



# SIERRA LEONE

END IMPUNITY THROUGH  
UNIVERSAL JURISDICTION

CAMPAIGN FOR  
INTERNATIONAL  
JUSTICE

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# 1. INTRODUCTION<sup>1</sup>

***Jurisdiction over particular crimes.*** Sierra Leone courts have been able to exercise universal criminal jurisdiction over grave breaches of the Geneva Conventions since 1959 (see Section 4 below).

Sierra Leone courts today can exercise universal jurisdiction over some ordinary crimes committed abroad by non-nationals serving in public office in Sierra Leone (see Section 4.1 below). They can also exercise universal jurisdiction over two crimes under national law of international concern (hijacking and attacks abroad on foreign aircraft) (see Section 4.2 below). In addition, Sierra Leone courts can exercise universal jurisdiction over some crimes under international law (for example, grave breaches of the Geneva Conventions, as well as some other war crimes when committed abroad by non-nationals serving in public office in Sierra Leone). However, Sierra Leone courts today cannot exercise universal jurisdiction over most crimes under international law, including many war crimes, all crimes against humanity, genocide, torture, extrajudicial executions, enforced disappearances and aggression. Universal jurisdiction means that the courts of Sierra Leone can try persons for acts committed outside its territory which are not linked to the state by the nationality of the suspect, the nationality of the victims or by harm to Sierra Leone's own national interest.

As explained in Section 4.3, Sierra Leone has defined some crimes under international law – including grave breaches of the Geneva Conventions, recruitment of child soldiers, slavery, the use of landmines and weapons particularly hazardous to children, and torture (against child victims) – as crimes under Sierra Leonean law. However, apart from grave breaches of the Geneva Conventions, it has not defined these crimes consistently with the strictest requirements of international law or it has not categorized them as war crimes in line with their characterization under international law. Moreover, it has not provided universal jurisdiction over these crimes, except in the narrow circumstance where a foreigner who is a public officer commits these crimes abroad. It has not

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<sup>1</sup> This report was researched and drafted by Aminta J. Ossom, a 2009 J.D. graduate of Harvard Law School and a Satter Fellow of the Harvard Human Rights Program, under the supervision of the International Justice Project in the International Secretariat of Amnesty International. Amnesty International wishes to thank the Harvard Human Rights Program, the Harvard Satter Fellowship and the American Society of International Law Arthur C. Helton Fellowship, which provided support for in-country research in conjunction with this report, Henry O.J. Tucker and the Amnesty International Sierra Leone Section for their assistance and accommodation and Hon. Justice Bankole Thompson, PhD, Emeritus Professor of Criminal Justice at Eastern Kentucky University (USA) (former Sierra Leone State Attorney, High Court judge, and Special Court for Sierra Leone justice), for his thoughtful and helpful comments on the current state of Sierra Leonean law during the drafting stage. In addition, Amnesty International is grateful for the helpful cooperation provided by members of the Sierra Leone Attorney General's Office, Ministry of Justice, Ministry of Defence, Human Rights Commission, Clerk of Parliament, Justice Sector Coordination Office, Anti-Corruption Commission and Sierra Leone Police as well as the assistance provided by members of Parliamentarians for Global Action, No Peace without Justice, the British Council Justice Sector Development Programme, Sierra Leone Red Cross Society, Network Movement for Democracy and Human Rights, Timap for Justice, and the Open Society Justice Initiative, who shared their expertise on the criminal justice system in Sierra Leone. Views included in this report reflect the positions of Amnesty International and may differ from the viewpoints of the above institutions and individuals.

Every effort was made to ensure that all the information in this paper was accurate as of 1 September 2012. However, for an authoritative interpretation of Sierra Leonean law, counsel authorized to practice in Sierra Leone should be consulted. Amnesty International welcomes any comments or corrections, which should be sent to [ijp@amnesty.org](mailto:ijp@amnesty.org).

defined crimes against humanity, most war crimes (apart from grave breaches of the Geneva Conventions), genocide, torture (against adult victims), extrajudicial executions, enforced disappearances and aggression as crimes under national law.

**Safe haven consequences regarding prosecution.** In addition to the failure to define many crimes under international law as crimes under national law and the failure to provide for universal jurisdiction over these crimes, as explained below in Section 6, there are numerous other obstacles to prosecution in universal jurisdiction cases, including: improperly broad defences, recognition of immunities and amnesties, political control over decisions to investigate or prosecute, very limited guarantees of the rights of victims, and inequality before the law.<sup>2</sup>

Therefore, Sierra Leone is currently a safe haven from prosecution in its courts for nationals and foreigners who are responsible for genocide, most war crimes (apart from grave breaches of the Geneva Conventions), crimes against humanity, torture, extrajudicial executions, enforced disappearances and aggression, whether committed in Sierra Leone or abroad. In addition, the factors identified above are likely to serve as obstacles to prosecution should Sierra Leone incorporate these crimes into national legislation in the future.

**Safe haven consequences regarding extradition.** As explained in Section 7, Sierra Leone is also a safe haven from extradition for war crimes, crimes against humanity, genocide, torture, extrajudicial executions, enforced disappearances and aggression because Sierra Leone legislation has not expressly provided that these crimes are extraditable. Although persons suspected of these crimes under international law could potentially be extradited for ordinary crimes that are components of the international crimes (such as murder, rape, and abduction), there is no express provision for extradition of a person suspected or convicted of crimes under international law, and there are a number of obstacles to granting extradition. In addition, there is no legal provision requiring that such persons be arrested and surrendered to the International Criminal Court or to any other international criminal court. Moreover, there are a number of obstacles to Sierra Leone seeking extradition from foreign states of persons suspected of crimes under international.

**Universal civil jurisdiction.** As explained below in Section 5, no statute expressly authorizes Sierra Leone to exercise universal civil jurisdiction. However, it is possible that victims can file civil claims in criminal proceedings based on universal jurisdiction arising out of the crimes in those proceedings, but not in civil proceedings (see Section 5 below).

**Special immigration, police and prosecution units.** As explained below in Section 8, Sierra Leone has no special immigration unit or consular service to screen for persons suspected of crimes under international law and to refer them to police or prosecuting authorities for investigation and possible prosecution.

Although Sierra Leone has special police units to investigate particular crimes under national law, such as terrorism and money laundering, and crimes of domestic and gender-based violence, Sierra Leone has no special police units to investigate crimes under international law.

In addition, Sierra Leone does not have any special prosecution unit to investigate and prosecute crimes under international law.

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<sup>2</sup> Other obstacles to prosecution, not specifically related to prosecutions based on universal jurisdiction, such as continuing conflict, violence or insecurity and general economic, social and cultural barriers to access to justice in the state exercising universal jurisdiction, are not addressed in this paper.

**Jurisprudence.** There are no known cases in Sierra Leone involving universal jurisdiction (see Section 9).

**Recommendations.** This paper is the ninth of a series of 193 papers on each UN member state updating Amnesty International's 722-page study of state practice concerning universal jurisdiction at the international and national level in 125 countries published in 2001 and the organization's preliminary global survey of universal jurisdiction legislation published in 2011 (for a list of the papers published so far, see Appendix I). This paper makes extensive recommendations for reform of law and practice so that Sierra Leone can fulfil its obligations under international law to investigate and prosecute crimes under international law, to extradite persons suspected of such crimes to another state able and willing to do so in a fair trial without the death penalty or a risk of torture or other cruel, inhuman or degrading treatment or punishment or to surrender them to the International Criminal Court.<sup>3</sup>

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<sup>3</sup> Amnesty International, *Universal jurisdiction: The duty of states to enact and enforce legislation*, Index: IOR 53/002 - 018/2001, September 2001 (<http://www.amnesty.org/en/library>); *Universal jurisdiction: A preliminary survey of legislation around the world - 2012 update*, Index: IOR 53/019/2012, 9 October 2012 (<http://www.amnesty.org/en/library/info/IOR53/019/2012/en>). Ten of the papers in the series have been published so far (Bulgaria, Burkina Faso, Germany, Ghana, Sierra Leone, Solomon Islands, Spain, Switzerland, Vanuatu and Venezuela) (see Appendix I for list and links).

## 2. THE LEGAL FRAMEWORK

**Very basic information about the country.** Sierra Leone is a West African nation that became independent of the United Kingdom on 27 April 1961. It is a member of the Commonwealth, the African Union and the Economic Community of West African States.

Sierra Leone is 10 years into the process of democratic reconstruction following an eleven-year internal armed conflict (lasting from 1991 to 2002), which greatly weakened political and legal institutions in the country and caused widespread destruction and loss of life. In its wake, the war left millions displaced, tens of thousands of victims fatally wounded, and many more maimed, severely injured, and sexually brutalized; extensive fighting also damaged the country's physical infrastructure and government institutions, including its justice system.

Two post-conflict mechanisms were established with the aim of ensuring some justice and to determine the truth about the crimes under international law committed during the war. The Special Court for Sierra Leone (SCSL), an international criminal court created by agreement between the United Nations and the Government of Sierra Leone, had the mandate to try those who were suspected of bearing the greatest responsibility for war crimes and crimes against humanity, as well as for certain serious violations of Sierra Leonean law committed in the country after 30 November 1996.<sup>4</sup> In addition, the Sierra Leone Truth and Reconciliation Commission (TRC) was created with the goal of establishing through testimony of victims and suspected perpetrators an impartial historical record of violations and abuses of human rights and crimes under international law that were committed during the war, providing recommendations for policy changes that would end impunity for human rights and international humanitarian law abuses, fostering peace and reconciliation, and responding to the needs of the victims.<sup>5</sup> However, as of 1 September 2012, many key recommendations of the TRC report have yet to be implemented (see Section 2.6 below).

### 2.1. TYPE OF LEGAL SYSTEM

Sierra Leone has a dual legal system modelled in part on the legal system of England. According to the Constitution, Sierra Leonean law includes the formal English common law, which is applicable in all jurisdictions including Freetown, and customary law, which covers family, property and personal matters as well as minor civil disputes and criminal offences and is applicable to communities outside of Freetown that accede to this law by custom.<sup>6</sup> Customary law is not discussed in this

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<sup>4</sup> Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone, art. 1 (1) (<http://www.sc-sl.org/LinkClick.aspx?fileticket=CLk1rMQtCHg%3d&tabid=176>).

<sup>5</sup> *Witness to Truth: Report of the Sierra Leone Truth & Reconciliation Commission*, Vol. 1, Ch. 1 Mandate, pp. 21-46, (<http://www.sierra-leone.org/Other-Conflict/TRCVolume1.pdf>). The SCSL is finalizing its work with the hearing of the appeal by former Liberian President Charles Taylor of his conviction and sentence for crimes against humanity and war crimes in Sierra Leone and the establishment of residual court mechanisms expected in 2012.

<sup>6</sup> The Constitution states that the laws of Sierra Leone include: provisions of the Constitution; laws made or under the authority of the Parliament as established by the Constitution; any orders, rules, regulations and other statutory instruments made by any person or authority pursuant to a power conferred in that behalf by the Constitution or any other law; the existing law (written and unwritten law that came into force before the 1991 Constitution); and common law (along with rules of customary law, including those determined by the Supreme Court of Judicature). The Constitution of Sierra Leone, 1991 (Act No. 6 of 1991) (1991 Constitution), Ch. XII, Sect. 170.

paper. The national Constitution of Sierra Leone, 1991, is the supreme law of the land to which all other laws must conform.<sup>7</sup>

Capacity constraints within the legal system may hinder access to and speedy administration of justice in Sierra Leone if universal jurisdiction is exercised. Independent observers have documented that arbitrary detentions, detentions extending beyond the period permitted by law, overcrowding and unsanitary conditions characterize the prison system.<sup>8</sup> In 2011, According to information submitted to the UN Human Rights Council during Sierra Leone's 2011 UN Universal Periodic Review, the justice sector suffers from persistent delays, restricted prosecutorial capacity causing postponements in adjudication, and a limited amount of vehicles to carry detainees to court.<sup>9</sup> Reportedly, shortages of personnel – including judges, magistrates, public prosecutors, private and legal aid lawyers – make justice even more inaccessible.<sup>10</sup> Sierra Leone has an official moratorium on the death penalty, but capital punishment still remains in the law.<sup>11</sup>

## 2.2. STATUS OF INTERNATIONAL LAW

There is no provision in the 1991 Sierra Leone Constitution that spells out a hierarchy of customary or conventional international law within the national legal system. However, Article 40 (4) of the Constitution outlines requirements for domestic ratification of international treaties:

“Provided that any Treaty, Agreement or Convention executed by or under the authority of the President which relates to any matter within the legislative competence of Parliament, or which in any way alters the law of Sierra Leone or imposes any charge on, or authorises any expenditure out of, the Consolidated Fund or any other fund of Sierra Leone, and any declaration of war made by the President shall be subject to ratification by Parliament – (i) by enactment of Parliament; or (ii) by resolution supported by the votes of not less than one-half of the Members of Parliament”.<sup>12</sup>

Sierra Leone is a dualist country in relation to international law, so international treaties can be implemented domestically only after incorporation into national legislation or through some other direct adoption into national law.<sup>13</sup>

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<sup>7</sup> 1991 Constitution, Ch. XIII, Sect. 171 (15).

<sup>8</sup> Human Rights Council, *Assistance to Sierra Leone in the field of human rights - Report of the United Nations High Commissioner for Human Rights*, 22 February 2011, A/HRC/16/78 (*Report of the UN High Commissioner for Human Rights*), para. 19 - 20. Human Rights Commission of Sierra Leone, *The State of Human Rights in Sierra Leone*, Freetown, 2010, pp. 46 - 47.

<sup>9</sup> Human Rights Council Working Group on the Universal Periodic Review, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 Sierra Leone (Compilation by OHCHR)*, 21 February 2011, A/HRC/WG.6/11/SLE/2, para. 30. Human Rights Commission of Sierra Leone, *The State of Human Rights in Sierra Leone* 43 (2010).

<sup>10</sup> Human Rights Council, *Report of the UN High Commissioner for Human Rights*, para. 21.

<sup>11</sup> Human Rights Council, *Report of the UN High Commissioner for Human Rights*, para. 2.

<sup>12</sup> 1991 Constitution Ch. V, Sect. 40 (4).

<sup>13</sup> According to the dualist approach, international and national law are two completely separate legal systems. International law would apply within a state only to the extent that it has been adopted by that state's own national law, not as international law. In contrast, according to the monist approach, international and national law are part of a single legal system and international law can be directly applied by national courts. See

Although not a party to the Vienna Convention on the Laws of Treaties, Sierra Leone is, as a matter of customary international law, obliged to recognize in all circumstances the supremacy of both conventional international law and customary international law with regard to its national law.<sup>14</sup> This obligation applies to all national law, including constitutions and legislation.<sup>15</sup> Therefore, Sierra Leone, as a matter of customary international law, should undertake any legislative changes necessary to comply with its obligations under treaties and customary international law, in particular, those spelled out below in the Recommendations section.

## 2.3. COURT SYSTEM

Sierra Leone has both civilian and military court systems.

### 2.3.1. STRUCTURE OF THE CIVILIAN COURT SYSTEM

The Sierra Leone judiciary is comprised of several levels of ordinary courts operating on two tracks – common law and customary law (customary law is not discussed in this paper).<sup>16</sup> Because they constitute serious crimes, crimes under international law would fall under the jurisdiction of the common law system.

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generally, Robert Jennings and Arthur Watts, *Oppenheim's International Law*, London and New York: Longman, 1992, pp. 53-54.

<sup>14</sup> For more than a century, international court decisions, arbitral awards and public international law experts have not limited the obligation under international law to ensure that national legislation and jurisprudence not be inconsistent with international law to conventional international law. See, for example, *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947 (Advisory Opinion)*, I.C.J. Rep. (1988), p. 34 (noting “the fundamental principle of international law that international law prevails over domestic law”) (citing *Alabama Claims* arbitration award (14 September 1872), reprinted in J.B. Moore, *International Arbitrations*, New York, vol. 1, pp. 495, 653, 1898); Robert Jennings and Arthur Watts, *Oppenheim's International Law*, 1992, 9th ed., vol. 1, pp. 82 – 86; Malcolm N. Shaw, *International Law*, Cambridge: Cambridge University Press, 4th ed., 1997, pp. 102 - 103; Gerald Fitzmaurice, ‘Law and Procedure of the International Court of Justice’, 1954 - 9 - General Principles and Sources of International Law, Brit. Y.B. Int'l L., 1959, 183; Edwin Borchard, ‘The relation between international law and municipal law’, Va. L. Rev., vol. 27, p. 137.

<sup>15</sup> Annemie Schaus, ‘Article 27 (1969)’, *Les Conventions de Vienne sur le droit des traités: Commentaire article par article*, Olivier Corten & Pierre Klein (eds.), Bruxelles: Bruylant-Centre de droit international-Université Libre de Bruxelles, 2006, p.1136 (« L'article 27 de la Convention de Vienne, quant à lui, prescrit certainement, dans l'ordre juridique international, la primauté du droit international sur le droit interne »). Mark E. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, Leiden: Martinus Nijhoff / Brill, 2009, p. 375 (“Article 27 expressed the principle that on international level international law is supreme”).

<sup>16</sup> According to the 1991 Constitution, the Sierra Leone Judicature consists of the Supreme Court of Sierra Leone, the Court of Appeal, and the High Court of Justice, all of which are superior courts of record and together constitute one Superior Court of Judicature in Sierra Leone. Included in the judiciary are any inferior or traditional courts established by Parliament through independent legislation, which by law includes a lower level of magistrates’ and local courts. 1991 Constitution, Ch. VII, Sect. 120 (4); Courts Act, 1965 (Act No. 31 of 1965) (Courts Act); the Local Courts Act, 2011 (Act No. 10 of 2011). Within the customary system, the lowest level of courts includes the local courts, which have jurisdiction in their respective chiefdoms over civil matters where the damages in dispute do not exceed one million leones, over minor criminal matters where the punishment does not exceed six month’s imprisonment and/or a fine of 50,000 leones, and over customary matters. The Local Courts Act, 2011 (Act No. 10 of 2011) (Local Courts Act), Sect. 15. Appeals within the customary system go from the local courts to the District Appeals Court, from the District Appeals Court to the Local Appeals Division of the High Court of Justice, from the Local Appeals Division to the Customary Appeals Division of the Court of Appeal. Local Courts Act, Sects. 39 - 43.

There are four levels of courts in the common law system. At the lowest level are the magistrates' courts, which supervise preliminary investigations into serious criminal charges, determining whether a suspect should face indictment at the High Court of Justice, which has original jurisdiction over felony charges such as murder and rape.<sup>17</sup> Appeals from judgments of the magistrates' courts are heard by the High Court of Justice.<sup>18</sup> Appeals from the High Court of Justice are heard by the Court of Appeal.<sup>19</sup> Appeals from the Court of Appeal are heard by the Supreme Court of Sierra Leone as of right for civil cases, as of right for criminal cases having passed through the High Court of Justice and the Court of Appeal, or with leave of the Court of Appeal in criminal cases deemed substantial or of public importance.<sup>20</sup> In addition, the Supreme Court of Sierra Leone has original, exclusive jurisdiction to enforce or interpret any provision of the Constitution.<sup>21</sup>

### 2.3.2. STRUCTURE OF THE MILITARY COURT SYSTEM

Courts-martial are military courts that have the power to try any person subject to military law for offences under military law, as spelled out by the Armed Forces of the Republic of Sierra Leone Act, 1961, and for offences under civilian law as applied to those in the military in peace and wartimes.<sup>22</sup> There is only one level of courts in the military court system. A court-martial sits as a tribunal with similar powers, rights, and privileges as are vested in High Court justices. Appeals from courts-martial are heard by the civilian Court of Appeal as of right for death penalty cases and with leave of the Court of Appeal for other cases.<sup>23</sup> Decisions reached by the Court of Appeal are final.<sup>24</sup>

Although not explicitly stated in the Armed Forces of the Republic of Sierra Leone Act, it is implied that courts-martial would have jurisdiction over crimes under international law should they be incorporated into national legislation. A catchall provision in the Act states that courts-martial have jurisdiction over all crimes under civilian law as applied to those in the military, which would include war crimes and crimes against humanity, in addition to offences under military law.<sup>25</sup> It is increasingly recognized by the international community that military courts should not have jurisdiction over members of the armed forces or civilians in cases involving human rights violations or crimes under international law (see below Section 4.3.1 below).

**Precedent.** As in most common law countries, all courts, including the Supreme Court, are normally bound by the rule of *stare decisis* (binding precedent) on questions of law. However, the Constitution provides that the Supreme Court may depart from its own previous decisions "when it appears right

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<sup>17</sup> Magistrates' courts also handle minor civil and criminal matters. Courts Act, Sects. 6 - 7 as amended by Courts (Amendment) Act, 1981 (Act No. 2 of 1981) and Courts (Amendment) Act, 2006 (Act No. 2 of 2006); See also Bankole Thompson, *The Criminal Law of Sierra Leone*, Lanham, Maryland: University Press of America, 1999, pp. 4 - 6.

<sup>18</sup> 1991 Constitution, Ch. VII, Sect. 134

<sup>19</sup> 1991 Constitution, Ch. VII, Sect. 122 (1). The Court of Appeal also has jurisdiction to hear appeals from Courts Martial as of right for death penalty cases and with leave of the Court of Appeal for other matters. The Armed Forces of the Republic of Sierra Leone (Amendment) Act, 2000, (Act No. 13 of 2000) (Armed Forces Amendment Act), Sect. 129.

<sup>20</sup> 1991 Constitution, Ch. VII, Sect. 123 (1).

<sup>21</sup> 1991 Constitution, Ch. VII, Sect. 124 (1)

<sup>22</sup> The Armed Forces of the Republic of Sierra Leone Act, 1961 (Act No. 34 of 1961) (Armed Forces Act), Sects. 72, 84.

<sup>23</sup> Armed Forces Act, Sect. 129, as amended by the Armed Forces Amendment Act.

<sup>24</sup> Armed Forces Act, Sects. 133, 139, as amended by the Armed Forces Amendment Act.

<sup>25</sup> See Armed Forces Act, Sects. 72, 84.

to do so.”<sup>26</sup> Within the judicial hierarchy, all courts are bound by the decisions of the Supreme Court, and courts inferior to the Court of Appeal are bound by the decisions of the Court of Appeal.<sup>27</sup>

## 2.4. OTHER COMPONENTS OF THE JUDICIAL SYSTEM

In addition to the courts, other actors in the judicial system are police and prosecutors, as well as a number of monitoring and coordinating institutions, discussed below in Section 2.6, such as the Office of the Ombudsman, the Human Rights Commission of Sierra Leone (Human Rights Commission), the Anti-Corruption Commission, the Law Reform Commission of Sierra Leone (Law Reform Commission) and the Justice Sector Coordination Office of the Ministry of Justice.

**Immigration screening unit.** There does not appear to be an immigration or consular unit that screens persons to determine whether they may have committed crimes under international law and to refer that determination to police or prosecutors for investigation and possible prosecution.

**Police.** Section 155 of the Constitution establishes the Police Force of Sierra Leone (Sierra Leone Police or SLP), headed by the Inspector General of Police.<sup>28</sup> According to the Police Act, 1964, the police are employed “for the detection of crime and the apprehension of offenders, [for] the preservation of law and order, the protection of property and the due enforcement of all law and regulations with which they are directly charged.”<sup>29</sup> Apart from the investigative officers of the Anti-Corruption Commission (see Section 2.6 below), the police have an exclusive mandate to investigate crime for prosecution.<sup>30</sup>

There are two specialized police units to investigate specific crimes: a Transnational Organized Crime Unit (TOCU), which investigates crimes under national law of international concern, such as cyber crime, drug trafficking and trafficking in persons, and a Family Support Unit (FSU) of the police, which has responsibility for investigating gender-based crimes and domestic violence. However, there is no special police unit to investigate crimes under international law (see Section 8 below).<sup>31</sup>

**Prosecuting authorities.** Section 64 of the 1991 Constitution provides for the office of Attorney General and Minister of Justice (a single office), a cabinet level political official who serves as the principal legal adviser and chief prosecutor for the Government of Sierra Leone.<sup>32</sup> The Solicitor

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<sup>26</sup> 1991 Constitution, Ch. VII, Sect. 122 (2).

<sup>27</sup> 1991 Constitution, Ch. VII, Sects. 122 (2), 128 (3).

<sup>28</sup> 1991 Constitution, Ch. X, Sect. 155.

<sup>29</sup> The Police Act, 1964 (Act No. 7 of 1964), Sect. 3.

<sup>30</sup> In addition, police-prosecutors try summary cases in magistrates’ courts through a general fiat (a formal authorization granted by the Attorney General and Minister of Justice permitting individuals who are not part of the Law Officers’ Department to prosecute criminal cases). See Law Officers’ (Conduct of Prosecutions) Instructions, 1965 (Public Notice 33 of 1965). In this capacity, state counsel from the Ministry of Justice Law Officers Department supervise their work. Interview with Superintendent and Head of the Legal & Justice Sector Support Department, Sierra Leone Police, in Freetown, Sierra Leone (19 September 2011).

<sup>31</sup> Interview with Superintendent and Head of the Legal & Justice Sector Support Department, Sierra Leone Police, in Freetown, Sierra Leone (19 September 2011); Interview with Deputy-Manager of the Family Support Unit, Sierra Leone Police, in Freetown, Sierra Leone (10 October 2011).

<sup>32</sup> 1991 Constitution, Ch. V, Sect. 64. The only criminal offence not prosecutable by the Attorney General and Minister of Justice and his assigns is the offence of corruption, prosecuted by the Anti-Corruption Commission (see Section 2.6). The Constitution of Sierra Leone (Amendment) Act, 2008 (Act No. 9 of 2008), Sects. 1 - 2. An Act to make certain Provisions in Relation to the Office of the Attorney-General and the Organisation of the Law Officers Department, 1965 (Act No. 6 of 1965), Sect. 2 (b). The Attorney General and Minister of Justice

General is the assistant to the Attorney General and Minister of Justice and serves as chief administrator of the Ministry of Justice. Both the Attorney General and Minister of Justice and the Solicitor General may try cases in any Sierra Leone court excluding local courts.<sup>33</sup> The Attorney General and Minister of Justice has supervisory responsibility over the Director of Public Prosecution and over the Law Officers Department of the Ministry of Justice, which the Director of Public Prosecution directs (see Section 6.8 below).<sup>34</sup>

Independent from the Law Officers Department, the Sierra Leone Anti-Corruption Commission has the exclusive authority to investigate and prosecute corrupt practices committed by public officials and private persons (see Section 2.6 below). However, with the exception of prosecutors from the Anti-Corruption Commission, state counsel are not independent and try criminal matters on behalf of and under the ultimate supervision of the Attorney General and Minister of Justice.<sup>35</sup> In fact, subject to the authority of this political official, the Director of Public Prosecutions has the power, not only to initiate, but also to take over or discontinue criminal proceedings instituted by any person and against any person in the country.<sup>36</sup> As noted above and in Section 8 below, there are no special prosecution, investigation, or joint police-prosecution units to investigate or prosecute crimes under international law.

## 2.5. ROLE OF VICTIMS AND ORGANIZATIONS ACTING IN THE PUBLIC INTEREST IN CRIMINAL PROCEEDINGS

In addition to government prosecutors, it is possible that legal persons acting in the public interest or on behalf of victims can initiate criminal prosecutions if granted a fiat (a formal, written authorization) by the Attorney General and Minister of Justice. Police and prosecutors do not have experts on crimes under international law of sexual or gender-based violence (there is a special unit with expertise in domestic violence – see Section 8 below), experts on crimes against members of marginalized groups such as minorities, or on the role of children as victims, witnesses or suspects.

### 2.5.1. CIVIL CLAIMS IN CRIMINAL PROCEEDINGS

The right to reparation and to civil claims in criminal, as well as in civil, proceedings is discussed in Section 5 below.

### 2.5.2. CRIMINAL PROCEEDINGS INITIATED BY VICTIMS OR IN THEIR BEHALF

As discussed below, legal persons acting on behalf of victims may be able to initiate criminal prosecutions through a grant of fiat by the Attorney General and Minister of Justice.

#### 2.5.2.1. Criminal proceedings initiated by victims

Victims or their families cannot initiate criminal proceedings alone.

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also represents the Government of Sierra Leone, its Ministers, Parliamentary Secretaries and Public Officers in all civil proceedings that arise out of the discharge of their duties. This official is the principal legal adviser to the government and a minister. The Attorney General only additionally became Minister of Justice in 1978 with the promulgation of the “One-party Constitution”. Although the functions of Minister of Justice are not identified in the Constitution, the minister is the official link between the Judiciary and Parliament/Cabinet and is responsible for judicial affairs.

<sup>33</sup> 1991 Constitution, Ch. V Sects. 64-65.

<sup>34</sup> 1991 Constitution, Ch. V Sect. 66. A primary role of the Law Officers Department, apart from prosecuting cases, is to supervise police-prosecutors and police investigations. Interview with Superintendent and Head of the Legal & Justice Sector Support Department, Sierra Leone Police, in Freetown, Sierra Leone (19 September 2011).

<sup>35</sup> 1991 Constitution, Ch. V, Sect. 64 (3).

<sup>36</sup> 1991 Constitution, Ch. V, Sect. 66 (4); The Criminal Procedure Acts, 1965 (Act No. 32 of 1965) (Criminal Procedure Acts), Sects. 44 - 46.

#### 2.5.2.2. Criminal proceedings initiated on behalf of victims or the public interest

Legal representatives of victims or their families, as well as other legal officers, may be able to initiate criminal proceedings if the Attorney General and Minister of Justice grants these representatives the authority to prosecute by fiat. A 'fiat' indicates official consent when required for the prosecution of some cases.<sup>37</sup> Although the practice has been largely untested, it is nevertheless certain that the Attorney General and Minister of Justice, a political official, would have the absolute discretion to refuse to grant this fiat or to revoke it.<sup>38</sup>

#### 2.5.3. RIGHTS OF VICTIMS IN CRIMINAL PROCEEDINGS

As discussed below, essential rights of victims in criminal proceedings are not guaranteed, including notice about their rights, the right to protection at all stages of the proceedings, the right to notice about developments in the proceedings, the right to participate in the proceedings and the right to legal representation in the proceedings.

##### 2.5.3.1. Notice of the rights of victims

The right of victims to notice about their rights regarding the investigation, prosecution and appeal is not guaranteed in law and practice.<sup>39</sup>

##### 2.5.3.2. Protection

According to a leading expert on Sierra Leonean law, protection may be afforded to victims during the course of trial or during any other proceedings by a court acting in pursuance of its inherent jurisdiction, such jurisdiction being an emanation from the common law.<sup>40</sup> However, in practice Sierra Leone courts have limited resources and often have not been able to provide effective victim and witness protection.<sup>41</sup>

##### 2.5.3.3. Support

The right to provision of psychological and other support for victims, particularly people who are often marginalized, such as women, members of minority groups and children, is not guaranteed by law. In practice, a limited number of programs funded and administered by non-governmental organizations provide social, financial, or medical support to special classes of victims such as victims of trafficking and victims of sexual and gender-based violence.<sup>42</sup> There do not appear to be programs administered by the state that provide such support to victims.

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<sup>37</sup> See Bankole Thompson, *The Criminal Law of Sierra Leone* 200 (1999).

<sup>38</sup> See Criminal Procedure Acts, Sects. 44-46.

<sup>39</sup> Interviews with Sierra Leonean lawyers and NGOs, in Freetown, Sierra Leone (13 September 2011, 16 September, 2011, 23 September 2011, 3 October 2011, 11 October 2011).

<sup>40</sup> Written Memo by Justice Bankole Thompson (30 March 2012).

<sup>41</sup> See Chris Mahony, 'Sierra Leone: Domestic protection conceptualised by an international tribunal,' *The Justice Sector Afterthought: Witness Protection in Africa*, Tswane, South Africa: Institute of Security Studies, 2010, pp. 150-161; UCLA School of Law International Justice Clinic & Aids-Free World, '4. Sierra Leone,' *Safety Denied: Victim and Witness Protection in Sexual Violence Cases*, 2011, pp. 23-29.

<sup>42</sup> Interview with Deputy-Manager of the Family Support Unit, Sierra Leone Police, in Freetown, Sierra Leone (10 October 2011). See also UCLA School of Law International Justice Clinic & Aids-Free World, *Safety Denied: Victim and Witness Protection in Sexual Violence Cases* 24 (2011).

#### 2.5.3.4. Notice of developments

The right of victims to notice about all developments in the investigation, prosecution and appeal is not guaranteed in law and practice.<sup>43</sup>

#### 2.5.3.5. Participation

The rights of victims to participate in pre-trial, trial and appellate proceedings are not guaranteed.

#### 2.5.3.6. Representation

The right of victims to legal representation in criminal – as opposed to civil (see Section 5.4.6 below) – proceedings is not guaranteed.<sup>44</sup>

## 2.6. OTHER INSTITUTIONS THAT HAVE A ROLE IN MONITORING THE JUDICIAL SYSTEM OR IN PROPOSING REFORM OF LAW AND PRACTICE

There are a number of other institutions that have a role in monitoring the judicial system or in proposing reform of law or practice, most of which could make recommendations relevant to the issues discussed in this paper, including endorsements of the recommendations made below in this paper.

***The Truth and Reconciliation Commission (TRC).*** The Sierra Leone Truth and Reconciliation Commission (TRC), a post-conflict mechanism that was operational between 2002 to 2004, made a number of recommendations to reform law and practice with the goal of preventing the resumption of widespread international human rights and humanitarian law abuses after the civil war.<sup>45</sup> Although the TRC did not make specific recommendations regarding the incorporation of crimes under international law, many of its recommendations proposed reforms to the national judicial system, such as the recommendation to improve women's access to justice and the recommendation for the establishment of legal aid for indigent clients.<sup>46</sup> As of 1 September 2012, many key recommendations of the TRC report had yet to be implemented. Some of these recommendations are relevant to the matters addressed in this paper, including: separation of the Offices of the Attorney General and that of the Minister of Justice, establishment of a TRC follow-up committee, abolition of the death penalty, decriminalization of libel, and constitutional review and repeal of discriminatory provisions against women.<sup>47</sup>

***The Ombudsman.*** The office of the Ombudsman, established by Section 146 of the Constitution and Section 2 of The Ombudsman Act, 1997, is an independent public officer who has the power to investigate maladministration and unjust actions or omissions of any department or ministry.<sup>48</sup>

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<sup>43</sup> Interviews with Sierra Leonean lawyers and NGOs, in Freetown, Sierra Leone (13 September 2011, 16 September, 2011, 23 September 2011, 3 October 2011, 11 October 2011).

<sup>44</sup> A legal aid bill passed by Parliament in May 2012 provides that an indigent person arrested, detained, or accused of a crime should have access to legal advice and assistance. That person should also have legal representation if approved for this service by the Legal Aid Board. However, the legislation does not guarantee representation to victims. See The Legal Aid Act, 2012, Sect. 20 (1). According to a reputable source, the President has signed the bill, but it was not yet available online as of 1 September 2012.

<sup>45</sup> *Witness to Truth*, Vol. 1, Ch. 1 Mandate, pp. 21- 46.

<sup>46</sup> See *Witness to Truth*, Vol. 2, Ch. 3 Recommendations (<http://www.sierra-leone.org/Other-Conflict/TRCVolume2.pdf>), pp. 149 - 150.

<sup>47</sup> Human Rights Council, *Report of the UN High Commissioner for Human Rights*, para. 48.

<sup>48</sup> This includes any statutory corporation or institution of higher learning set up at least partially through public

Although investigative proceedings are informal in nature, the Ombudsman has the same powers, rights and privileges as are vested in the High Court of Justice to seek evidence and enforce attendance of witnesses.<sup>49</sup> To resolve a complaint made against a public official, the Ombudsman can facilitate negotiation, report on an investigation with recommendations, inform the Government of a defect in law, or draw the attention of the Attorney General and Minister of Justice to a potential crime.<sup>50</sup> However, the Ombudsman does not have the authority to investigate a matter relating to the prosecutorial discretion of the Attorney General and Minister of Justice.<sup>51</sup> It does not appear that the Ombudsman has made any recommendations concerning crimes under international law or universal jurisdiction.

**The Human Rights Commission.** The Human Rights Commission of Sierra Leone (Human Rights Commission), established by the Human Rights Commission Act in 2004, is a national human rights institution staffed full-time by a five-person body of human rights experts – including two lawyers – and appointed by the President subject to the approval of the Sierra Leone Parliament.<sup>52</sup> The Human Rights Commission conducts independent investigations into human rights complaints, promotes human rights through public education and outreach, and monitors and documents human rights violations in the country. It also advises the Government of Sierra Leone on human rights during the passing of legislation and in state reporting to treaty bodies, producing an annual report on the state of human rights in the country.<sup>53</sup> It does not appear that the Human Rights Commission has made any recommendations concerning crimes under international law or universal jurisdiction.

In its investigative role, the Human Rights Commission has the same powers, rights, and privileges as are vested in High Court justices to examine complaints of human rights violations committed by public officials.<sup>54</sup> After making its decision on an investigation, the Human Rights Commission may issue enforceable orders or directions, such as requiring measures to protect the life and safety of an individual or recommending the payment of reparations to victims and their families or costs to their lawyers.<sup>55</sup> Decisions made after an investigation by the Human Rights Commission may be appealed to the Supreme Court.<sup>56</sup> The Human Rights Commission also has the authority to appoint legal practitioners to submit *amicus curiae* briefs in legal proceedings involving human rights issues within the competence of the Commission.<sup>57</sup>

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funding, and any member of the public service, including officers of the court. 1991 Constitution, Ch. X, Sect. 146; The Ombudsman Act, 1997 (Act No. 2 of 1997) (Ombudsman Act), Sects. 2, 8, 19.

<sup>49</sup> Ombudsman Act, Sects. 10 - 11.

<sup>50</sup> Ombudsman Act, Sect. 7 (1) (b).

<sup>51</sup> Neither does the Ombudsman have the authority to investigate a matter pending before or already decided by a competent tribunal or a matter involving dealings between the Government of Sierra Leone and that of another state or international organization, or involving the granting of honors or awards. Ombudsman Act, Sect. 8.

<sup>52</sup> Human Rights Commission of Sierra Leone Act, 2004 (Act No. 9 of 2004) (Human Rights Commission Act), Sect. 3.

<sup>53</sup> Human Rights Commission Act, Sect. 7.

<sup>54</sup> This means the HRCSL may enforce attendance of witnesses, examine witnesses under oath, compel the production of documents and other evidence, and issue a request for the examination of witnesses abroad. Human Rights Commission Act, Sect. 8 (1) (a).

<sup>55</sup> Human Rights Commission Act, Sects. 8 (1) (b), 11. The Commission may refer any individual who refuses to comply with its decisions, directions, or orders to the High Court of Justice for contempt. Human Rights Commission Act, Sect. 8.

<sup>56</sup> Human Rights Commission Act, Sect. 8 (3).

<sup>57</sup> In these instances, the legal practitioners must have at least five years' experience. Human Rights Commission

However, the Human Rights Commission does not have the authority to investigate human rights complaints that fall within the mandate of other governmental institutions, such as corrupt practices or crimes, which it would refer to the Anti-Corruption Commission or to the police and Law Officers Department respectively.<sup>58</sup> In addition, it cannot investigate a matter that is pending or has already been decided by a competent tribunal.<sup>59</sup>

**The Anti-Corruption Commission.** The Anti-Corruption Commission, governed by the Anti-Corruption Act of 2008, is an independent statutory body headed by a Commissioner with legal practice experience and a Deputy Commissioner with a background in financial accountability.<sup>60</sup> The Anti-Corruption Commission conducts independent investigations into corruption complaints, monitors the practices and procedures of public bodies for corruption, combats corruption nationally through research, advising, public education and outreach, and prosecutes corrupt acts through the criminal justice system.<sup>61</sup>

**The Justice Sector Coordination Office.** Established in 2007, the Justice Sector Coordination Office of the Ministry of Justice coordinates and implements the Government of Sierra Leone's justice sector reform strategy, which aims to streamline and improve the activities of nine ministries, departments and agencies comprising the justice sector.<sup>62</sup> It has made no recommendations concerning the adjudication of crimes under international law or universal jurisdiction.

**The Law Reform Commission.** The Law Reform Commission, composed of representatives from the bar, bench, Ministry of Justice, Sierra Leone Bar Association, and Law School, is charged with regularly reviewing all law in force in Sierra Leone with a view to eliminating anomalies, repealing obsolete and outdated legislation, and generally updating and modernizing the law.<sup>63</sup> The Commission, which drafts recommendations for law reform for presentation to the Attorney General

Act, Sect. 12.

<sup>58</sup> Interview with Public Information Officer, Human Rights Commission of Sierra Leone, in Freetown, Sierra Leone (11 August 2011).

<sup>59</sup> Human Rights Commission Act, Sect. 16 (a).

<sup>60</sup> The Anti-Corruption Act, 2008 (Act No. 12 of 2008) (Anti-Corruption Act), Sects. 3, 9. The Anti-Corruption Act, 2008 repeals the Anti-Corruption Act, 2000. Anti-Corruption Act, Sect. 141.

<sup>61</sup> Anti-Corruption Act, Sect. 7; The Constitution of Sierra Leone (Amendment) Act, 2008 (Act No. 9 of 2008), Sects. 1 - 2. In its investigative capacity, the ACC has the same powers, rights, and privileges as are vested in High Court justices to examine corruption complaints.<sup>61</sup> If at the conclusion of an investigation, the Commissioner is of the opinion that corrupt practices have been found warranting prosecution, the Commissioner or his charge may prosecute individuals responsible in the High Court of Justice or pursue civil remedies. Anti-Corruption Act, Sects. 89, 133. While the thrust of the work of the Anti-Corruption Commission focuses on public officials, any person can be found liable under the 2008 Act. Interview with Prosecutor, Anti-Corruption Commission, in Freetown, Sierra Leone (13 September 2011).

<sup>62</sup> British Council Justice Sector Development Programme, *Justice Sector Development Programme (JSDP): A Government of Sierra Leone Initiative*, Freetown: British Council, 2010, p. 2. The nine ministries, agencies and departments are the Anti-Corruption Commission, the Sierra Leone Prisons Service, the Ombudsman Office, the Law Reform Commission, the Judiciary, the Attorney General's Office, the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Local Government and Rural Development, the Sierra Leone Police, the Ministry of Social Welfare and Gender Affairs, and the Human Rights Commission of Sierra Leone.

<sup>63</sup> Law Reform Commission Act, as amended by the National Provisional Ruling Council Decrees (Repeal and Modification) Act, 1996 (Act No. 3 of 1996) (NPRC Decrees Repeal and Modification Act), Sects. 2, 3.

and Minister of Justice, may also appoint committees and legal researchers for the facilitation of its mandate.<sup>64</sup> It produces an annual report on its activities.<sup>65</sup>

A number of institutions have recommended amending the substantive criminal law and legislation relevant to the administration of justice in Sierra Leone. Legal practitioners in the country have mentioned that they drafted or were aware of other practitioners' bills proposing legal aid for indigent clients, modernization of laws related to sexual offences, and amendments to the Criminal Procedure and Money Laundering Acts.<sup>66</sup> However, despite efforts to obtain information concerning these bills from the Law Reform Commission, which has primary responsibility for cataloguing and coordinating these legal reform efforts, it was not possible to obtain documentation detailing these proposals.

It does not appear that the Law Reform Commission has made any recommendations of its own concerning crimes under international law or universal jurisdiction.

***Prior civil society advocacy on the domestic incorporation of crimes under international law.*** A

number of civil society groups in addition to Amnesty International, including Parliamentarians for Global Action and No Peace Without Justice,<sup>67</sup> have advocated for the domestic incorporation of crimes under international law in Sierra Leone. Amnesty International is aware of two draft bills drafted by civil society proposing the incorporation of provisions of the Rome Statute of the International Criminal Court, which Sierra Leone ratified more than a decade ago on 15 September 2000, into legislation, but Amnesty International has not been able to locate copies of either bill. Neither bills has ever been enacted into law. Defining crimes under international law as crimes in Sierra Leone, either through the enactment of a comprehensive ICC Act based on these bills or through other legislation that adequately defines and sanctions crimes under international law, are substantive law reform efforts necessary to ensure that Sierra Leone does not remain a safe haven for perpetrators of crimes under international law (see Recommendations section below).

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<sup>64</sup> Law Reform Commission Act, as amended by the NPRC Decrees Repeal and Modification Act, Sects. 3(1), 3(3), 6(1).

<sup>65</sup> Law Reform Commission Act, as amended by the NPRC Decrees Repeal and Modification Act, Sect. 9.

<sup>66</sup> Interviews with lawyers, in Freetown, Sierra Leone (12 Sept 2011, 13 Sept 2011, 19 Sept 2011, 3 October 2011).

<sup>67</sup> Both groups have hosted workshops and seminars in Sierra Leone and in the West Africa region on the domestic incorporation of the Rome Statute of the International Criminal Court. See No Peace Without Justice, Seminar on Implementation of the Rome Statute of the International Criminal Court (Freetown, 11-15 December 2006 (<http://www.npwj.org/ICC/Seminar-Implementation-Rome-Statute-International-Criminal-Court.html-0>); No Peace Without Justice, Sierra Leone Regional Roundtables (Bo, 15-16 August 2007 & Makeni, 21-22 January 2008) (<http://www.npwj.org/ICC/Sierra-Leone-Roundtable-2008.html-0>); Parliamentarians for Global Action, Regional Roundtable Discussion on the Implementation of the Rome Statute of the ICC (Freetown, 18 January 2008) (<http://www.pgaction.org/activity/2008/pga-regional-roundtable-discussion-on-the-implementation-of-the-rome-statute.html>); Parliamentarians for Global Action, Regional Roundtable Discussion on the Implementation of the Rome Statute of the ICC (Monrovia, 9 February 2011) (<http://www.pgaction.org/activity/2011/regional-roundtable-discussion-on-implementation-of-the-rome-statute-of-the-icc.html>).

### 3. GEOGRAPHIC JURISDICTION OTHER THAN UNIVERSAL JURISDICTION

There are five forms of geographic jurisdiction: territorial jurisdiction and four forms of extraterritorial jurisdiction (active and passive personality jurisdiction, protective jurisdiction and universal jurisdiction (discussed below in Section 4)). Sierra Leone courts can exercise territorial jurisdiction, active personality and protective jurisdiction over certain crimes, but they cannot exercise passive personality jurisdiction.

**Territorial jurisdiction.** National courts of Sierra Leone can exercise territorial jurisdiction over crimes and torts that occurred in that country's territory if the crimes were committed entirely in the territory, within its territorial sea, or on board one of its ships or aircraft.<sup>68</sup> In addition, Sierra Leone courts can exercise objective territorial jurisdiction over conduct constituting the crime of human trafficking that begins abroad where the crime is either completed in the territory of the Sierra Leone (object state) or any essential element of the crime occurs in Sierra Leone.<sup>69</sup> Sierra Leone courts also may exercise subjective territorial jurisdiction over conduct constituting the crime of human trafficking that begins in the territory of Sierra Leone (subject state) and is completed abroad.<sup>70</sup> National courts cannot exercise a third form of territorial jurisdiction – effects jurisdiction – which is similar to objective jurisdiction, but differs from it in a crucial respect. Under effects jurisdiction, the forum state has jurisdiction over a crime or tort where all elements were committed abroad, but the crime or tort had some impact, which could be incidental, in the forum state.

**Active personality jurisdiction.** National courts of Sierra Leone can exercise active personality jurisdiction (jurisdiction over crimes committed by persons who were nationals of Sierra Leone at the time of the commission of the crime) for certain crimes, including trafficking in persons,<sup>71</sup> corruption,<sup>72</sup> treason and other offences against the state,<sup>73</sup> and over offences committed by public

<sup>68</sup> Criminal Procedure Acts, Sects. 36 (1), 39, 42 (2), 53 (1). The Merchant Shipping Act, 2003 (Act No. 33 of 2003) (Merchant Shipping Act), Sect. 489.

<sup>69</sup> The Anti-Human Trafficking Act, 2005 (Act No. 44 of 2005), Sect. 14, which states:

“A court in Sierra Leone shall have jurisdiction to try an offence under this Act where the act constituting the offence has been carried out –

- (a) wholly or partly in Sierra Leone;
- (b) by a citizen of Sierra Leone anywhere;
- (c) by a person on board a vessel or aircraft registered in Sierra Leone”.

<sup>70</sup> *Ibid.*

<sup>71</sup> Anti-Human Trafficking Act, Sect. 14.

<sup>72</sup> Anti-Corruption Act, Sect. 137.

<sup>73</sup> The Treason and State Offences Act, 1963 (Act No. 10 of 1963), Sect. 1 (1) states:

“This Act may be cited as the Treason and State Offences Act, 1963, and shall apply to all acts which are offences under this Act whether committed in Sierra Leone or elsewhere: Provided that a person shall not be punishable under this Act for anything done outside Sierra Leone who is not –

- (a) a citizen of Sierra Leone; or
- (b) ordinarily resident in Sierra Leone; or

officers abroad who were acting or purporting to act in the course of their official duties.<sup>74</sup> However, this seems to be the extent of active personality jurisdiction in Sierra Leone.<sup>75</sup> There also appears to be no civil jurisdiction over crimes committed by nationals abroad.

**Passive personality jurisdiction.** The courts of Sierra Leone cannot exercise passive personality jurisdiction (jurisdiction over crimes committed against persons who were nationals of Sierra Leone at the time of the crime). There also appears to be no civil jurisdiction over crimes committed against nationals abroad.

**Protective jurisdiction.** Sierra Leone courts can exercise protective jurisdiction (jurisdiction over crimes against specific national interests of Sierra Leone) for crimes such as counterfeiting,<sup>76</sup> forgery of documents in relation to the registration of ships,<sup>77</sup> and for treason and other offences against the state such as spying, unauthorized use of a uniform, and personification through false documents.<sup>78</sup> There appears to be no civil jurisdiction over such crimes.

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(c) employed in the Public Service of Sierra Leone”.

Jurisdiction over foreign residents and foreigners employed by Sierra Leone under this provision for treason and other offences against the state done outside Sierra Leone constitutes protective jurisdiction.

<sup>74</sup> Criminal Procedure Acts, Sect. 42 (1). To the extent that public officers can be non-nationals of Sierra Leone, this provision also includes universal jurisdiction.

<sup>75</sup> In his treatise on criminal law in the country, former High Court and Special Court for Sierra Leone justice Bankole Thompson states: “It is extremely doubtful whether a murder committed by a Sierra Leonean citizen abroad may be tried in Sierra Leone as if it had been committed there in much the same way as [in the United Kingdom].” Bankole Thompson, *The Criminal Law of Sierra Leone* 58 (1999) (comparing extraterritorial jurisdiction in Sierra Leone with that of the United Kingdom, from *Smith and Hogan* 1983, p. 273).

<sup>76</sup> The Coinage Offences Act, 1965 (Act No. 33 of 1965), Sect. 14 (1) states:

“Any person found committing an offence against this Act may be immediately apprehended without warrant by any person and forthwith taken before a Magistrate or Justice of the Peace to be dealt with according to the law”.

<sup>77</sup> Merchant Shipping Act, Sects. 98, 99, 116. For example, Sect. 98 states:

“Any person who forges, fraudulently alters or assists in the forging or fraudulent altering or procures to be forged or fraudulently altered, any register, builder’s certificate, tonnage certificate, certificate of registry, declaration, bill of sale or instrument of mortgage . . . commits an offence and shall be liable on conviction to a fine not exceeding four million Leones or imprisonment for a term not exceeding three years or both”.

<sup>78</sup> Treason and State Offences Act, 1963 (Act No. 10 of 1963), Sect. 1 (1).

## 4. LEGISLATION PROVIDING FOR UNIVERSAL CRIMINAL JURISDICTION

As discussed below, Sierra Leone courts may exercise universal jurisdiction in limited circumstances over a few ordinary crimes, when committed by foreigners abroad who are Sierra Leone public officials; over some crimes under national law of international concern, including hijacking; and over certain crimes under international law, including grave breaches of the Geneva Conventions. However, Sierra Leone courts cannot exercise universal jurisdiction over the following crimes under international law: most war crimes that do not constitute grave breaches of the Geneva Conventions, crimes against humanity, genocide, torture, extrajudicial executions, enforced disappearances and aggression. Obstacles to the exercise of universal jurisdiction over crimes under international law are discussed below in Section 6.

**Definitions.** Universal jurisdiction is the *ability* of the court of any state to try persons for crimes committed outside its territory when the crimes committed are not linked to the state by the nationality of the suspect, the nationality of the victims or by harm to the state's own national interests. Sometimes this is called permissive universal jurisdiction. The authority of states to exercise universal jurisdiction is now part of customary international law. Universal jurisdiction is also reflected in treaties, national legislation and jurisprudence concerning crimes under international law, crimes under national law of international concern and ordinary crimes under national law. When a national court exercises this universal jurisdiction specifically over conduct committed abroad amounting to crimes under international law or over crimes under national law of international concern – as opposed to conduct simply amounting to ordinary crimes – the court in fact acts as an agent of the international community enforcing international law rather than as an agent of the state enforcing domestic law.

Under the related *aut dedere aut judicare* (extradite or prosecute) rule, a state may not shield a person suspected of certain categories of crimes. Instead, it is *required* to exercise jurisdiction (which would necessarily include universal jurisdiction in certain cases) over the suspect, to extradite the suspect to a state able and willing to exercise jurisdiction or to surrender the suspect to an international criminal court with jurisdiction over the suspect and the crime. As a practical matter, when the *aut dedere aut judicare* rule applies, the state where the suspect is found must ensure that its courts can exercise all possible forms of geographic jurisdiction, including universal jurisdiction, in those cases where it will not be in a position to extradite the suspect to another state or to surrender that person to an international criminal court.

### 4.1. ORDINARY CRIMES

In some limited circumstances, Sierra Leone courts can exercise universal jurisdiction over offences committed abroad by non-nationals serving in public office for Sierra Leone.<sup>79</sup> However, Sierra Leone courts cannot exercise universal jurisdiction over other ordinary crimes, such as murder, assault, rape or kidnapping.

### 4.2. CRIMES UNDER NATIONAL LAW OF INTERNATIONAL CONCERN

As indicated in the attached chart, Sierra Leone has signed, but not yet ratified, seven international treaties providing for universal jurisdiction over crimes under national law of international concern and it has ratified or acceded to twelve of such treaties. As noted below, it has defined the crimes

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<sup>79</sup> Sierra Leone courts have jurisdiction to try non-nationals serving in public office for offences they commit when acting or purporting to act in the course of their duties, whether in Sierra Leone or abroad. Criminal Procedure Acts, Sect. 42 (1).

listed in eight of those treaties in whole or in part, as crimes under national law and it has expressly provided its courts with universal jurisdiction over two of such crimes. For six of these crimes, the Criminal Procedure Act grants universal jurisdiction only over foreign nationals serving in public office in Sierra Leone and then only if the crimes were done in the course of their public duties.

<b>CHART I. CRIMES UNDER NATIONAL LAW OF INTERNATIONAL CONCERN</b>				
<b>CRIME AND TREATY<sup>80</sup></b>	<b>SIGNED RELEVANT TREATY</b>	<b>RATIFIED/ ACCEDED TO RELEVANT TREATY</b>	<b>DEFINED IN NATIONAL LAW</b>	<b>UNIVERSAL JURISDICTION</b>
Piracy - 1958 High Seas Convention		13 March 1962 (succeeded)	NO	NO
Piracy - 1982 UN Convention on the Law of the Sea	10 December 1982	12 December 1994 (ratified)	NO	NO
Counterfeiting - 1929 Convention		13 October 1960 (UK territorial application)	The Coinage Offences Act, 1965 (Act No. 33 of 1965).	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer only)
Narcotics Trafficking: 1961 Single Convention, as amended by 1972 Protocol			The Narcotics Drugs Control Act, 2008 (Act No. 10 of 2008), Part III.	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer only)
Violence on Aircraft – 1963 Tokyo Convention		9 November 1970 (acceded)	The Civil Aviation Act, 2008 (Act No. 2 of 2008), Sect. 59	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer only)
Hijacking Aircraft- 1970 Hague Convention	19 July 1971	18 September 1975 (ratified)	The Unlawful Seizure of Aircraft Act, 1974 (Act No. 2 of 1974), Sect. 1 (1)  The Civil	The Unlawful Seizure of Aircraft Act, 1974 (Act No. 2 of 1974), Sect. 1 (1)

<sup>80</sup> The citations to these treaties, with links where they exist, are found in Appendix I.

<b>CHART I. CRIMES UNDER NATIONAL LAW OF INTERNATIONAL CONCERN</b>				
<b>CRIME AND TREATY<sup>80</sup></b>	<b>SIGNED RELEVANT TREATY</b>	<b>RATIFIED/ ACCEDED TO RELEVANT TREATY</b>	<b>DEFINED IN NATIONAL LAW</b>	<b>UNIVERSAL JURISDICTION</b>
			Aviation Act, 2008 (Act No. 2 of 2008), Sect. 58	
Psychotropic Substances: 1971 Convention		6 June 1994 (acceded)	The Narcotics Drugs Control Act, 2008 (Act No. 10 of 2008), Part III	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer only)
Attacks on Aviation – 1971 Montreal Convention		20 September 1979 (acceded)	The Unlawful Interference with Civil Aviation Act, 1974 (Act No. 1 of 1974), Sect. 1 (1)	The Unlawful Interference with Civil Aviation Act, 1974 (Act No. 1 of 1974), Sect. 1 (1)
Internationally Protected Persons - 1973 Convention		26 September 2003 (acceded)	NO	NO
Hostage Taking: 1979 Convention		26 September 2003 (acceded)	NO	NO
Nuclear Materials - 1979 Convention			NO	NO
Attacks on Navigation - 1988 Convention			NO	NO
UN Personnel - 1994 Convention	13 February 1995		NO	NO
UN Personnel - 2005 Protocol	21 September 2006		NO	NO
Terrorist Bombing - 1997 Convention		26 September 2003 (acceded)	NO	NO
Terrorism - 1999 OAU Convention	14 July 1999		NO	NO

<b>CHART I. CRIMES UNDER NATIONAL LAW OF INTERNATIONAL CONCERN</b>				
<b>CRIME AND TREATY<sup>80</sup></b>	<b>SIGNED RELEVANT TREATY</b>	<b>RATIFIED/ ACCEDED TO RELEVANT TREATY</b>	<b>DEFINED IN NATIONAL LAW</b>	<b>UNIVERSAL JURISDICTION</b>
Financing of Terrorism - 1999 Convention	27 November 2001	26 September 2003 (ratified)	NO	NO
Transnational Organized Crime - 2000 UN Convention	27 November 2001		NO	NO
Trafficking of Human Beings - 2000 Protocol	27 November 2001		The Anti-Human Trafficking Act, 2005 (Act No. 44 of 2005), Sect. 2	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer only)
Firearms - 2001 Protocol	27 November 2001		NO	NO
Corruption - 2003 AU Convention	12 September 2003	3 December 2008 (ratified)	The Anti-Corruption Act 2008 (Act No. 12 of 2008), Part IV	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer only)
Nuclear Terrorism - 2005 Convention	14 September 2005		NO	NO

As Chart I indicates, Sierra Leonean law only provides for the exercise of universal jurisdiction over national crimes of international concern defined in the 1970 Hague Convention and the 1971 Montreal Convention. The two pieces of national legislation that implement these conventions, the Unlawful Seizure of Aircraft Act, 1974 and the Unlawful Interference with Civil Aviation Act, 1974, both state that any person who commits the covered offences, including hijacking and attacks on aviation, within Sierra Leone or abroad, can be found guilty of the offences in Sierra Leone. If a covered offence is committed outside of Sierra Leone by any person found within Sierra Leone, the courts will proceed as if the offence had been committed in that part of Sierra Leone where the person has been found.<sup>81</sup>

<sup>81</sup> The Unlawful Seizure of Aircraft Act, 1974 (Act No. 2 of 1974), Sect. 1 states:

“(1) Any person who within Sierra Leone or abroad unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, an aircraft in flight shall be guilty of the offence of unlawful seizure of aircraft and shall be liable on conviction to imprisonment for life.

In addition, Section 42 (1) of the Criminal Procedure Acts grants Sierra Leone courts the ability to exercise universal jurisdiction over foreigners serving as Sierra Leone public officers who commit crimes abroad.

### 4.3. CRIMES UNDER INTERNATIONAL LAW

Sierra Leone courts may exercise universal jurisdiction over grave breaches of the four 1949 Geneva Conventions. However, they cannot exercise universal jurisdiction over most other crimes under international law, including grave breaches of Protocol I, most other war crimes in international armed conflict, violations of common Article 3 to the Geneva Conventions, violations of Protocol II, most other war crimes in non-international armed conflict, crimes against humanity, genocide, torture, extrajudicial executions, enforced disappearances and aggression.

#### 4.3.1. WAR CRIMES

Sierra Leone is a party to the four Geneva Conventions of 1949.<sup>82</sup> It has also acceded to Protocols I<sup>83</sup> and II<sup>84</sup> to these conventions. In addition, Sierra Leone has been a party to the Rome Statute of

(2) Where an offence punishable under subsection (1) has been committed outside Sierra Leone by a person who is found in any part of Sierra Leone, the offence shall be deemed to have been committed in that part of Sierra Leone and proceedings in respect thereof may be brought in any court in Sierra Leone which would have jurisdiction if the offence had been committed in that part of Sierra Leone for which the court acts[.]”

Section 1 (1) of the Unlawful Interference with Civil Aviation Act, 1974 (Act No. 1 of 1974) provides that “[a]ny person who within Sierra Leone or abroad” commits certain specified acts interfering with civil aviation “shall be guilty of the offence of unlawful interference with Civil Aviation and be liable on conviction to imprisonment for life”. Sect. 1 (2) provides that where certain specified acts interfering with civil aviation “ha[ve] been committed outside Sierra Leone by a person who is found in any part of Sierra Leone, the offence shall be deemed to have been committed in that part of Sierra Leone for which the court acts”.

<sup>82</sup> The Geneva Conventions are:

Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949 (First Geneva Convention)

(<http://treaties.un.org/pages/showDetails.aspx?objid=080000028015847c>), 75 U.N.T.S. 31. (entered into force 21 October 1950);

Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949 (Second Geneva Convention)

(<http://treaties.un.org/Pages/showDetails.aspx?objid=08000002801591b0>), 75 U.N.T.S. 85. (entered into force 21 October 1950);

Convention Relative to the Treatment of Prisoners of War, 12 August 1949 (Third Geneva Convention)

(<http://treaties.un.org/Pages/showDetails.aspx?objid=0800000280159839>), 75 U.N.T.S. 135. (entered into force 21 October 1950); and

Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, (Fourth Geneva Convention)

(<http://treaties.un.org/Pages/showDetails.aspx?objid=0800000280158b1a>), 75 U.N.T.S. 287. (entered into force 21 October 1950).

<sup>83</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977,

(<http://treaties.un.org/Pages/showDetails.aspx?objid=08000002800f3586>), 1125 U.N.T.S. 3. (entered into force 7 December 1978).

<sup>84</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977,

the International Criminal Court (Rome Statute) since 15 September 2000.<sup>85</sup> As indicated in the charts below, Sierra Leone has also signed and ratified a number of other international humanitarian law treaties with penal provisions or provisions that may give rise to international criminal responsibility.

As the charts indicate, grave breaches of the Geneva Conventions are crimes under Sierra Leone national law and the courts of Sierra Leone have the ability to exercise universal jurisdiction over these grave breaches. However, Sierra Leone courts are not able to exercise universal jurisdiction over most other war crimes.

#### 4.3.1.1. War crimes in international armed conflict: Grave breaches of the 1949 Geneva Conventions

The four Geneva Conventions of 1949 each contain a list of grave breaches, which states parties are prohibited from committing against persons protected by the conventions. Persons protected by the conventions include wounded and sick members of the armed forces in the field; wounded, sick and shipwrecked members of armed forces at sea; prisoners of war and civilian persons in time of war.<sup>86</sup> These grave breaches have been consolidated in substance without change in Article 8 of the Rome Statute.<sup>87</sup>

Each state party to those conventions undertakes in a common article a two-part obligation: (1) to define grave breaches as crimes under national law, and then (2) to exercise universal jurisdiction over those suspected of committing grave breaches, to extradite them to another state party able and willing to exercise jurisdiction, or to surrender them to an international criminal court with jurisdiction over them.<sup>88</sup> That common article states in relevant part:

“The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case”.<sup>89</sup>

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(<http://treaties.un.org/Pages/showDetails.aspx?objid=08000002800f3cb8>),  
1125 U.N.T.S. 609. (entered into force 7 December 1978).

<sup>85</sup> Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference on the Establishment of an International Criminal Court, Rome UN Doc A/CONF.183/9\*, 17 July 1998, as corrected by the *process-verbaux* UN Doc C.N.577.1998.TREATIES-8, 10 November 1998, and UN Doc C.N.604.1999.TREATIES-18, 12 July 1999.

<sup>86</sup> First Geneva Convention, art. 50; Second Geneva Convention, art. 51; Third Geneva Convention, art. 130; Fourth Geneva Convention, art. 147.

<sup>87</sup> Rome Statute, art. 8 (2) (a).

<sup>88</sup> Although the Geneva Conventions do not expressly state that a state party may satisfy its obligation to extradite or prosecute persons suspected of grave breaches by surrendering a person to an international criminal court with jurisdiction, the drafters of the Conventions intended this result.

<sup>89</sup> First Geneva Convention, art. 49; Second Geneva Convention, art. 50; Third Geneva Convention, art. 129; Fourth Geneva Convention, art. 146.

Although Sierra Leone does not have a Geneva Conventions Act, the United Kingdom's Geneva Conventions Act 1957, which defines grave breaches of the Geneva Conventions as crimes and authorizes national courts to exercise universal jurisdiction over them,<sup>90</sup> applies to the state. The United Kingdom's Geneva Conventions Act (Colonial Territories) Order in Council, 1959, extended the Geneva Conventions Act to the Sierra Leone Protectorate before its independence on 27 April 1961.<sup>91</sup> It appears that no Sierra Leonean law has amended or repealed this order in council in the past half century.<sup>92</sup>

#### 4.3.1.2. War crimes in international armed conflict: Grave breaches of the 1977 Protocol I

Sierra Leone has been a party to Protocol I since 21 April 1987. Protocol I applies to international armed conflict and certain non-international armed conflict.<sup>93</sup> Article 85 (2) of Protocol I expands the scope of persons protected by the Geneva Conventions.<sup>94</sup> In addition, Protocol I also lists a number of new grave breaches of that treaty in Articles 11 and 85 (3) to (5). Finally, Protocol I imposes the same two-part obligation on states parties: to (i) define these grave breaches of Protocol I as crimes under national law and to (ii) try or extradite persons suspected of such grave breaches. Sierra Leone has not defined grave breaches of that treaty as crimes under its national law. Neither has the state provided its courts with universal jurisdiction over such grave breaches.

#### 4.3.1.3. War crimes in international armed conflict: 1998 Rome Statute, other treaties and customary international law

In addition to grave breaches of the Geneva Conventions and Protocol I, there are other war crimes in international armed conflict that are defined in the 1998 Rome Statute, in an ever-expanding number of international humanitarian law treaties and in customary international law.

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<sup>90</sup> United Kingdom Geneva Conventions Act 1957, Sect. 1.

<sup>91</sup> United Kingdom Geneva Conventions Act (Colonial Territories) Order in Council, 1959. The Order in Council is part of the existing law of Sierra Leone.

Section 176 of the Constitution of 1991 provides:

“Existing law’ means any Act, rule, regulation, order or other such instrument made in pursuance of, or continuing in operation under, the existing Constitution and having effect as part of the laws of Sierra Leone or of any part thereof immediately before the commencement of this Constitution or any Act of the Parliament of the United Kingdom or Order of Her Majesty in Council so having effect and may be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution as if it had been made under this Constitution”.

<sup>92</sup> When Sierra Leone was a British colony, orders in council were adopted by the imperial parliament as instruments for effecting major legislative changes in the governance of the country. Two key examples of such orders were: the Sierra Leone (Protectorate) Order in Council, 1951 and the Sierra Leone (Legislative Council) Order in Council, 1953. See Bankole Thompson, *Constitutional History and Law of Sierra Leone (1961-1995)*, Lanham, Maryland: University Press of America, pp. 4-5, 10 n. 8, 1997. Orders in council have the force of law and are not statutes of general application. Therefore, they do not fall under the Courts Act, Sect. 74, which indicates that statutes of general application in force in England after 1 Jan. 1880 are excluded from the laws of Sierra Leone.

<sup>93</sup> Protocol I, art. 1 (4).

<sup>94</sup> Article 85 (2) of Protocol I protects “persons in the power of an adverse Party protected by Articles 44, 45 and 73 of this Protocol, or against the wounded, sick and shipwrecked of the adverse Party who are protected by this Protocol, or against those medical or religious personnel, medical units or medical transports which are under the control of the adverse Party and are protected by this Protocol”.

**Rome Statute.** Article 8 (2) (b) of the Rome Statute defines a broad range of war crimes in international armed conflict. Sierra Leone has defined some of these war crimes – or ordinary crimes forming key components of the war crimes – as crimes under national law.<sup>95</sup> However, it has not authorized its courts to exercise universal jurisdiction over these crimes.

**Gaps in the Rome Statute.** As explained below, there are a number of serious gaps in Article 8 (2) (b) of the Rome Statute, which are covered by other treaties and by rules of customary international law. Although there is no provision in the Rome Statute expressly requiring states parties to provide its courts with universal jurisdiction over these war crimes, states parties recognize that they have a complementarity obligation to exercise their jurisdiction over such crimes.

**Other treaties concerning war crimes.** The Rome Statute leaves out a number of war crimes in international armed conflict listed in treaties. As Charts II and III indicate, Sierra Leone has defined only a few of these war crimes as crimes under national law. It also indicates that Sierra Leone has not authorized its courts to exercise universal jurisdiction over them. Chart II identifies war crimes in the Third Geneva Convention and Protocol I that have been omitted from the Rome Statute. Chart III identifies war crimes in other treaties that have been omitted from the Rome Statute.

**CHART II. WAR CRIMES IN INTERNATIONAL ARMED CONFLICT IN THE THIRD GENEVA CONVENTION AND PROTOCOL I THAT HAVE BEEN OMITTED FROM THE ROME STATUTE**

Crime	Treaty	Signed	Ratified/ acceded	Defined in national law (citing any relevant provision)	Universal jurisdiction (citing any relevant provision)
Unjustifiable delay in the repatriation of prisoners of war	Geneva Conv. III <sup>96</sup> and Prot. I,		Geneva Conv. III 27 April 1961	UK Geneva Conventions Act (Colonial Territories) Order	Criminal Procedure Acts, 1965 (Act No.

<sup>95</sup> Under Sierra Leonean law, it is an offence to conscript or enlist children under the age of fifteen years into the national armed forces, which is defined as a war crime in Rome Statute, Article 8 (2) (b) (xxvi). See the Child Rights Act, 2007 (Act No. 43 of 2007) (Child Rights Act), Sects. 28 (2) (b), 35. Sexual slavery and enforced prostitution, which are defined as war crimes in Rome Statute, Article 8 (2) (b) (xxii), constitute exploitation falling under the umbrella of “trafficking in persons,” which is an offence under Sierra Leonean law. Anti-Human Trafficking Act, Sect. 2. In Sierra Leone, rape of a female adult is a crime under the common law and rape of a girl under the age of fourteen is a statutory offence. Bankole Thompson, *The Criminal Law of Sierra Leone* 68 - 69 (1999) (citing the antiquated English common law definition of rape and Sect. 6 of the Sierra Leone Prevention of Cruelty to Children Act, Cap 31 of the 1960 Laws of Sierra Leone). These acts could amount to war crimes under Article 8 (2) (b) (xxii) of the Rome Statute. However, Sierra Leonean law does not expressly indicate that the above offences could constitute war crimes in line with their designation under international law and the definitions falls short of international law and standards.

<sup>96</sup> Third Geneva Convention, Article 118, as well as customary international humanitarian law. Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Geneva, International Committee of the Red Cross and Cambridge University Press, 2005, with updates from the ICRC Customary International Humanitarian Law database (<http://www.icrc.org/eng/resources/documents/publication/pcustom.htm>), Rule 156 (Serious violations of international humanitarian law constitute war crimes).

<sup>97</sup> Protocol I, Article 85 (4) (b), as well as customary international humanitarian law. *Customary International*

**CHART II. WAR CRIMES IN INTERNATIONAL ARMED CONFLICT IN THE THIRD GENEVA CONVENTION AND PROTOCOL I THAT HAVE BEEN OMITTED FROM THE ROME STATUTE**

Crime	Treaty	Signed	Ratified/ acceded	Defined in national law (citing any relevant provision)	Universal jurisdiction (citing any relevant provision)
	art. 85 (4) (b) <sup>97</sup>		(succeeded )Prot. I. 21 April 1987 (acceded)	in Council 1959 (making UK Geneva Conventions Act, 1957, Sect. 1 & Sch. III (Art. 118) applicable to Sierra Leone)	32 of 1965), Sect. 42 (1) (foreign public officer) only)
Unjustifiable delay in the repatriation of civilians	Prot. I, art. 85 (4) (b) <sup>98</sup>		21 April 1987 (acceded)	NO	NO
Launching of an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, Injury to civilians or damage to civilian objects	Prot. I, art. 85 (3) (c) <sup>99</sup>		21 Apr 1987 (acceded)	NO	NO

**Other treaties that may impose criminal responsibility.** In addition to the Geneva Conventions and Protocol I, there are a number of international humanitarian law treaties applicable during international armed conflict imposing obligations that, if violated, may possibly result in individual criminal responsibility, either under the treaties or because the prohibitions are recognized as part of customary international law. As Chart III indicates, Sierra Leone has defined a few violations of these treaties – specifically the recruitment of child soldiers into the armed forces and the use of weapons particularly harmful to children – as crimes under national law. However, as discussed below, it has not classified these crimes specifically as war crimes in a manner that is consistent with their categorization under customary international law. Additionally, Sierra Leone has not authorized its courts to exercise universal jurisdiction over these crimes.

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*Humanitarian Law*, Rule 156 (Serious violations of international humanitarian law constitute war crimes).

<sup>98</sup> Article 85 (4) (b) of Protocol I, as well as customary international humanitarian law. *Customary International Humanitarian Law*, Rule 156 (Serious violations of international humanitarian law constitute war crimes).

<sup>99</sup> Article 85 (3) (c) of Protocol I, and customary international humanitarian law. *Customary International Humanitarian Law*, Rule 156 (Serious violations of international humanitarian law constitute war crimes).

**CHART III. INTERNATIONAL HUMANITARIAN LAW TREATIES APPLICABLE DURING INTERNATIONAL ARMED CONFLICT IMPOSING OBLIGATIONS WHICH, IF VIOLATED, MAY POSSIBLY RESULT IN INDIVIDUAL CRIMINAL RESPONSIBILITY, EITHER UNDER THE CONVENTIONS OR BECAUSE THE PROHIBITIONS ARE RECOGNIZED AS PART OF CUSTOMARY INTERNATIONAL LAW**

<b>Crime</b>	<b>Treaty</b>	<b>Signed</b>	<b>Ratified/ acceded</b>	<b>Defined in national law (citing any relevant provision)</b>	<b>Universal jurisdiction (citing any relevant provision)</b>
Use of poisonous gases or bacteriological weapons	1925 Geneva Protocol		20 March 1967 (acceded)	NO	NO
Harm to protected cultural property	1954 CCP			NO	NO
Illegal export of cultural property	1954 CCP			NO	NO
Developing, producing and stockpiling bacteriological weapons	BWC 1972		29 June 1976 (ratified)	NO	NO
Use of prohibited environmental modification techniques	ENMOD Conv. 1976			NO	NO
Recruiting, training, financing or protecting mercenaries	Mercenaries - 1977 OAU Convention [AU only]			NO	NO
Use of prohibited conventional weapons	CCW 1980	1 May 1981	30 September 2004 (ratified)	NO	NO
Use of weapons that injure by non-detectable fragments	CCW Prot. I 1980		30 September 2004 (consent to be bound)	NO	NO
Use of prohibited land mines, booby traps and other	CCW Prot. II 1980			The Child Rights Act, 2007 (Act	Criminal Procedure Acts, 1965

**CHART III. INTERNATIONAL HUMANITARIAN LAW TREATIES APPLICABLE DURING INTERNATIONAL ARMED CONFLICT IMPOSING OBLIGATIONS WHICH, IF VIOLATED, MAY POSSIBLY RESULT IN INDIVIDUAL CRIMINAL RESPONSIBILITY, EITHER UNDER THE CONVENTIONS OR BECAUSE THE PROHIBITIONS ARE RECOGNIZED AS PART OF CUSTOMARY INTERNATIONAL LAW**

devices				No. 43 of 2007), Sects. 28 (2) (b), 35.	(Act No. 32 of 1965), Sect. 42 (1) (foreign public officer)
Use of prohibited incendiary weapons	CCW Prot. III 1980		30 September 2004 (consent to be bound)	NO	NO
Use, financing or training of mercenaries	Mercenaries - 1989 Convention			NO	NO
Developing, producing, stockpiling or using prohibited chemical weapons	CWC 1993	15 Jan 1993	30 September 2004 (ratified)	NO	NO
Use of blinding laser weapons	CCW Prot. IV 1995		30 September 2004 (consent to be bound)	NO	NO
Use of prohibited mines, booby-traps and other devices	CCW Prot. II a 1996		30 September 2004 (consent to be bound)	NO	NO
Use, stockpiling, production and transfer of prohibited anti-personnel mines	AP Mine Ban Conv. 1997	29 July 1998	25 April 2001 (ratified)	The Child Rights Act, 2007 (Act No. 43 of 2007), Sects. 28 (2) (b), 35.	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer)

**CHART III. INTERNATIONAL HUMANITARIAN LAW TREATIES APPLICABLE DURING INTERNATIONAL ARMED CONFLICT IMPOSING OBLIGATIONS WHICH, IF VIOLATED, MAY POSSIBLY RESULT IN INDIVIDUAL CRIMINAL RESPONSIBILITY, EITHER UNDER THE CONVENTIONS OR BECAUSE THE PROHIBITIONS ARE RECOGNIZED AS PART OF CUSTOMARY INTERNATIONAL LAW**

Harm to cultural property	Hague Prot. 1999  Arts. 15 – 20			NO	NO
Recruitment or use of child soldiers	Opt Prot. CRC 2000	8 Sep 2000	15 May 2002 (ratified)	The Child Rights Act, 2007 (Act No. 43 of 2007), Sects. 28, 35.	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer)
Use of prohibited conventional weapons	CCW Amdt 2001		30 September 2004 (ratified)	NO	NO
Failure to clear, remove or destroy explosive remnants of war	CCW Prot. V 2003		30 September 2004 (consent to be bound)	NO	NO
Use of prohibited cluster munitions	Cluster Munitions 2008	3 Dec 2008	3 December 2008 (ratified)	NO	NO

In 2007, Sierra Leone enacted the Child Rights Act to, among other things, incorporate into national law the Convention on the Rights of the Child and its Optional Protocol on the Involvement of Children in Armed Conflict. Section 28 of the Act accordingly prohibits the recruitment or conscription of children into government armed service in line with the Convention. It also sets the age of recruitment at 18, sanctioning child conscription or recruitment above that age, which comports with the Optional Protocol.<sup>100</sup> However, the Act does not criminalize the recruitment of

<sup>100</sup> The Child Rights Act, Sect. 28 (2) states:

“(2) The Government shall not –

- a. recruit or conscript any child into military or para-military service or permit such recruitment or conscription by the armed forces;

children by armed groups separate from the national armed forces and in this respect falls short of the strictest requirements of international law.<sup>101</sup>

In addition to prohibiting government recruitment of child soldiers, the Child Rights Act prohibits the “use or [permitted] [u]se of land mines and other weapons declared by international instruments to be adverse to children.”<sup>102</sup> This provision appears to allude to the Convention Prohibiting Anti-Personnel Mines (AP Mine Ban) and the Second Protocol to the Convention on Certain Conventional Weapons, which govern weapons particularly hazardous to children, including booby-traps and land mines.<sup>103</sup> However, the Child Rights Act does not specifically designate either the use of child soldiers or the use of weapons adverse to children as war crimes, as they have been classified under customary international law.<sup>104</sup>

**Rules of customary international humanitarian law.** In addition, there are numerous rules of customary international humanitarian law applicable to international armed conflict not expressly listed in the Rome Statute (in addition to the war crimes listed in Protocol I mentioned above), which, if violated, could lead to individual criminal responsibility. Some of these rules are listed in the following chart, indicating whether Sierra Leone has defined violations of these rules as crimes under national law. As Chart IV indicates, Sierra Leone has included some of these crimes – namely those relating to slavery and slave labour – in national law. While Sierra Leonean law recognizes that exploitation committed during armed conflict is an offence,<sup>105</sup> it does not specifically list slavery and deportation to slave labour as war crimes in a manner that is consistent with customary international law. Chart IV also indicates that Sierra Leone has not authorized its courts to exercise universal jurisdiction over these crimes.

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- b. use or permit the use of land mines and other weapons declared by international instruments to be adverse to children”.

Sect. 35 states:

“Any person who contravenes a provision of this Part commits an offence and shall be liable on summary conviction to a fine not exceeding thirty million leones or to a term of imprisonment not exceeding two years or to both such fine and imprisonment”.

See Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, art. 2.

<sup>101</sup> See Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, art. 4.

<sup>102</sup> Child Rights Act, 2007, Sects. 28 (2) (b), 35.

<sup>103</sup> See Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction, art. 1; Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, art. 6.

<sup>104</sup> See *Customary International Humanitarian Law*, Rule 136 (Children must not be recruited into armed forces or groups; state practice establishes this as a war crime under customary international law) & Rule 80 (Use of booby traps which are in any way attached to or associated with objects or persons entitled to special protection under international humanitarian law – including traps made to look like objects for children – is prohibited; state practice establishes this as a crime under customary international law in both international and non-international armed conflict).

<sup>105</sup> See Anti-Human Trafficking Act, Sect. 2 (3) (h).

**CHART IV. RULES OF CUSTOMARY INTERNATIONAL HUMANITARIAN LAW IN INTERNATIONAL ARMED CONFLICT**

<b>Rule of customary international humanitarian law</b>	<b>Defined in national law (citing any relevant provision)</b>	<b>Courts provided with universal jurisdiction (citing any relevant provision)</b>
Slavery <sup>106</sup>	The Anti-Human Trafficking Act, 2005 (Act No. 44 of 2005), Sect. 2.	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer)
Deportation to slave labour <sup>107</sup>	The Anti-Human Trafficking Act, 2005 (Act No. 44 of 2005), Sect. 2.	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer)
Collective punishments <sup>108</sup>	NO	NO
Despoliation of the wounded, sick, shipwrecked or dead <sup>109</sup>	NO	NO
Attacking or ill-treating a <i>parlementaire</i> or bearer of the flag of truce <sup>110</sup>	NO	NO
Launching an indiscriminate attack resulting in loss of life or injury to civilians or damage to civilian objects <sup>111</sup>	NO	NO
Use of biological weapons <sup>112</sup>	NO	NO

<sup>106</sup> *Customary International Humanitarian Law*, Rule 94 (Slavery and the slave trade in all their forms are prohibited); Rule 156 (Serious violations of international humanitarian law constitute war crimes).

<sup>107</sup> *Customary International Humanitarian Law*, Rule 95 (Uncompensated or abusive forced labour is prohibited); Rule 156 (Serious violations of international humanitarian law constitute war crimes).

<sup>108</sup> *Customary International Humanitarian Law*, Rule 103 (Collective punishments are prohibited); Rule 156 (Serious violations of international humanitarian law constitute war crimes).

<sup>109</sup> *Customary International Humanitarian Law*, Rule 156 (Serious violations of international humanitarian law constitute war crimes).

<sup>110</sup> *Customary International Humanitarian Law*, Rule 67 (*Parlementaires* are inviolable); Rule 156 (Serious violations of international humanitarian law constitute war crimes).

<sup>111</sup> *Customary International Humanitarian Law*, Rule 11 (Indiscriminate attacks are prohibited); Rule 156 (Serious violations of international humanitarian law constitute war crimes).

<sup>112</sup> *Customary International Humanitarian Law*, Rule 73 (The use of biological weapons is prohibited).

**CHART IV. RULES OF CUSTOMARY INTERNATIONAL HUMANITARIAN LAW IN INTERNATIONAL ARMED CONFLICT**

Rule of customary international humanitarian law	Defined in national law (citing any relevant provision)	Courts provided with universal jurisdiction (citing any relevant provision)
Use of chemical weapons <sup>113</sup>	NO	NO
The use of non-detectable fragments <sup>114</sup>	NO	NO
The use of binding laser weapons <sup>115</sup>	NO	NO

Certain kinds of conduct amounting to various forms of enslavement during armed conflict are defined as ordinary crimes, but not as war crimes. Sierra Leone’s Anti-Human Trafficking Act incorporates a prohibition against slavery and slave labour under the umbrella of “trafficking in persons.” According to the Act, slavery is defined as “the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised,”<sup>116</sup> which is akin to the definition of slavery under customary international law.<sup>117</sup> Under Sierra Leonean law, this type of exploitation, even when committed during armed conflicts, constitutes trafficking in persons, which is an offence.<sup>118</sup> However, the Anti-Human Trafficking Act does not specifically indicate that slavery,

<sup>113</sup> *Customary International Humanitarian Law*, Rule 74 (The use of chemical weapons is prohibited).

<sup>114</sup> *Customary International Humanitarian Law*, Rule 79 (The use of weapons the primary effect of which is to injure by fragments which are not detectable by X-rays in the human body is prohibited).

<sup>115</sup> *Customary International Humanitarian Law*, Rule 86 (The use of laser weapons that are specifically designed, as their combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision is prohibited).

<sup>116</sup> Anti-Human Trafficking Act, Sect. 1.

<sup>117</sup> For example, the 1926 Slavery Convention, defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” art. 1.

<sup>118</sup> The Anti-Human Trafficking Act, Sect. 2 states:

“(1) It is an offence for any person to engage in trafficking in persons.

(2) A person engages in trafficking in persons if he undertakes the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation.

(3) For the purposes of subsection (2), “exploitation” includes, at a minimum –

- a. keeping a person in a state of slavery;
- b. subjecting a person to practices similar to slavery;
- c. compelling or causing a person to provide forced labour or services;
- d. keeping a person in a state of servitude, including sexual servitude;
- e. exploitation of the prostitution of another;

deportation to slave labour or exploitation during armed conflict could amount to war crimes under customary international law.<sup>119</sup> Moreover, Sierra Leone limits the ability of its courts to exercise universal jurisdiction to foreigners serving as public officers who have committed a crime abroad.

#### 4.3.1.4. War crimes in non-international armed conflict: Common Article 3 of the Geneva Conventions, 1977 Protocol II, Rome Statute, other conventional international law and customary international law

Certain violations of international humanitarian law prohibitions in non-international armed conflict are now recognized as being war crimes entailing individual criminal responsibility. These prohibitions are found, in particular, in common Article 3 of the Geneva Conventions, Protocol II, Article 8 (2) (c) and (e) of the Rome Statute, other conventional international law and customary international humanitarian law.

Common Article 3 is a mini-convention that protects persons not taking part in hostilities from a broad list of inhumane treatment. Protocol II “develops and supplements” common Article 3 with respect to non-international armed conflicts that take place in the territory of a state party to the Protocol.<sup>120</sup> It addresses conflicts “between [a state party’s] armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol”.<sup>121</sup> It also provides a broad range of protections to often marginalized people. Article 8 (2) (c) of the Rome Statute includes most of the war crimes in common Article 3, and Article 8 (2) (e) contains an extensive, but by no means complete, list of war crimes in non-international armed conflict.

**Rome Statute.** Sierra Leone has defined only a few of the crimes listed in Article 8 (2) (c) and (e) as crimes in national law.<sup>122</sup> However, it has not specifically indicated that, if committed in the context of and associated with an armed conflict, these ordinary crimes could amount to war crimes in a manner that is consistent with their categorization under international law. In addition, the definitions of these crimes do not generally comport with the strictest requirements of international

- 
- f. engaging in any other form of commercial sexual exploitation, including but not limited to pimping, pandering, procuring, profiting from prostitution, maintaining a brothel, child pornography;
  - g. illicit removal of human organs;
  - h. exploitation during armed conflicts”.

<sup>119</sup> See *Customary International Humanitarian Law*, Rules 94, 95, 156.

<sup>120</sup> Protocol II, art. 1 (1).

<sup>121</sup> Protocol II, art. 1.

<sup>122</sup> Murder is a common law offence in Sierra Leone, which is defined as a war crime in Rome Statute, Article 8(2)(c)(i). Bankole Thompson, *The Criminal Law of Sierra Leone* 57-58 (1999) (citing the English common law definition of murder). Under Sierra Leonean law, it is an offence to conscript or enlist children under the age of fifteen years into the national armed forces, which is defined as a war crime in Rome Statute, Article 8(2)(e)(vii). Child Rights Act, Sects. 28, 35. Sexual slavery and enforced prostitution, which are defined as war crimes in Rome Statute, Article 8(2)(e)(vi), constitute exploitation falling under the umbrella of “trafficking in persons,” which is an offence under Sierra Leonean law. Anti-Human Trafficking Act, Sect. 2. In Sierra Leone, rape of a female adult is a crime under the common law and rape of a girl under the age of fourteen is a statutory offence. Bankole Thompson, *The Criminal Law of Sierra Leone* 68-69 (1999) (citing the English common law definition of rape and Sect. 6 of the Sierra Leone Prevention of Cruelty to Children Act, Cap 31 of the 1960 Laws of Sierra Leone). These acts could amount to war crimes under Article 8 (2) (e) (vi) of the Rome Statute.

law (see Section 4.3.2 below). Moreover, Sierra Leone has not expressly authorized its courts to exercise universal jurisdiction over these crimes, except in the narrow circumstance when a foreigner who is a public officer commits a crime abroad.

**Gaps in the Rome Statute.** Although serious violations of Protocol II are listed as war crimes in the Statute of the International Criminal Tribunal for Rwanda, many of them are not expressly included in Article 8 (2) (e) of the Rome Statute. For example, intentionally starving the civilian population (Article 14 of Protocol II and customary international humanitarian law) is omitted.<sup>123</sup>

**Other international humanitarian law treaties.** In addition, there are a number of international humanitarian law treaties applicable during non-international armed conflict imposing obligations that, if violated, may result in individual criminal responsibility, either under the treaties or because the prohibitions are recognized as part of customary international law. There are also numerous rules of customary international humanitarian law applicable in non-international armed conflict that, if violated, would result in individual criminal responsibility.

As Chart V indicates, Sierra Leone has defined some violations of these treaties – specifically the recruitment of child soldiers and the use of weapons particularly harmful to children – as crimes under national law. However, as discussed (see Section 4.3.1.3 above), it has not classified these crimes specifically as war crimes in a manner that is consistent with their categorization under customary international law.

**CHART V. INTERNATIONAL HUMANITARIAN LAW TREATIES APPLICABLE DURING NON-INTERNATIONAL ARMED CONFLICT IMPOSING OBLIGATIONS WHICH, IF VIOLATED, POSSIBLY MAY RESULT IN INDIVIDUAL CRIMINAL RESPONSIBILITY, EITHER UNDER THE CONVENTIONS OR BECAUSE THE PROHIBITIONS ARE RECOGNIZED AS PART OF CUSTOMARY INTERNATIONAL LAW**

Crime	Treaty	Signed	Ratified or acceded	Definition in national law (citation to any relevant provision)	Universal jurisdiction (citation to any relevant provision)
Harm to protected cultural property	1954 CCP and Hague Prot. 1954			NO	NO
Recruiting, training, financing or protecting mercenaries	Mercenaries - 1977 OAU Convention			NO	NO
Use of certain prohibited conventional	CCW 1980	1 May 1981	30 September 2004	NO	NO

<sup>123</sup> See *Customary International Humanitarian Law*, Rule 53 (The use of starvation of the civilian population as a method of warfare is prohibited); Rule 156 (Serious violations of international humanitarian law constitute war crimes).

**CHART V. INTERNATIONAL HUMANITARIAN LAW TREATIES APPLICABLE DURING NON-INTERNATIONAL ARMED CONFLICT IMPOSING OBLIGATIONS WHICH, IF VIOLATED, POSSIBLY MAY RESULT IN INDIVIDUAL CRIMINAL RESPONSIBILITY, EITHER UNDER THE CONVENTIONS OR BECAUSE THE PROHIBITIONS ARE RECOGNIZED AS PART OF CUSTOMARY INTERNATIONAL LAW**

<b>Crime</b>	<b>Treaty</b>	<b>Signed</b>	<b>Ratified or acceded</b>	<b>Definition in national law</b> (citation to any relevant provision)	<b>Universal jurisdiction</b> (citation to any relevant provision)
weapons			(ratified)		
Use of weapons that injure by non-detectable fragments	CCW Prot. I 1980		30 September 2004 (consent to be bound)	NO	NO
Use of prohibited mines, booby-traps and other devices	CCW Prot. II 1980			NO	NO
Use of prohibited incendiary weapons	CCW Prot. III 1980		30 September 2004 (consent to be bound)	NO	NO
Use, financing or training of mercenaries	Mercenaries - 1989 Convention			NO	NO
Use of prohibited mines, booby-traps and other devices	CCW Prot. II a 1996			The Child Rights Act, 2007 (Act No. 43 of 2007), Sects. 28 (2) (b), 35.	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer)
Developing, producing, stockpiling and using prohibited chemical weapons	CWC 1993	15 January 1993	30 September 2004 (ratified)	NO	NO
Use of blinding laser weapons	CCW Prot. IV 1995		30 September 2004	NO	NO

**CHART V. INTERNATIONAL HUMANITARIAN LAW TREATIES APPLICABLE DURING NON-INTERNATIONAL ARMED CONFLICT IMPOSING OBLIGATIONS WHICH, IF VIOLATED, POSSIBLY MAY RESULT IN INDIVIDUAL CRIMINAL RESPONSIBILITY, EITHER UNDER THE CONVENTIONS OR BECAUSE THE PROHIBITIONS ARE RECOGNIZED AS PART OF CUSTOMARY INTERNATIONAL LAW**

<b>Crime</b>	<b>Treaty</b>	<b>Signed</b>	<b>Ratified or acceded</b>	<b>Definition in national law</b> (citation to any relevant provision)	<b>Universal jurisdiction</b> (citation to any relevant provision)
			(consent to be bound)		
Using, stockpiling, producing and transferring prohibited anti-personnel mines	AP Mine Ban Conv. 1997	29 July 1998	25 April 2001 (ratified)	The Child Rights Act, 2007 (Act No. 43 of 2007), Sects. 28, 35	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer)
Harming protected cultural property	Hague Prot. 1999			NO	NO
Recruiting and using child soldiers	Opt Prot. CRC 2000	8 September 2000	15 May 2002 (ratified)	The Child Rights Act, 2007 (Act No. 43 of 2007), Sects. 28, 35	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer)
Using certain prohibited conventional weapons	CCW Amdt 2001		30 September 2004 (ratified)	NO	NO
Failing to clear and destroy explosive remnants of war	CCW Prot. V		30 September 2004 (consent to be bound)	NO	NO
Use of prohibited cluster munitions	Cluster Munitions 2008	3 December 2008	3 December 2008 (ratified)	NO	NO

**Rules of customary international humanitarian law.** Finally, there are a number of rules of customary international law applicable in non-international armed conflict, which, if violated, could lead to individual criminal responsibility for war crimes. Some of these rules are listed in Chart VI. The chart indicates that Sierra Leone has defined one of these rules – namely the prohibition of slavery – as a crime under national law. However, as discussed (see Section 4.3.1.3 above), it has not defined this crime specifically as a war crime in a manner that is consistent with customary international law. It also indicates that Sierra Leone has not authorized its courts to exercise universal jurisdiction over the crime.

**CHART VI. RULES OF CUSTOMARY INTERNATIONAL LAW APPLICABLE TO NON-INTERNATIONAL ARMED CONFLICT WHICH, IF VIOLATED, COULD LEAD TO INDIVIDUAL CRIMINAL RESPONSIBILITY FOR WAR CRIMES**

Rule of customary international humanitarian law	Defined in national law (citation to any relevant provision)	Universal jurisdiction (citation to any relevant provision)
Use of biological weapons <sup>124</sup>	NO	NO
Use of chemical weapons <sup>125</sup>	NO	NO
Use of non-detectable fragments <sup>126</sup>	NO	NO
Use of binding laser weapons <sup>127</sup>	NO	NO
Launching an indiscriminate attack resulting in death or injury to civilians, or an attack in the knowledge that it will cause excessive incidental civilian loss, injury or damage <sup>128</sup>	NO	NO
Making non-defended localities and demilitarized zones the object of attack <sup>129</sup>	NO	NO
Using human shields <sup>130</sup>	NO	NO

<sup>124</sup> *Customary International Humanitarian Law*, Rule 73 (The use of biological weapons is prohibited).

<sup>125</sup> *Customary International Humanitarian Law*, Rule 74 (The use of chemical weapons is prohibited).

<sup>126</sup> *Customary International Humanitarian Law*, Rule 79 (The use of weapons the primary effect of which is to injure by fragments which are not detectable by X-rays in the human body is prohibited).

<sup>127</sup> *Customary International Humanitarian Law*, Rule 86 (The use of laser weapons that are specifically designed, as their combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision is prohibited).

<sup>128</sup> *Customary International Humanitarian Law*, Rule 11 (Indiscriminate attacks are prohibited); Rule 156 (Serious violations of international humanitarian law constitute war crimes).

<sup>129</sup> *Customary International Humanitarian Law*, Rule 36 (Directing an attack against a demilitarized zone agreed upon between the parties to the conflict is prohibited); Rule 37 (Directing an attack against a non-defended locality is prohibited); Rule 156 (Serious violations of international humanitarian law constitute war crimes).

<sup>130</sup> *Customary International Humanitarian Law*, Rule 97 (The use of human shields is prohibited); Rule 156

**CHART VI. RULES OF CUSTOMARY INTERNATIONAL LAW APPLICABLE TO NON-INTERNATIONAL ARMED CONFLICT WHICH, IF VIOLATED, COULD LEAD TO INDIVIDUAL CRIMINAL RESPONSIBILITY FOR WAR CRIMES**

Rule of customary international humanitarian law	Defined in national law (citation to any relevant provision)	Universal jurisdiction (citation to any relevant provision)
Slavery <sup>131</sup>	The Anti-Human Trafficking Act, 2005 (Act No. 44 of 2005), Sect. 2	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer)
Collective punishments <sup>132</sup>	NO	NO
Use of poison <sup>133</sup>	NO	NO
Use of toxic gases <sup>134</sup>	NO	NO
Use of dum-dum bullets <sup>135</sup>	NO	NO

**4.3.2. CRIMES AGAINST HUMANITY**

Sierra Leone has been a party to the Rome Statute since 15 September 2000. The most widely accepted list of acts constituting crimes against humanity is found in Article 7 of the Rome Statute.<sup>136</sup> As Chart VII indicates, Sierra Leone has only defined some of these crimes as crimes under national law. As discussed below, it has not defined many of these crimes in a manner that is consistent with the strictest requirements of international law (see the discussion that follows Chart VII). In addition, Sierra Leonean law does not recognize that these crimes, when committed as part of a widespread or systematic attack against civilians, constitute crimes against humanity. Moreover, Sierra Leone has not authorized its courts to exercise universal jurisdiction over these crimes, except when the person is a foreigner serving as a public officer.

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(Serious violations of international humanitarian law constitute war crimes).

<sup>131</sup> *Customary International Humanitarian Law*, Rule 94 (Slavery and the slave trade in all their forms are prohibited); Rule 156 (Serious violations of international humanitarian law constitute war crimes).

<sup>132</sup> *Customary International Humanitarian Law*, Rule 103 (Collective punishments are prohibited); Rule 156 (Serious violations of international humanitarian law constitute war crimes).

<sup>133</sup> The Review Conference of the Rome Statute adopted an amendment to Article 8 (2) (e) to make the use of this weapon in non-international armed conflict a war crime. RC/Res.5, *Adopted at the 12th plenary meeting, on 10 June 2010, by consensus* (Advance version, 16 June 2010 13:00) ([http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/RC-Res.5-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.5-ENG.pdf)).

<sup>134</sup> Rome Statute Review Conference, RC/Res.5 (2010).

<sup>135</sup> Rome Statute Review Conference, RC/Res.5 (2010).

<sup>136</sup> For the scope of crimes against humanity, see Machteld Boot, Rodney Dixon & Christopher K. Hall, 'Article 7 (Crimes Against Humanity)', *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*, Otto Triffterer (ed.), Oxford: Hart, 2nd ed., 2008, p. 183 (3<sup>rd</sup> ed. forthcoming 2013).

<b>CHART VII. CRIMES AGAINST HUMANITY</b>			
<b>Threshold/Act</b>	<b>Definition in text of Rome Statute, Article 7 and/or the Elements of Crimes<sup>137</sup></b>	<b>Definition in national law (citation to any relevant provision)</b>	<b>Universal jurisdiction in national law (citation)</b>
<b>Threshold</b>	Committed as part of a widespread or systematic attack directed against a civilian population, with perpetrator knowledge of the attack	No threshold requirement under national law	N/A
Murder	Killing one or more persons	When a person of sound memory and age of discretion unlawfully kills, within Sierra Leone, any reasonable creature in being under protection of the state, with malice aforethought, either express or implied, injured dying within one year and one day after the act (common law) <sup>138</sup>	
Extermination	Killing one or more persons, including by inflicting conditions of life, <i>inter alia</i> , the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population  Conduct constituted, or took place as part of, a mass killing of members of a civilian population	NO	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer)
Enslavement	Exercise of any or all the powers attaching to the right of ownership over	Identified as “keeping a person in a state of slavery” in the Anti-	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1)

<sup>137</sup> The Elements of Crimes is a document separate from the Rome Statute written to assist the ICC in the interpretation and application of Rome Statute arts. 6-8, defining genocide, crimes against humanity, and war crimes. International Criminal Court, Elements of Crimes, ICC-PIDS-LT-03-002/11\_Eng (2011).

<sup>138</sup> See Bankole Thompson, *The Criminal Law of Sierra Leone* 57 (1999).

<b>CHART VII. CRIMES AGAINST HUMANITY</b>			
<b>Threshold/Act</b>	<b>Definition in text of Rome Statute, Article 7 and/or the Elements of Crimes<sup>137</sup></b>	<b>Definition in national law (citation to any relevant provision)</b>	<b>Universal jurisdiction in national law (citation)</b>
	<p>one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or imposing on them a similar deprivation of liberty</p> <p>Includes the exercise of power in the course of trafficking in persons, in particular women and children</p>	<p>Human Trafficking Act, 2005 (Act No. 44 of 2005), Sect. 2 (3) (a)</p> <p>Slavery is defined in the Act as: “the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised”. Sect. 1</p>	(foreign public officer)
Deportation or forcible transfer of population	<p>Deportation or forcible transfer of one or more persons by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law</p> <p>Perpetrator awareness of the factual circumstances establishing lawfulness of victims' presence</p>	NO	NO
Imprisonment or other severe deprivation of physical liberty	<p>Imprisonment of one or more persons or otherwise severe deprivation of physical liberty, the gravity of this conduct being such that it violates fundamental rules of international law</p> <p>Perpetrator awareness of the factual circumstances establishing the gravity of the conduct</p>	**Prohibition in the Constitution but no criminal sanctions (The Constitution of Sierra Leone, 1991 (Act No. 6 of 1991), Ch. III, Sect. 17)	NO

<b>CHART VII. CRIMES AGAINST HUMANITY</b>			
<b>Threshold/Act</b>	<b>Definition in text of Rome Statute, Article 7 and/or the Elements of Crimes<sup>137</sup></b>	<b>Definition in national law (citation to any relevant provision)</b>	<b>Universal jurisdiction in national law (citation)</b>
Torture	Intentional infliction of severe pain or suffering, whether physical or mental, upon one or more persons in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions	Adult Victims:  **Prohibition in the Constitution but no criminal sanctions (The Constitution of Sierra Leone, 1991 (Act No. 6 of 1991), Ch. III, Sect. 20)	NO
		Child Victims:  Identified as “torture or other cruel, inhuman or degrading treatment or punishment including any cultural practice which dehumanises or is injurious to the physical and mental welfare of a child” in the Child Rights Act, 2007 (Act No. 43 of 2007), Sect. 33)	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer)
Rape	Invasion of the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or the anal or genital opening of the victim with any object or any other part of the body  Invasions committed by force, or by threat or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another	Adult Victims:  Unlawful sexual intercourse with a woman without her consent by force, fear, or fraud (common law) <sup>139</sup>	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer)
		Child Victims:  Unlawfully and carnally knowing and abusing any girl under the age of fourteen with or without her consent (Prevention of Cruelty to Children Act, Cap. 31 of the 1960 Laws of Sierra Leone, Sect. 6)	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer)

<sup>139</sup> See Bankole Thompson, *The Criminal Law of Sierra Leone* 68 (1999).

<b>CHART VII. CRIMES AGAINST HUMANITY</b>			
<b>Threshold/Act</b>	<b>Definition in text of Rome Statute, Article 7 and/or the Elements of Crimes<sup>137</sup></b>	<b>Definition in national law (citation to any relevant provision)</b>	<b>Universal jurisdiction in national law (citation)</b>
	person, or by taking advantage of a coercive environment, or committed against a person incapable of giving genuine consent		
Sexual slavery	Enslavement (see definition above) where the perpetrator caused the victim to engage in one or more acts of a sexual nature	Identified as “keeping a person in a state of sexual servitude” in the Anti-Human Trafficking Act, 2005 (Act No. 44 of 2005), Sect. 2 (3) (d)	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer)
Enforced prostitution	Causing one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by circumstances identified (see the definition of Rape) above  Perpetrator expects to obtain pecuniary or other advantage for or in connection with the acts of a sexual nature	Identified as “exploitation of the prostitution of another” in the Anti-Human Trafficking Act, 2005 (Act No. 44 of 2005), Sect. 2 (3) (e)	Criminal Procedure Acts, 1965 (Act No. 32 of 1965), Sect. 42 (1) (foreign public officer)
Forced pregnancy	Unlawful confinement of a one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law	NO	NO
Forced sterilization	Deprivation of one or more persons of biological reproductive capacity, neither justified by the medical or hospital treatment of the person or persons concerns nor carried out	NO	NO

<b>CHART VII. CRIMES AGAINST HUMANITY</b>			
<b>Threshold/Act</b>	<b>Definition in text of Rome Statute, Article 7 and/or the Elements of Crimes<sup>137</sup></b>	<b>Definition in national law (citation to any relevant provision)</b>	<b>Universal jurisdiction in national law (citation)</b>
	with their genuine consent		
Other forms of sexual violence	An act of a sexual nature against one or more persons or causing such persons to engage in an act of a sexual nature by force, or by threat of force or coercion such as that caused by circumstances identified (see the definition of Rape) above, the gravity of this conduct being equivalent to the sexual crimes listed above  Perpetrator awareness of the factual circumstances establishing the gravity of the conduct	NO	NO
Persecution	Intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity  Targeting based on political, social, racial, national, ethnic, cultural, religious, gender, or other grounds universally recognized as impermissible under international law	NO	NO
Enforced disappearance	Arrest, detention or abduction of persons by, with the authorization of, support or acquiescence of, a State or political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on	NO	NO

<b>CHART VII. CRIMES AGAINST HUMANITY</b>			
<b>Threshold/Act</b>	<b>Definition in text of Rome Statute, Article 7 and/or the Elements of Crimes<sup>137</sup></b>	<b>Definition in national law (citation to any relevant provision)</b>	<b>Universal jurisdiction in national law (citation)</b>
	<p>the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time</p> <p>Perpetrator awareness that the arrest, detention, or abduction would be following by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of the victim, or such refusal was preceded or accompanied by that deprivation of freedom</p>		
The crime of apartheid	<p>Inhumane acts of a character similar to those referred to in Article 7, committed in the context of an institutionalized regime or systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime</p> <p>Perpetrator awareness of the factual circumstances establishing the character of the act</p>	NO	NO
Other inhumane acts	<p>Acts of a similar character [to the above], intentionally causing great suffering, or serious injury to body or to mental or physical health</p> <p>Perpetrator awareness of the factual</p>	NO	NO

CHART VII. CRIMES AGAINST HUMANITY			
Threshold/Act	Definition in text of Rome Statute, Article 7 and/or the Elements of Crimes <sup>137</sup>	Definition in national law (citation to any relevant provision)	Universal jurisdiction in national law (citation)
	circumstances establishing the character of the act		

As discussed below, the definitions of crimes listed in Chart VII under Sierra Leonean law fall short of the strictest requirements of international law.<sup>140</sup> Importantly, in no instance does Sierra Leonean law indicate that the crimes listed could constitute crimes against humanity if committed as part of a widespread or systematic attack directed against a civilian population. While it is possible for Sierra Leone courts to prosecute the following crimes as ordinary crimes in such an instance, prosecuting these offences as ordinary crimes will not reflect the same moral condemnation and, in most instances, elicit equivalent punishment, to the corresponding crimes under international law. In addition, Sierra Leone courts may only exercise universal jurisdiction over these crimes when committed abroad by a foreigner who is a public officer.

**Murder.** The common law definition of murder under Sierra Leonean law does not define murder, when committed as part of a widespread or systematic attack against civilians, as a crime against humanity.

**Enslavement.** The Sierra Leone Constitution recognizes the right of all individuals to be free from slavery, servitude, and forced labour and condemns the trafficking or dealing in human beings, but it contains no criminal sanction.<sup>141</sup> Under the Anti-Human Trafficking Act, “keeping a person in a state of slavery” falls under the umbrella of “trafficking in persons,” which is a crime.<sup>142</sup> Nevertheless, Sierra Leonean law does not specifically define enslavement, when committed as part of a widespread or systematic attack against civilians, as a crime against humanity.

**Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law.** The Sierra Leone Constitution recognizes the right of all individuals to personal liberty and states that any person who is unlawfully arrested or detained is entitled to compensation.<sup>143</sup> However, Sierra Leonean law does not define deprivation of liberty as a criminal offence nor does it provide a criminal sanction for the act. In addition, Sierra Leonean law does not indicate that deprivation of liberty, when committed as part of a widespread or systematic attack against civilians, could constitute a crime against humanity.

**Torture.** The Sierra Leone Constitution recognizes the right of all individuals to be free from torture and any punishment or other treatment which is inhuman or degrading.<sup>144</sup> However, Sierra Leonean law only defines torture as a crime when committed against child victims.<sup>145</sup> Moreover, Sierra Leonean law does not define what constitutes torture nor does it indicate that torture, when committed as part of a widespread or systematic attack against civilians, is a crime against humanity.

<sup>140</sup> For the scope of each crime against humanity, see Boot, Dixon & Hall, *supra* note XXX, p. 183 *et seq.*

<sup>141</sup> 1991 Constitution, Ch. III, Sect. 19.

<sup>142</sup> See Anti-Human Trafficking Act, Sect. 2 (3)(a).

<sup>143</sup> 1991 Constitution, Ch. III, Sect. 17.

<sup>144</sup> 1991 Constitution, Ch. III, Sect. 20.

<sup>145</sup> See Child Rights Act, Sects. 33, 35.

**Rape.** Under Sierra Leonean law, the rape of a female adult is a crime under the common law and the rape of a girl under the age of fourteen is a statutory offence.<sup>146</sup> The inclusion of only women and girls as potential victims of rape renders both Sierra Leone's statutory and common law definitions of rape discriminatory and thus inconsistent with international human rights standards. The current definitions fail to account for potential instances of rape where men and boys are victims, including the realities of rape committed during armed conflict and as part of widespread and systematic attacks against civilians, where men and boys are often targeted.<sup>147</sup>

Under Sierra Leonean law, a key element of rape is a lack of victim consent. This is problematic in that it may not account for coercive circumstances recognized by international law during which any apparent consent given by the victim cannot be genuine. Moreover, the qualifying requirement that the perpetrator engaged in unlawful sexual intercourse by "force, fear, or fraud" is not robust enough to encompass these coercive circumstances.<sup>148</sup> A definition of rape and sexual violence based on "force, threat of force or coercion" would be more consistent with international standards. This would also align more closely with international standards than the definition of statutory rape under Sierra Leonean law, which is based on an age of consent.<sup>149</sup> Neither the common law nor statutory definitions of rape under Sierra Leonean law define rape, when committed as part of a widespread or systematic attack against civilians, as a crime against humanity.

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<sup>146</sup> Bankole Thompson, *The Criminal Law of Sierra Leone* 68-69 (1999) (citing the English common law definition of rape and Sect. 6 of the Sierra Leone Prevention of Cruelty to Children Act, Cap 31 of the 1960 Laws of Sierra Leone).

<sup>147</sup> See Dustin A. Lewis, 'Unrecognized Victims: Sexual Violence against Men in Conflict Settings under International Law,' *Wis. Int'l L.J.* vol. 27, p. 1; Hilmi M. Zawati, 'Impunity or Immunity: Wartime Male Rape and Sexual Torture as a Crime Against Humanity,' *Torture - Journal on Rehabilitation of Torture Victims and Prevention of Torture*, vol. 17, p. 27. Sierra Leone jurisprudence also holds that a husband cannot have unlawful sexual intercourse with his wife. See Bankole Thompson, *The Criminal Law of Sierra Leone* 68 (1999) (stating that "based on the common law which is entrenched in the Sierra Leone jurisdiction . . . a husband cannot rape his wife, the legal connotation of unlawful sexual intercourse would seem to be one that is outside the context of the marital relationship"). However, the House of Lords abolished this common law rule two decades ago in *R v. R.*, [1991] UKHL 12. The lack of recognition of marital rape also is contrary to international human rights law and standards.

<sup>148</sup> Various kinds of coercion recognized in international law include threats of force, duress, detention, psychological oppression, abuses of power, the perpetrator's taking advantage of a coercive environment, and the perpetrator's taking advantage of a victim's incapacity to genuinely consent. See Amnesty International, *Rape and sexual violence: Human rights law and standards in the international criminal court (Rape and sexual violence)*, Index: 53/001/2011, March 2011 (<http://www.amnesty.org/en/library/info/IO53/001/2011/en>), pp. 13 – 28.

<sup>149</sup> Statutory rape provisions may fail to provide victims' justice if the age of consent is set too low or too high. In Sierra Leone, the law presumes that adolescents above the age of fourteen – a category of individuals at particular risk of coerced sexual abuse – genuinely consent, without provision for a case-by-case analysis of coercion, which would take into account their decreased physicality, social and economic dependence, or limited negotiating power. See Amnesty International, *Rape and sexual violence* 31 – 33 (2011). Article 1 of the Convention on the Rights of the Child defines a child as "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

**Enforced prostitution and sexual slavery.** Under Sierra Leonean law, enforced prostitution and sexual slavery fall under the umbrella of “trafficking in persons,” which is a crime.<sup>150</sup> However, Sierra Leonean law does not specifically classify enforced prostitution and sexual slavery, when committed as part of a widespread or systematic attack against civilians, as crimes against humanity.

#### 4.3.3. GENOCIDE

Sierra Leone has neither signed nor ratified the 1948 Convention for the Prevention and Punishment of the Crime of Genocide (Genocide Convention).<sup>151</sup> Article II of the Genocide Convention defines genocide as follows:

“In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group”.

Article 6 of the Rome Statute contains a virtually identical definition of this crime. In addition, Article III of the Genocide Convention requires states to make both genocide and four ancillary forms of genocide crimes under national law:

“The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide”.

Most of these ancillary forms of genocide are also incorporated in Article 25 (Individual responsibility) of the Rome Statute.

Sierra Leone has not defined genocide as a crime. Sierra Leone has also not defined ancillary crimes of genocide listed in Article III of the Genocide Convention (conspiracy, direct and public incitement, attempt and complicity) as crimes under national law. Moreover, Sierra Leone has not provided its courts with universal jurisdiction over genocide.

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<sup>150</sup> See Anti-Human Trafficking Act, Sect. 2.

<sup>151</sup> U.N. G.A. Res. 260 (III), 9 December 1948  
([http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/260\(III\)](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/260(III))).

#### 4.3.4. TORTURE

Sierra Leone has been a party to the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) since 25 April 2001.<sup>152</sup> This treaty requires states parties to define acts of torture as crimes under national law (Art. 4), to establish jurisdiction over persons suspected of committing acts of torture (which necessarily include rape and other crimes of sexual violence) who are present in their territories if they are not extradited (Art. 5 (2)), to take measures to ensure presence for prosecution or extradition (Art. 6 (1) and (2)) and to submit the cases to competent authorities if they are not extradited (Art. 7 (1)).

However, Sierra Leone has defined the torture only of children as a crime (see Section 4.3.2 above).<sup>153</sup> Some of the activities associated with torture – including assault – are defined as crimes in Sierra Leonean law.<sup>154</sup> Nevertheless, the courts of Sierra Leone cannot fulfil their obligation under the Convention against Torture to exercise universal jurisdiction over torture or over other activities, like assaults, associated with torture, except when committed abroad by a foreigner who is a public officer.

#### 4.3.5. EXTRAJUDICIAL EXECUTIONS

Extrajudicial executions, which are “unlawful and deliberate killings, carried out by order of a government or with its complicity or acquiescence,” constitute fundamental violations of human rights and an affront to the conscience of humanity.<sup>155</sup> The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions make clear that all states must ensure that all persons found in territory subject to their jurisdiction who are suspected of such crimes are either prosecuted in their own courts or are extradited to face trial elsewhere.<sup>156</sup>

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<sup>152</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/a3bd1b89d20ea373c1257046004c1479/\\$FILE/G0542837.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/a3bd1b89d20ea373c1257046004c1479/$FILE/G0542837.pdf)), UN G.A. Res. 39/46, 10 December 1984.

<sup>153</sup> Although Section 33 of the Child Rights Act states that “No person shall subject a child to torture or other cruel, inhuman or degrading treatment or punishment,” and Section 35 classifies such treatment as a crime, the Act does not define the elements of this crime. A definition of torture that comports with international law should be based on, but not limited to, Article 1 (1) of the Convention against Torture, which states:

“[T]he term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

<sup>154</sup> See United Kingdom Offences Against the Person Act, 1861 (24 & 25 Vict c 100). The UK Offences Against the Person Act is included among the laws of Sierra Leone as a statute of general application in force in England before 1880. See Courts Act, Sect. 74.

<sup>155</sup> Amnesty International, *“Disappearances” and Political Killings – Human Rights Crisis of the 1990s: A Manual for Action*, Index: ACT 33/01/94, February 1994 (<http://www.amnesty.org/en/library/info/ACT33/001/1994/en>), p. 86; Amnesty International, *14-Point Program for the Prevention of Extrajudicial Executions*, Index: POL 35/002/1993, April 1993 (<http://amnesty.org/en/library/info/POL35/003/1993/en>). For a discussion of universal jurisdiction over extrajudicial executions, see Amnesty International, *Universal jurisdiction: The duty of states to enact and implement legislation - Ch. Eleven (Extrajudicial executions)*, Index: 53/014/2001, September 2001 (<http://www.amnesty.org/en/library/info/IOR53/014/2001/en>).

<sup>156</sup> Principle 18 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and  
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Extrajudicial executions are not expressly defined as crimes in Sierra Leone. However, these killings could be prosecuted as murder under the common law, or, if committed during an international armed conflict, as a grave breach of the Geneva Conventions. The courts of Sierra Leone cannot exercise universal jurisdiction over the ordinary crime of murder, except when committed abroad by a foreigner who is a public officer.

#### 4.3.6. ENFORCED DISAPPEARANCES

Sierra Leone signed on 6 February 2007, but as of 1 September 2012 had not yet ratified, the 2006 International Convention for the Protection of All Persons from Enforced Disappearance (Disappearance Convention).<sup>157</sup> This treaty requires states parties to define enforced disappearance as a crime under national law (Arts. 3, 4 and 6),<sup>158</sup> to establish jurisdiction over persons suspected of enforced disappearance who are present in their territories if they are not extradited (Art. 9 (2)), to take measures to ensure presence for prosecution or extradition (Art. 10 (1) and (2)) and to submit the case to the competent authorities if they are not extradited (Art. 11 (1)).

In addition, Article 7 (1) (i) of the Rome Statute lists enforced disappearance of persons as a crime against humanity. It defines enforced disappearances as

“the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time”.

Sierra Leone has not defined enforced disappearance as a crime under national law.<sup>159</sup> It has not provided its courts with universal jurisdiction over enforced disappearances.

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Summary Executions declares:

“Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed”.

<sup>157</sup> International Convention for the Protection of All Persons from Enforced Disappearance, U.N. G.A. Res. 61/177, 20 Dec. 2006 (<http://www2.ohchr.org/english/law/disappearance-convention.htm>).

<sup>158</sup> The Convention has defined enforced disappearance in Article 2 as

“the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”.

<sup>159</sup> For the scope of Sierra Leone’s obligation to implement this treaty when it is ratified, see Amnesty International, *No impunity for enforced disappearances: Checklist for effective implementation of the International Convention for the Protection of All Persons from Enforced Disappearance*, Index: IOR 51/006/2011, November 2012 (<http://www.amnesty.org/en/library/info/IOR51/006/2011/en>).

#### 4.3.7. AGGRESSION

The crime under international law of planning, preparing, initiating or waging aggressive war has been recognized as a crime under international law since it was incorporated in the Nuremberg Charter in 1945.<sup>160</sup> It is expressly listed as a crime in Article 5 of the Rome Statute over which the International Criminal Court shall exercise jurisdiction.<sup>161</sup> The Review Conference on the Rome Statute adopted an amendment to the Rome Statute defining the crime and setting out the conditions under which the Court will exercise its jurisdiction over the crime.<sup>162</sup>

Sierra Leone has not defined the planning, preparation, initiation or waging of an aggressive war as a crime under national law nor has it provided its courts with universal jurisdiction over this crime.

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<sup>160</sup> Charter of the International Military Tribunal, annexed to the London Agreement (Nuremberg Charter), 8 Aug. 1945, Article 6 (a) (“CRIMES AGAINST PEACE: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing[.]”)

<sup>161</sup> Rome Statute, art. 5 (2). The Review Conference on the Rome Statute adopted an amendment to the Rome Statute defining the crime and setting out the conditions under which the Court will exercise its jurisdiction over the crime. RC/Res.6 ([http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/RC-Res.6-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf)).

<sup>162</sup> RC/Res.6 ([http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/RC-Res.6-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf)).

# 5. JURISDICTION OVER CIVIL CLAIMS FOR REPARATION

There does not appear to be any Sierra Leone legislation expressly providing for universal civil jurisdiction, either in civil proceedings or in criminal proceedings.

In civil proceedings and in criminal proceedings, the scope of remedies that can be awarded to victims according to Sierra Leonean law is more limited than the rights of victims to reparations under international law. Under international law and standards, victims of crimes under international law and other human rights violations and abuses are entitled to full reparation, including restitution, rehabilitation, compensation and guarantees of non-repetition.<sup>163</sup> Under Sierra Leonean law, victims may obtain compensation and restitution in criminal proceedings. Plaintiffs initiating civil proceedings may obtain damages in the form of monetary compensation or equitable remedies, including restitution.

## 5.1. UNIVERSAL JURISDICTION OVER CIVIL CLAIMS IN CIVIL CASES

In contrast to a number of civil law countries and the United States,<sup>164</sup> there is no specific legislation in Sierra Leone permitting victims to obtain reparations in civil proceedings based on universal jurisdiction.

## 5.2. CIVIL CLAIMS IN CRIMINAL PROCEEDINGS

It appears that under the Criminal Procedure Acts, victims can receive civil remedies in criminal proceedings (for a description of how the rights of victims in such criminal proceedings generally are implemented, see Section 2.5 above). There is nothing in this legislation suggesting that they

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<sup>163</sup> With regard to war crimes, see, for example, 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, *reprinted in* Adam Roberts & Richard Guelff, *Documents on the Laws of War*, Oxford: Oxford University Press, 3rd ed., 2000, p. 67. See also Hisakazu Fujita, Isomi Suzuki & Kantato Nagano, *War and the Rights of Individuals, Renaissance of Individual Compensation*, Tokyo: Nippon Hyoron-sha, 1999, p. 31 (expert opinions by Frits Kalshoven); Eric David 49; Christopher Greenwood 59; Protocol I, art. 91 (Responsibility). With regard to crimes under international law and other human rights violations and abuses, see, for example, Human Rights Committee, General Comment No. 31, UN Doc. CCPR/C/21/Rev.1/Add.13 (scope of Article 2 of the ICCPR); Convention against Torture, art. 14; 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Basic Principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and international humanitarian law (Van Boven-Bassiouni Principles), UN Comm'n Hum. Rts Res. E/C.N.4/2005/35, 13 April 2005; GA Res. A/RES/60/147, 16 Dec. 2005; UN Updated set of principles for the protection and promotion of human rights through action to combat impunity (Joinet-Orentlicher Principles), UN Comm'n Hum. Rts Res. E/C.N.4/2005/81, 15 April 2005.

<sup>164</sup> See, for example, Amnesty International, *Universal jurisdiction: The scope of universal civil jurisdiction*, Index: IOR 53/008/2007, July 2007 (<http://www.amnesty.org/en/library/info/IOR53/008/2007/en>) (noting legislative provisions in 25 countries with universal civil jurisdiction, including: Argentina, Austria, Belgium, Bolivia, China, Colombia, Costa Rica, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, Myanmar, the Netherlands, Panama, Poland, Portugal, Romania, Senegal, Spain, Sweden, United States and Venezuela). In addition to the numerous decisions by US Federal courts awarding civil reparation to victims in civil cases based on universal jurisdiction over the past three decades, courts in other countries have made such awards in civil cases. See, for example, *Ashraf El-Hojouj v. Libya*, Civil Section, first instance regional court in The Hague (Netherlands), 21 March 2012 (<http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=BV9748>); *Kovač c. Plavšić, Jugement, Tribunal de Grande Instance Paris, France, 14 mars 2011* (awarding approximately 200,000 euros to victims of crimes against humanity).

cannot recover for civil claims in such proceedings on the same jurisdictional basis as the criminal proceedings, including recovery for civil claims in criminal proceedings based on universal jurisdiction. However, this is not expressly granted and has not occurred in practice. Victims are entitled to recover two forms of reparations in criminal proceedings – restitution<sup>165</sup> and compensation.<sup>166</sup>

### 5.3. THE RIGHT TO REPARATION OF VICTIMS IN CIVIL PROCEEDINGS

Sierra Leone legislation does not expressly recognise the right of victims of crimes under international law to reparation in civil proceedings. However, Sierra Leonean law generally provides for two types of remedies in civil proceedings – compensation and equitable remedies, such as restitution.

The scope of reparation that can be awarded to victims according to Sierra Leonean law is more limited than the rights of victims under international law and standards. International law recognizes five forms of reparation – restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition. Some of these forms of reparation can only be provided by the state where the crime occurred or by the convicted person's state, and, therefore, it would not be possible to include them in a court judgment based on universal jurisdiction. However, some of these forms of reparation – such as providing satisfaction in the form of an apology to the victim or the victim's family – could

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<sup>165</sup> The Criminal Procedure Acts, Sect. 60 states:

- “(1) Where any person is convicted of having stolen or otherwise obtained any property dishonestly by means of any felony or misdemeanour, the Court convicting him may—
- a. order that the property or part thereof be restored to the person who appears to it to be the owner thereof, either on payment or without payment by the owner to the person in whose possession such property or a part thereof then is, of any sum named in such order;
  - b. make an assessment as to the value of such property at the time it was so stolen or otherwise obtained as aforesaid and order that the sum so assessed be paid by the person convicted to the person who appears to it to be the owner of the property.
- (2) This section shall apply to—
- a. any valuable security which has been bona fide paid or discharged by any person liable to pay or discharge the same; or
  - b. any negotiable instrument or money which shall have been bona fide received by transfer or delivery by any person for a just and valuable consideration without notice, or without any reasonable cause to suspect, that it had been stolen or otherwise dishonestly obtained; or
  - c. any offence against sections 20, 21 and 22 of the Larceny Act, 1916”.

<sup>166</sup> The Criminal Procedure Acts, Sect. 54 states:

- “(1) When any person is convicted of an offence and the facts constituting the offence amount also to a tort against the person or property of the prosecutor, the Court before which such person is convicted may, on the application of the prosecutor and after taking any such further evidence as it deems necessary, order the person convicted to pay the prosecutor such sum as appears to the Court to be reasonable compensation (not exceeding in the case of a summary conviction one thousand Leones) in addition to or in lieu of any other punishment.
- (2) Where a prosecutor has actually received the compensation awarded under the provisions of subsection (1) or any part thereof the convicted person shall be released from all further or other proceedings by the prosecutor whether civil or criminal for the same cause”.

Any compensation or expenses awarded are not considered a penalty but are recoverable as a judgment debt in the Court where the order is made. Sect. 58.

be provided by the convicted person himself or herself. In Sierra Leone, the principal remedy in civil proceedings is monetary compensation (known as damages) under the common law. In addition, Sierra Leone courts have discretion to grant plaintiffs restitution or an injunction as equitable remedies.<sup>167</sup>

#### 5.4. THE RIGHTS OF VICTIMS DURING CIVIL PROCEEDINGS

In general, a number of rights are recognized for victims who are plaintiffs or complainants in civil proceedings. These include the right to participate through the issue and service of legal process, including pleadings, the right to file pre-trial motions, the right to testify at trial, the right to counsel, the right to notice of any orders relevant to the proceedings, and the right to notice of hearing of appeal. According to a leading expert on Sierra Leonean law, these rights are either expressly or impliedly provided for, in the case of magisterial proceedings, in the Magistrates Courts Rules, and, in the case of civil proceedings in the High Court, in the Sierra Leone High Court Rules, 2007, and in the English Supreme Court Practice, 1999, applicable in civil proceedings in Sierra Leone through incorporation by reference, otherwise known as 'The White Book'.<sup>168</sup> However, the right to notice of one's rights, which is necessary to ensure the effective exercise of other rights, is not guaranteed. The rights of victims in criminal proceedings are discussed in Section 2 (see Section 2.5 above).

##### 5.4.1. NOTICE OF THE RIGHTS OF VICTIMS

The right of victims to notice about their rights regarding the investigation, litigation and appeal is not guaranteed in law and practice.

##### 5.4.2. PROTECTION

According to a leading expert on Sierra Leonean law, a court acting under its inherent jurisdiction may afford victims protection during the course of civil proceedings.<sup>169</sup> However, in practice Sierra Leone courts have limited resources and often have not been able to provide effective victim and witness protection.<sup>170</sup>

##### 5.4.3. SUPPORT

The right to provision of psychological and other support for victims, particularly to people who are often marginalized, such as women, members of minority groups and children, is not guaranteed by law. In practice, a limited number of programs funded and administered by non-governmental organizations provide social, financial, or medical support to special classes of victims such as victims of trafficking and victims of sexual and gender-based violence.<sup>171</sup>

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<sup>167</sup> Written Memo by Justice Bankole Thompson (16 February 2012) (stating "The Sierra Leone Courts, in their civil capacity, have as far back as colonial times, developed an authoritative and consistent body of case law on the remedy of damages as a relief in tort cases" and citing the law embodied in the African Law Reports, Sierra Leone series, spanning the years 1937-49, 1950-56, 1957-60, 1964-66, 1967-68, 1968-69, 1970-71 and 1971-73).

<sup>168</sup> Written Memo by Justice Bankole Thompson (30 March 2012).

<sup>169</sup> Written Memo by Justice Bankole Thompson (30 March 2012).

<sup>170</sup> See Chris Mahony, 'Sierra Leone: Domestic protection conceptualised by an international tribunal,' *The Justice Sector Afterthought: Witness Protection in Africa* 151 – 161 (2010); UCLA School of Law International Justice Clinic & Aids-Free World, '4. Sierra Leone,' *Safety Denied: Victim and Witness Protection in Sexual Violence Cases* 23-29 (2011).

<sup>171</sup> Interview with Deputy-Manager of the Family Support Unit, Sierra Leone Police, in Freetown, Sierra Leone (10 October 2011). See also UCLA School of Law International Justice Clinic & Aids-Free World, *Safety Denied: Victim and Witness Protection in Sexual Violence Cases* 24 (2011).

#### 5.4.4. NOTICE OF DEVELOPMENTS

By law, victims who are plaintiffs or complainants in civil proceedings are entitled to notice about all developments in the proceedings,<sup>172</sup> but it is not clear to what extent this right is guaranteed in practice.

#### 5.4.5. PARTICIPATION

The right of victims to participate in pre-trial, trial and appellate proceedings is guaranteed. By law victims who are plaintiffs or complainants are entitled to participate in civil proceedings by pleading, filing motions and testifying.<sup>173</sup>

#### 5.4.6. REPRESENTATION

Victims who are plaintiffs or complainants in civil – as opposed to criminal (see Section 2.5.6.6 above) - proceedings have a right to legal representation.<sup>174</sup> However, Sierra Leone has only recently established programs administered by the state that provide such counsel for victims.

### 5.5. OTHER ASPECTS OF CIVIL CLAIMS PROCEDURES

***Statutes of Limitations on Civil Claims*** (see Section 6.3 below).

***Immunities*** (see Section 6.5 below).

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<sup>172</sup> For example, the rules of the High Court provide that notice must be given to parties in proceedings, or to their legal representatives, for discovery purposes and to indicate the initiation of motions and claims, the setting of an action down for trial, the filing of an affidavit, the making of admissions, the appearance of the defendant, the changing of a solicitor or intention to act in person, and the making of an application for judicial review. See The High Court Rules, 2007 (Constitutional Instrument No. 25 of 2007) (High Court Rules), Orders 8 (3), 21 (2), 24 (4), 27 (9-11), 34 (1-2), 38 (1), 40 (5), 58 (6), 59 (1-4), 52 (5). Notice of a judgment may also be given, by parties or by the court on its own motion, to non-parties affected by the litigation. See High Court Rules, Order 18 (16).

<sup>173</sup> See High Court Rules, Orders 5, 8, 9, 21, 30, 52. Order 5 (6) states:

“[A]ny person (whether or not he sues as a trustee or in a personal representative capacity) may begin and carry on proceedings in the High Court by a solicitor or in person”.

<sup>174</sup> See Legal Aid Act, Sect. 20 (2); High Court Rules, Orders 5 (6), 59.

## 6. OBSTACLES TO THE EXERCISE OF CRIMINAL OR CIVIL JURISDICTION

As discussed below, there are a number of obstacles to exercising criminal and civil jurisdiction based on universal jurisdiction in criminal and civil cases. These obstacles include: many missing definitions of crimes under international law, some divergences between Sierra Leonean law and international law with regard to principles of criminal responsibility and defences and recognition of amnesties or similar measures of impunity.<sup>175</sup>

### 6.1. FLAWED OR MISSING DEFINITIONS OF CRIMES UNDER INTERNATIONAL LAW, PRINCIPLES OF CRIMINAL RESPONSIBILITY OR DEFENCES

#### 6.1.1. DEFINITIONS OF CRIMES

As indicated above in Section 4, the definitions of grave breaches of the Geneva Conventions under Sierra Leonean law are consistent with those under international law. The definitions of all other crimes under international law are either missing in national law or are inconsistent with the strictest requirements of international law.

Indeed, Sierra Leone has not defined most other war crimes, any crimes against humanity, genocide, torture (except for torture of children), extrajudicial executions, enforced disappearances or aggression as crimes under national law. Although some of the conduct amounting to crimes under international law can be prosecuted as ordinary crimes, such as murder, assault, rape and abduction, this alternative is not entirely satisfactory as it leaves gaps where conduct amounting to crimes under international law is not subject to criminal responsibility under national law. Moreover, a prosecution based on universal jurisdiction for ordinary crimes is not possible under the national law in Sierra Leone except in the very rare circumstance when the act was committed abroad by a non-national serving in public office in Sierra Leone. In addition, conviction for an ordinary crime, even when it has common elements, does not convey the same moral condemnation as if the person had been convicted of the crime under international law and does not necessarily involve as severe a punishment.<sup>176</sup>

#### 6.1.2. PRINCIPLES OF CRIMINAL RESPONSIBILITY

In Sierra Leone, as in most common law countries, principles of criminal responsibility are found in jurisprudence. As explained below, most principles of criminal responsibility found in Sierra Leonean law are largely consistent with principles defined in international law. In one instance, however, the national law of Sierra Leone lacks a principle of responsibility required under international law with respect to crimes under international law and the principles that should apply to such crimes.

The primary difference between principles of criminal responsibility found in the laws of Sierra Leone and those principles found in the Rome Statute and other international law instruments is that Sierra Leonean law does not have a principle of command and superior responsibility. The

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<sup>175</sup> As noted above in footnote 2, this paper does not address a whole range of other types of obstacles to justice, including conflict and poverty, that are not specific to universal jurisdiction.

<sup>176</sup> See *Prosecutor v. Bagaragaza*, Decision on the Prosecution Motion for Referral to the Kingdom of Norway – Rule 11 *bis* of the Rules of Procedure and Evidence, Case No. ICTR-2005-86-11 *bis*, Trial Chamber (19 May 2006), para. 16, *aff'd*, *Prosecutor v. Bagaragaza*, Decision on Rule 11 *bis* Appeal, Case No. ICTR-05-86-AR11 *bis*, Appeals Chamber (30 August 2006), para. 16.

principle of superior responsibility in international law is found in Articles 86 (2) and 87 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I),<sup>177</sup> Article 6 of the International Law Commission's 1996 Draft Code of Crimes against the Peace and Security of Mankind<sup>178</sup> and Article 28 of the Rome Statute,<sup>179</sup> which itself falls short of other international law in some respects. In addition, the Committee against Torture has concluded that superiors cannot escape criminal responsibility for torture committed by their subordinates.<sup>180</sup> There is no jurisprudence recognizing the principle of superior responsibility in the laws of Sierra Leone, which is a departure from international law.

With regard to other principles of individual criminal responsibility, Sierra Leonean law is similar to Article 25 of the Rome Statute. Its common law principles of individual criminal responsibility recognize commission of a crime, individually or jointly (Rome Statute, art. 25 (3) (a)); ordering, soliciting or inducing a crime (Rome Statute, art. 25 (3) (b)); aiding, abetting or otherwise assisting the commission of a crime (Rome Statute, art. 25 (3) (c)); contributing to the commission or attempted commission of a crime by a group of persons acting with a common purpose (Rome Statute, art. 25 (3) (d));<sup>181</sup> and attempting to commit a crime (Rome Statute, art. 25 (3) (f)).<sup>182</sup>

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<sup>177</sup> Paragraph 2 of Article 86 (Failure to act) of Protocol I states:

"1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.

2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach".

See also Protocol I, art. 87 (Duty of commanders).

<sup>178</sup> Article 6 (Responsibility of superiors) of the Draft Code of Crimes, which was intended to apply both to international and national courts, states:

"The fact that a crime against the peace and security of mankind was committed by a subordinate does not relieve his superiors of criminal responsibility, if they knew or had reason to know, in the circumstances at the time, that the subordinate was committing or was going to commit such a crime and if they did not take all necessary measures within their power to prevent or repress the crime".

<sup>179</sup> Rome Statute, art. 28 (Responsibility of commanders and other superiors). Although Article 6 (1) (b) of the International Convention for the Protection of All Persons from Enforced Disappearance is modelled on the two-tiered Article 28 of the Rome Statute, Article 6 (1) (c) makes clear that this provision "is without prejudice to the higher standards of responsibility applicable under relevant international law to a military commander or to a person effectively acting as a military commander".

<sup>180</sup> Committee against Torture, General Comment 2 (Implementation of article 2 by States parties), U.N. Doc. CAT/C/GC/2, 24 January 2008, para. 26.

<sup>181</sup> Drawing from English common law, Sierra Leonean law designates multiple participants to a crime 'accomplices,' or *participes criminis*. For felonies, this category may be sub-divided into principals in the first degree, principals in the second degree, accessories before the fact and accessories after the fact. All except for accessories after the fact are generally given the same punishment. Bankole Thompson, *The Criminal Law of Sierra Leone* 41 (1999). A principal in the second degree is someone who, though not implicated in the crime as the principal in the first degree, "aids and abets its commission by his presence and encouragement." See Bankole Thompson, *The Criminal Law of Sierra Leone* 42 - 43 (1999) (referencing the Sierra Leone Court of

However, there is no express provision in Sierra Leonean law making it unlawful directly and publicly to incite others to commit genocide (Rome Statute, art. 25 (3) (e)).

### 6.1.3. DEFENCES

As discussed below, there are a number of defences in Sierra Leonean law that are broader than defences permitted under international law with respect to crimes under international law or which are inappropriate for such crimes, such as compulsion and duress, self-defence and defence of property. These could lead to impunity for the worst imaginable crimes.<sup>183</sup> For some defences, it has not been possible to determine the exact scope of the defence, such as for mistake of fact and necessity, largely due to the sparseness of Sierra Leonean case law authorities on the subject and the lack of a fully developed criminal jurisprudence.

#### ***Defences – superior orders***

In line with international law, there is no defence of superior orders in Sierra Leonean law. This defence has been contrary to international law since Nuremberg, although it may properly be taken into account in mitigation of punishment.<sup>184</sup> This defence has been excluded from numerous international instruments for more than half a century. It has been excluded from the Nuremberg Charter, Allied Control Council Law No. 10, the ICTY Statute, the ICTR Statute, the Regulation establishing the Special Panels for East Timor, the Statute of the Special Court for Sierra Leone, the Cambodian Law establishing the Extraordinary Chambers and the International Convention for the Protection of All Persons from Enforced Disappearance.<sup>185</sup> In addition, the Committee against

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Appeal case *Walker v. R.*, ALR SL 142 (1964 - 66), where this mode of responsibility was applied). An accessory before the fact is someone who, though not present at the commission of a felony, "procures, counsels or assists in its preparation." *Bankole Thompson, The Criminal Law of Sierra Leone* 46 (1999) (referencing the Sierra Leone Court of Appeal case *Kargbo v. R.*, ALR SL 146 (1967 - 68), where this mode of responsibility was applied). Incitement and solicitation of crimes are inchoate offences in Sierra Leone. See Bankole Thompson, *The Criminal Law of Sierra Leone* 247-55 (1999). Sierra Leonean law also holds individuals responsible who, in furtherance of a common purpose, contribute to a group crime. See Bankole Thompson, *The Criminal Law of Sierra Leone* 43-46 (1999) (discussing *Turay v. Reginam*, ALR SL 142 (1964 - 66) and *John and Four Others v. State*, ALR SL 441 (1972-73), where the Sierra Leone Court of Appeal used the common purpose test to determine if individuals present at the scene of a crime were merely onlookers or principals in the second degree, intentionally pursuing a common design).

<sup>182</sup> Under Sierra Leonean law, an attempt to commit an indictable offence is a criminal misdemeanour. See Bankole Thompson, *The Criminal Law of Sierra Leone* 234 - 41 (1999).

<sup>183</sup> This section is not intended to cover the full range of defences to criminal charges under Sierra Leonean law, but simply to discuss some of the most significant features regarding defences that have implications for prosecutions for crimes under international law based on universal jurisdiction.

<sup>184</sup> Amnesty International, *The international criminal court: Making the right choices – Part I: Defining the crimes and permissible defences (ICC: Making the right choices)*, Index: IOR 40/01/1997, January 1997 (<http://www.amnesty.org/en/library/info/IO40/001/1997/en>), Sect. VI.E.6.

<sup>185</sup> Charter of the International Military Tribunal, annexed to the London Agreement (Nuremberg Charter), 8 Aug. 1945, art. 8; Allied Control Council Law No. 10, Punishment of persons guilty of war crimes, crimes against peace and against humanity (Allied Control Council Law No. 10), 20 Dec. 1945, art. II (4) (b), (published in the Official Gazette of the Control Council for Germany, No. 3, Berlin, 31 Jan. 1946); Charter of the International Military Tribunal for the Far East (Tokyo Charter), art. 6; ICTY Statute, art. 7 (4); ICTR Statute, art. 6 (4); Draft Code of Crimes against the Peace and Security of Mankind, art. 5; UNTAET Regulation 2000/15 (establishing the Special Panels for Serious Crimes, Dili, East Timor), 6 June 2000, Sect. 21; Statute of the Special Court for Sierra Leone (Sierra Leone Statute), art. 6 (4); Cambodian Law on the Establishment of the Extraordinary Chambers, with inclusion of amendments as promulgated on 27 Oct. 2004 (NS/RKM/1004/006), art. 29; International Convention for the Protection of All Persons from Enforced Disappearance, art. 6 (2).

Article 33 of the Rome Statute permits the defence of superior orders to war crimes, but it is narrowly circumscribed, applicable only to trials in the International Criminal Court and contrary to every other

Torture has concluded that superior orders can never be a defence to torture.<sup>186</sup>

### ***Defences – mistake of fact***

The common law of Sierra Leone, governed by English and Sierra Leone jurisprudence, provides that a mistake of fact that makes a criminal act inadvertent is an excuse to a crime.<sup>187</sup> For example, in the case of *R. v. Tolson*, an accused succeeded against a bigamy charge with the defence that he reasonably and honestly believed his wife's first husband was dead.<sup>188</sup> Under applicable common law principles, a leading expert on Sierra Leonean law reasons that "if the *actus reus* includes surrounding circumstances, it cannot be said to be intentional unless all of its elements including those circumstances are known".<sup>189</sup>

Based on this reasoning, the defence of mistake of fact under Sierra Leonean law is slightly broader than the defence of mistake of fact found in Article 32 (1) of the Rome Statute, which specifically requires a mistake negating the mental element of the crime in order to excuse the crime. Article 32 (1) of the Rome Statute provides:

"A mistake of fact shall be a ground for excluding criminal responsibility *only if* it negates the mental element required by the crime (emphasis added)".<sup>190</sup>

It appears that, under Sierra Leonean law, a mistake negating any element of the crime could excuse the crime. However, no other jurisprudence further clarifying this defence has been located, so it is not possible to give a definitive answer whether the defence of mistake of fact is actually broader than the defence spelled out in the Rome Statute.

### ***Defences – ignorance of the law***

The common law of Sierra Leone, governed by English and Sierra Leone jurisprudence, provides that ignorance or mistake of law is not generally a defence to criminal liability. However, ignorance or mistake of law "can operate as a defence to criminal liability where it has the effect of negating the *mens rea* for the particular offense."<sup>191</sup>

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international instrument adopted concerning crimes under international law, including instruments subsequently adopted, such as the Statute of the Special Court for Sierra Leone and the Cambodian Extraordinary Chambers Law.

<sup>186</sup> Committee against Torture, General Comment 2, U.N. Doc. CAT/C/GC/2, 2008, para. 26.

<sup>187</sup> See Bankole Thompson, *The Criminal Law of Sierra Leone* 273 (1999) (stating that "[w]here a defendant can prove some mistake of fact rendering the commission of the crime inadvertent and that he acted under an honest and reasonable mistake in the circumstances which, if true, would have justified the act done, he is thereby exempted from criminal liability").

<sup>188</sup> See Bankole Thompson, *The Criminal Law of Sierra Leone* 273 & 290, n. 31 (1999) (citing *R. v. Tolson*, 23 QBD (1889)).

<sup>189</sup> Written Memo by Justice Bankole Thompson (11 April 2012) (citing Glanville Williams, *Criminal Law: The General Part*, London: Sweet & Maxwell, 1960, pp. 140 - 142). For crimes imposing strict liability, a mistake of fact will not excuse the crime. See Bankole Thompson, *The Criminal Law of Sierra Leone* 273 & 290, n. 31 (1999) (citing *R. v. Prince LR*, 2 CRR 154 (1875)).

<sup>190</sup> For the scope of this defence, see *ICC: Making the Right Choices – Part I*, *supra* note 184, Sect. VI.E.6.

<sup>191</sup> Bankole Thompson, *The Criminal Law of Sierra Leone* 272-273 (1999).

This defence under Sierra Leonean law seems to have roughly the same scope as the defence of mistake of law in Article 32 (2) of the Rome Statute. Article 32 (2) of the Rome Statute excludes the defence of mistake of law, except to the extent that it negates the mental element of the crime:

“A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime or as provided for in article 33.”<sup>192</sup>

#### **Defences – insanity and mental disease or defect**

The defence of insanity, mental disease or mental defect in Sierra Leonean law is narrower than this defence in the Rome Statute. The defence under Sierra Leonean law is spelled out in the common law *M’Naughten* Rule, which an expert in Sierra Leonean law summarizes in his criminal law treatise: “[A] person cannot be convicted of a crime if, at time of the commission of the act, such a person was labouring under such a defect of reason (from disease of the mind) as not to know the nature or quality of his act, or if he did know it, as not to know that it was wrong”.<sup>193</sup> In this construction, ‘nature and quality’ refers to “the physical nature and quality of the act and not to its moral or legal quality;”<sup>194</sup> ‘wrong’ means unlawful rather than morally wrong.<sup>195</sup>

The first part of Article 31 (1) (a) of the Rome Statute is similar to the *M’Naughten* Rule. It states:

“[i]n addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person’s conduct:

(a) The person suffers from a mental disease or defect that destroys that person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law[.]”<sup>196</sup>

In an expansion of the *M’Naughten Rule*, Article 31 (1) (a) of the Rome Statute also provides that it is a defence if the mental disease or defect destroys a person’s capacity to control his or her conduct to conform to the requirements of the law, which is not included in the *M’Naughten* Rule.

#### **Defences – intoxication**

The common law of Sierra Leone provides for a defence of intoxication similar to the defence of intoxication found in Rome Statute Article 31 (1) (b). Under Sierra Leonean law, it is presumed that a person intends the natural consequences of his or her actions, thus voluntary intoxication is rarely a defence to criminal conduct. Exceptionally, voluntary intoxication may be a defence to criminal liability when an accused can prove the intoxication impaired his or her ability to foresee the consequences of his or her actions, discern the wrongfulness of his or her actions, or control his or her actions, making him or her more susceptible to provocation. Most crucial, the defence of

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<sup>192</sup> For the scope of Article 33 (Superior orders and prescription of law) of the Rome Statute, see the discussion of superior orders above in this subsection.

<sup>193</sup> See Bankole Thompson, *The Criminal Law of Sierra Leone* 270 (1999).

<sup>194</sup> See Bankole Thompson, *The Criminal Law of Sierra Leone* 280 (1999) (quoting *R v. Codere*, 12 Cr. App. R. 21 (1916)).

<sup>195</sup> See Bankole Thompson, *The Criminal Law of Sierra Leone* 280 (1999) (citing *R v. Windle*, 2 QB 826 (1952)).

<sup>196</sup> Rome Statute, art. 31 (1) (a).

intoxication can only succeed when it rebuts the presumption that the accused intended the natural consequences of his or her actions.<sup>197</sup>

Similarly, Article 31 (1) (b) of the Rome Statute states:

“[i]n addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person’s conduct:

(b) The person is in a state of intoxication that destroys that person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of the law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court[.]”<sup>198</sup>

### ***Defences – compulsion, duress and necessity***

As Amnesty International has argued, compulsion, duress and necessity should not be *defences* to crimes under international law, but should simply be grounds for *mitigation* of punishment.<sup>199</sup> However, in a regrettable political compromise, Article 31 (1) (d) of the Rome Statute permits, in strictly limited circumstances and only in trials before the International Criminal Court, defences of duress in response to threats from another person and of necessity (called ‘duress’) in response to threats from circumstances beyond a person’s control.<sup>200</sup>

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<sup>197</sup> See Bankole Thompson, *The Criminal Law of Sierra Leone 275-278* (1999) (analyzing Sierra Leone Court of Appeal case *Wreh v. Regem*, ALR SL 153 (1950-56), where the Court held that the accused could not demonstrate he was so impaired by drink as to defeat the presumption that he intended the natural consequences of his actions).

<sup>198</sup> Rome Statute, art. 31 (1) (b).

<sup>199</sup> Amnesty International, *ICC: Making the right choices*, *supra* note 184, Sect. VI.E.3 & 4. The Committee against Torture has recommended that states parties “completely remove *necessity* as a possible justification for the crime of torture”. Concluding observations – Israel, U.N. Doc. CAT/C/ISR/CO/4, 23 June 2009, para. 14 (<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/431/65/PDF/G0943165.pdf?OpenElement>) (emphasis in original).

<sup>200</sup> Article 31 (1) (d) of the Rome Statute provides that

“[i]n addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person’s conduct:

...

(d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:

(i) Made by other persons; or

(ii) Constituted by other circumstances beyond that person’s control”.

**Compulsion or duress.** Compulsion (or duress) is generally a defence to crimes under Sierra Leonean law. There is no exception for crimes under international law. The common law of Sierra Leone provides that duress is a defence to criminal liability when the accused proves he or she faced a threat of immediate or imminent serious bodily harm or death. The accused must have acted under the reasonable and honest belief that the commission of an otherwise unlawful act was the only way to avoid the harm.<sup>201</sup> This defence is much broader than the defence in the Rome Statute as it does not require that the person prove he or she did not intend to cause a greater harm than the one sought to be avoided.

The defence of compulsion or duress under Sierra Leonean law appears similar to the ground of duress in Article 31 (1) (d) of the Rome Statute for excluding responsibility, which could lead to impunity. That article provides:

“[i]n addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person’s conduct:

(d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:

(i) Made by other persons, or

(ii) Constituted by other circumstances beyond that person’s control”.<sup>202</sup>

The scope of Article 31 (1) (d) has yet to be interpreted by the International Criminal Court.

**Necessity.** The defence of necessity is not clearly defined in Sierra Leonean law. In discussing the potential defence of necessity in his criminal law treatise, a leading expert on Sierra Leonean law states that, under common law principles applicable to Sierra Leone, necessity may be a defence in exceptional circumstances if the accused proves that he or she committed an otherwise unlawful act to avoid self-harm or the harm of another.<sup>203</sup> It is unclear how this defence would be limited in cases of crimes under international law. Nevertheless, it is well settled precedent under the common law that necessity (outside of self-defence) is not a defence to murder even if the accused reasonably believed that murder was the only way to preserve his or her own life.<sup>204</sup>

#### **Defences – defence of person or property**

The defences in Sierra Leonean law of self-defence, defence of others and defence of property are broader than that which is appropriate for crimes under international law. The common law of Sierra Leone provides that an accused person must satisfy a number of pre-requisites to claim self-defence. The accused person claiming self-defence cannot have initiated or instigated the attack. The accused must have been under an immediate threat of death or grievous bodily harm.

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<sup>201</sup> See Bankole Thompson, *The Criminal Law of Sierra Leone* 274-275 (1999).

<sup>202</sup> Rome Statute, art. 31 (1) (d).

<sup>203</sup> See Bankole Thompson, *The Criminal Law of Sierra Leone* 267-268 (1999).

<sup>204</sup> See Bankole Thompson, *The Criminal Law of Sierra Leone* 268 (1999) (citing *R. v. Dudley and Stephens*, 14 QBD, 273 (1884)).

Reasonably and honestly believing the threat, the accused must have used force to counter the attack that is reasonable and necessary in the circumstances.<sup>205</sup>

A potential problem arises from the fact that Sierra Leonean law allows an accused to claim defence of others,<sup>206</sup> but it is not clear how this defence would be limited for crimes under international law. It is also noteworthy that Sierra Leone does not apply the “retreat doctrine.” This means that, under Sierra Leonean law, a person claiming self-defence does not have to show that he or she could not have retreated in the circumstances as an alternative to using force, which is a modification of the old common law principle.<sup>207</sup>

Closely related to self-defence, the defence of justification, otherwise known as defence of property, is not well developed in Sierra Leonean law. However, a leading expert on Sierra Leonean law outlines a few key principles that might govern this defence in Sierra Leone: First, defence of one’s property against a threat of imminent danger is a right under the common law. However, only reasonable force is justified. In exceptional circumstances, deadly force may be used to protect one’s own property or the property one occupies, particularly if the person presenting the hazard threatens to commit a felony on the property. Finally, in the course of defending property, a threat of death or grievous bodily harm justifies the use of force in self-defence. Additionally, in the course of defending property, one may also use force – including deadly force – in the apprehension of a felon to prevent the felon’s escape.<sup>208</sup> It is not clear how defence of property would be limited for crimes under international law.

As Amnesty International has explained, self-defence and defence of others can be defences to crimes under international law in certain limited circumstances, but only when the response is reasonable and proportionate and, if deadly force is used, only when retreat is not possible.<sup>209</sup> Unfortunately, in another political compromise, Article 31 (1) (c) of the Rome Statute provides very broad defences of self, others and property, but these defences apply only in trials before the International Criminal Court.<sup>210</sup>

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<sup>205</sup> See Bankole Thompson, *The Criminal Law of Sierra Leone* 260-263 (1999).

<sup>206</sup> See Bankole Thompson, *The Criminal Law of Sierra Leone* 262 (1999).

<sup>207</sup> See Bankole Thompson, *The Criminal Law of Sierra Leone* 261-262 (1999) (citing *Kargbo v. Reginam*, ALR SL 358 (1968-69), where the Court of Appeal held that “Where a person defends himself he is not obliged to retreat. He can attack his assailant until he is out of danger”).

<sup>208</sup> See Bankole Thompson, *The Criminal Law of Sierra Leone* 265-266 (1999).

<sup>209</sup> Amnesty International, *ICC: Making the right choices*, Sect. VI.E.5.

<sup>210</sup> Article 31 (1) (c) of the Rome Statute provides that

“[i]n addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person’s conduct:

...

(c) The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph[.]”

## 6.2. PRESENCE REQUIREMENTS IN ORDER TO OPEN AN INVESTIGATION OR REQUEST EXTRADITION

There appear to be no provisions expressly requiring the presence of a suspect in Sierra Leone to initiate a police inquiry into an alleged crime. In addition, there appears to be no provision expressly requiring that a suspect must have been in Sierra Leone at some point after the crime was committed in order for Sierra Leone to make an extradition request for that suspect from a foreign state.

The omission of a presence requirement means that the police are able to open an investigation immediately as soon as they learn that a person suspected of committing crimes under international law is on his or her way to Sierra Leone or about to change planes at a Sierra Leone airport. There is no need to wait until the suspect has entered the country on a visit that would be too short to permit an investigation to be completed and an arrest warrant issued and implemented. As Sierra Leone is able to request extradition of a person suspected of a crime committed abroad (see below in Section 7), the absence of a presence requirement also means that Sierra Leone could also help shoulder the burden when other states fail to fulfil their obligations to investigate and prosecute crimes under international law.<sup>211</sup> Indeed, this possibility was envisaged as an essential component of the enforcement provisions of the four 1949 Geneva Conventions (and subsequently incorporated in Protocol I to the Conventions), each of which provide that any state party, regardless whether a suspect had ever been in its territory, as long as it “has made out a *prima facie* case,” may request extradition of someone suspected of grave breaches of those Conventions.<sup>212</sup> If the presence of the suspected perpetrator were to be necessary for an effective investigation in a particular case and the person could not be extradited to Sierra Leone, it is very unlikely that the police would decide to open an investigation.

## 6.3. STATUTES OF LIMITATIONS APPLICABLE TO CRIMES UNDER INTERNATIONAL LAW

Sierra Leonean law expressly provides for statutes of limitations on civil claims in civil proceedings, but there are no statutes of limitations on crimes generally.

***Statutes of limitations applicable to crimes under international law.*** Sierra Leone has neither signed, nor ratified the 1968 Convention on the Non-Applicability of Statutory Limitations for War Crimes and Crimes against Humanity.<sup>213</sup> However, Sierra Leone has been a party to the Rome Statute of the International Criminal Court since September 2000, which provides for the non-applicability of statutes of limitations for crimes under international law listed within the Statute.<sup>214</sup> Independent of conventional international law, states must not apply statutes of limitation to crimes under customary

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<sup>211</sup> For further information about the shared responsibility model, see Amnesty International, *Improving the effectiveness of state cooperation*, Index: IOR 53/004/2009, October 2009 (<http://www.amnesty.org/en/library/info/IOR53/004/2009/en>). The absence of a presence requirement also means that states can accept cases transferred by an international court, such as the ICTY or ICTR, for crimes under international law more easily by completing an investigation before the transfer and issuing an arrest warrant before the transfer.

<sup>212</sup> First Geneva Convention, art. 49; Second Geneva Convention, art. 50; Third Geneva Convention, art. 129; Fourth Geneva Convention, art. 146.

<sup>213</sup> Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 26 November 1968, entry into force 11 November 1970 (<http://www2.ohchr.org/english/law/warcrimes.htm>).

<sup>214</sup> Rome Statute, art. 29 (Non-applicability of statute of limitations) (“The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.”).

international law.<sup>215</sup> Sierra Leonean law does not expressly provide a statute of limitations for crimes generally. Neither is there an express provision for a statute of limitations in Sierra Leonean law applicable to crimes under international law.

**Statutes of limitation applicable to torts.** Sierra Leone has a statutory limitation of six years for civil cases involving personal injury.<sup>216</sup> The courts have determined that the time begins to run at the earliest time a civil action could be brought.<sup>217</sup>

#### 6.4. DOUBLE CRIMINALITY

Sierra Leonean law does not expressly require that conduct that was committed abroad be a crime both in Sierra Leone and in the place where it was committed (double criminality) for prosecution in Sierra Leone. However, the lack of a requirement of double criminality for the purposes of prosecution must be distinguished from double criminality requirements in the granting of extradition requests (see below in Section 7.1.1.3) and double criminality requirements for the purposes of mutual legal assistance (see below in Section 7.2.2.4).

Whatever the merits may be for requiring double criminality with respect to conduct that only amounts to an ordinary crime, it has no merit when the conduct amounts to a crime under international law, even if the requesting state is seeking extradition to prosecute the person for an ordinary crime when its legislation does not characterize the conduct as a crime under international law. All states have a shared obligation to investigate and prosecute conduct that amounts to crimes under international law, either by doing so in their own courts or by extraditing the suspect to another state or surrendering that person to an international criminal court, and they cannot escape this obligation by refusing to extradite on the basis of double criminality.

#### 6.5. IMMUNITIES

Sierra Leone provides an absolute immunity for the President of the Republic, which would likely apply even if crimes under international law are at issue.<sup>218</sup> It does not appear that Sierra Leone also

<sup>215</sup> See, for example, Committee against Torture, Concluding observations – Spain, U.N. Doc. CAT/C/ESP/CO/5, 9 December 2009, para. 21

(<http://www.google.co.uk/#hl=en&source=hp&q=%22committee+notes+that+measure+102%22+Spain&btnG=Google+Search&meta=&aq=f&oq=%22committee+notes+that+measure+102%22+Spain&fp=97531010bb3ad556>) (“While it takes note of the State party’s comment that the Convention against Torture entered into force on 26 June 1987, whereas the Amnesty Act of 1977 refers to events that occurred before the adoption of that Act [dating to 1936], the Committee wishes to reiterate that, bearing in mind the long-established *jus cogens* prohibition of torture, the prosecution of acts of torture should not be constrained by . . . the statute of limitation.”); *Prosecutor v. Furundzija*, Judgment, International Criminal Tribunal for the former Yugoslavia (10 December 1998), para. 155-15 (no statute of limitations should apply to *jus cogens* prohibition of torture); *Barrios Altos v. Peru*, Judgment, Inter-American Court of Human Rights, 14 March 2001, para. 41 (provisions on prescription with respect to serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance are prohibited). See also Ruth Kok, *Statutory Limitations in International Criminal Law*, London: Blackwell, 2008.

<sup>216</sup> See The Limitation Act, 1961 (Act No. 51 of 1961), Sect. 3 (1), which states:

“The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say – (a) actions founded on simple contract or on tort[.]”

<sup>217</sup> In the case of an act that is actionable *per se* without needing proof of damages, the statutory time period begins to run from the time the act was committed. See *Baxter and Wilson*, ALR SL 351 (1970-71).

<sup>218</sup> The 1991 Constitution, Ch. V, Sect. 48 (4) states:

“While any person holds or performs the functions of the office of President, no civil or criminal proceedings shall be instituted against him in respect of anything done or omitted to be done by him either in his official

recognizes in statute or in jurisprudence diplomatic and foreign consular, foreign head of state, and other state or official immunities, even if crimes under international law are in issue.<sup>219</sup>

Civil claims against foreign officials do not appear to be barred by assertions of official immunities.

Amnesty International believes that the judgment of the International Court of Justice in the *Arrest Warrant* case,<sup>220</sup> which concluded that serving heads of state, heads of government and foreign ministers were immune from prosecution in foreign courts, is based on an incorrect analysis of international law. Therefore, Amnesty International has urged that this ruling, which is binding only upon the states in that case, should be reversed and hopes that this will be done in the future, as no serving or former official should be able to assert successfully a claim of immunity with respect to the worst possible crimes ever committed. As explained elsewhere,<sup>221</sup> there is no convincing basis in customary international law to accord immunity of state officials in or out of office when committing genocide, crimes against humanity and war crimes. Indeed, the International Court of Justice in the *Arrest Warrant* case failed to cite any state practice or *opinio iuris* in this respect.

Instruments adopted by the international community show a consistent rejection of immunity from prosecution for crimes under international law for any government official since the Second World War. Those instruments articulated a customary international law rule and general principle of law. Indeed, several of the international instruments adopted over the past half century were expressly intended to apply both to international and national courts.<sup>222</sup> Moreover, even the international

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or private capacity”.

<sup>219</sup> Sierra Leone became a state party to the Vienna Convention on Diplomatic Relations on 13 August 1962, (See Vienna Convention on Diplomatic Relations, 18 April 1961,

[http://treaties.un.org/pages/ShowMTDSGDetails.aspx?src=UNTSO&tabid=2&mtdsg\\_no=III-3&chapter=3&lang=en#Participants](http://treaties.un.org/pages/ShowMTDSGDetails.aspx?src=UNTSO&tabid=2&mtdsg_no=III-3&chapter=3&lang=en#Participants)),

500 U.N.T.S. 95 (entered into force 24 April 1964)), which forms the basis of diplomatic immunity, although provisions of the Convention have not been incorporated into domestic law. Sierra Leone has neither signed nor ratified the Vienna Convention on Consular Relations, which provides for consular immunity. See Vienna Convention on Consular Relations, 24 April 1963,

[http://treaties.un.org/pages/ShowMTDSGDetails.aspx?src=UNTSO&tabid=2&mtdsg\\_no=III-6&chapter=3&lang=en#Participants](http://treaties.un.org/pages/ShowMTDSGDetails.aspx?src=UNTSO&tabid=2&mtdsg_no=III-6&chapter=3&lang=en#Participants)),

596 U.N.T.S. 261 (entered into force 19 March 1967). National public officials are individually provided immunity, but this immunity is limited to acts done in good faith and in the execution of official duties. This immunity is also subject to a reasonableness standard. See Bankole Thompson, *The Criminal Law of Sierra Leone* 270 (1999). See also 1991 Constitution, Ch. VI, Sects. 99-100 (granting Members of Parliament immunity from civil and criminal proceedings concerning statements made in Parliament and from the service of civil or criminal process while on their way to and from parliamentary proceedings) & Ch. VII, Sect. 120 (9) (granting judges of the Superior Court of Judicature immunity from any action or suit arising from the performance of judicial functions); Anti-Corruption Act, Sect. 20 (granting the Anti-Corruption Commissioner and Deputy Commissioner immunity from any action, suit, or other legal proceeding concerning a decision, act, or omission arising from their duties). The State Proceedings Act, 2000, which repeals the Petitions of Rights Act, Cap 23 of the Laws of Sierra Leone, makes the Government liable to civil suits for actions done by government officials in the course of public duties, but provides that these suits against the Government should be instituted against the Attorney General as defendant rather than against government officers individually. See State Proceedings Act, 2000 (Act No. 14 of 2000), Sect. 13 (2).

<sup>220</sup> *Democratic Republic of the Congo v. Belgium*, Judgment, I.C.J. Rep. 3 (2002).

<sup>221</sup> Amnesty International, *Universal Jurisdiction: Belgian prosecutors can investigate crimes under international law committed abroad*, Index: IOR 53/001/2003, February 2003

<http://www.amnesty.org/en/library/info/IO53/001/2003/en>, p. 10. See also Amnesty International, *Bringing Power to Justice: Absence of immunity for heads of state before the International Criminal Court*, Index: IOR 53/017/2010, December 2010 (<https://www.amnesty.org/en/library/info/IO53/017/2010/en>).

<sup>222</sup> These instruments include: Allied Control Council Law No.10, art. II (4) (a); U.N. G. A. Res. 95 (i), 11 Dec.

instruments establishing international criminal courts envisaged that the same rules of international law reiterated in those instruments applied with equal force to prosecutions by national courts.<sup>223</sup>

## 6.6. BARS ON RETROACTIVE APPLICATION OF INTERNATIONAL CRIMINAL LAW IN NATIONAL LAW OR OTHER TEMPORAL RESTRICTIONS

States have recognized for more than six decades since the adoption of the Universal Declaration of Human Rights that the prohibition of retroactive criminal laws does not apply to retrospective national criminal legislation enacted after the relevant conduct became recognized as criminal under international law.<sup>224</sup> Article 15 of the ICCPR, to which Sierra Leone has acceded, contains a similar prohibition.<sup>225</sup> The Committee against Torture has also made clear that national legislation defining torture as a crime under international law can apply to conduct which was considered as torture under international law prior to the enactment of that legislation.<sup>226</sup>

Thus, nothing in either article or other international law prevents Sierra Leone from enacting legislation incorporating crimes under international law into its law and permitting prosecutions for those crimes committed prior to the legislation entered into force, but after they were recognized as crimes under international law. It is not clear, however, whether national legislation defining crimes under international law as crimes under Sierra Leonean law is retrospective, but it is doubtful that such legislation is retrospective, given the constitutional prohibition of retroactive criminal law.<sup>227</sup>

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1946; 1948 Genocide Convention, art. IV; 1950 Nuremberg Principles, principle III; 1954 Draft Code of Offences, art. 3; 1973 *Apartheid* Convention, art. III; 1991 Draft Code of Crimes, art. 13 (Official position and responsibility); 1996 Draft Code of Crimes, art. 6 (Official position and responsibility).

<sup>223</sup> Statute of the Special Court for Sierra Leone, art. 6 (Individual criminal responsibility) (2); Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006), art. 29. For further analysis on this point, see Amnesty International, *Universal Jurisdiction: Belgian court has jurisdiction in Sharon case to investigate 1982 Sabra and Chatila killings*, Index: EUR 53/001/2002, May 2002 (<http://www.amnesty.org/en/library/info/EUR53/001/2002/en>).

<sup>224</sup> Article 11 (2) of the 1948 Universal Declaration of Human Rights states:

“No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed”.

<sup>225</sup> Article 15 of the ICCPR states:

“(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations”.

<sup>226</sup> See, for example, Committee against Torture, Concluding observations – Spain, U.N. Doc. CAT/C/ESP/CO/5, 2009, para. 21.

<sup>227</sup> The 1991 Constitution has a non-retroactivity provision, which does not expressly exclude crimes under international law. Sect. 23(7), states: “No person shall be held guilty of an offence on an account of any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations”.  
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## 6.7. *NE BIS IN IDEM*

The principle of *ne bis in idem* (that one cannot be tried twice for the same crime) is a fundamental principle of law recognized in international human rights treaties and other instruments, including the ICCPR, the American Convention on Human Rights, Additional Protocol I and constitutive instruments establishing the ICTY, ICTR and the Special Court for Sierra Leone.<sup>228</sup> However, apart from the vertical exception between international courts and national courts, the principle only prohibits retrials after an acquittal by the same jurisdiction.<sup>229</sup> This limitation on the scope of the principle can serve international justice by permitting other states to step in when the territorial state or the suspect's state conducts a sham or unfair trial. It is not clear whether Sierra Leone courts would recognize *ne bis in idem* as a bar to prosecution in Sierra Leone if the person had been tried in a foreign proceeding that was a sham or unfair.<sup>230</sup>

## 6.8. POLITICAL CONTROL OVER DECISIONS TO INVESTIGATE AND PROSECUTE

The Attorney General and Minister of Justice, a single political official (see Section 2.4), makes the final decision on whether to institute a criminal prosecution in Sierra Leone.<sup>231</sup> Political interference in the process of justice is contrary to international standards.<sup>232</sup>

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omission which did not, at the time it took place, constitute such an offence.”

<sup>228</sup> ICCPR, art. 14 (7); American Convention on Human Rights, art. 8 (4); Additional Protocol I, art. 75 (4) (h); ICTY Statute, art. 10 (1); ICTR Statute, art. 9 (1); Statute of the Special Court for Sierra Leone, art. 9.

<sup>229</sup> The Human Rights Committee has concluded that Article 14 (7) of the ICCPR “does not guarantee *non bis in idem* with regard to the national jurisdictions of two or more States. The Committee observes that this provision prohibits double jeopardy only with regard to an offence adjudicated in a given State.” *A.P. v. Italy*, No. 204/1986, 2 November 1987, 2 Selected Decisions of the Human Rights Committee under the Optional Protocol 67, UN Doc. CCPR/C/OP/2, UN Sales No. E.89.XIV.1. This limitation was also recognized during the drafting of Article 14 (7) of the ICCPR. See Marc J. Bossuyt, *Guide to the “Travaux Préparatoires” of the International Covenant on Civil and Political Rights*, Dordrecht: Martinus Nijhoff, 1987, pp. 316-318; Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, Kehl am Rhein: N.P. Engel, 1993, pp. 272-273; Dominic McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights*, Oxford: Clarendon Press, 1991. The ICTY Trial Chamber in the *Tadić* case reached the same conclusion. *Prosecutor v. Dusko Tadić*, Case No IT-94-1-A, July 15, 1999.

<sup>230</sup> The Constitution's double jeopardy provision prohibits re-trials only for those accused who can show that their trial took place in a “competent court”. See 1991 Constitution, Ch. III, Sect. 23(9).

<sup>231</sup> 1991 Constitution, Ch. V, Sect. 64 (3); 1991. While the Director of Public Prosecutions, a public prosecutor who is not a political official, has the ability to institute criminal proceedings for the state, this ability is subject to the ultimate discretion of the Attorney General and Minister of Justice. 1991 Constitution, Ch. V, Sect. 66.

<sup>232</sup> Political decisions to prosecute could, in some instances, be inconsistent with the UN Guidelines on the Role of Prosecutors. For example, Guideline 12 (a) requires prosecutors to “perform their duties fairly”; Guideline 13 requires prosecutors to “[c]arry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination”; Guideline 13 (b) requires prosecutors to “[p]rotect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect” and Guideline 14 states that “[p]rosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.”

## 6.9. DISCRIMINATION IN LAW AND PRACTICE

Laws and practices that discriminate on the grounds of, for example, gender, race, religion national, ethnic or social origin, other status<sup>233</sup> can be an obstacle to prosecutions and to access to justice in general.

Failure to guarantee equality before the law for everyone, can mean that certain categories of crimes commonly committed against people subject to discrimination, such as women and crimes of sexual violence, are more likely to go unpunished, making Sierra Leone a safe haven from prosecution in its courts for perpetrators of these crimes.

Discrimination on the grounds of gender, race, colour, political or other opinion, and national and ethnic origin is prohibited under the Sierra Leone Constitution.<sup>234</sup> However, this constitutional prohibition does not expressly address discrimination on the basis of age, language, religion or belief, wealth, birth, social origin, or other status. The prohibition does apply, as a matter of law, to access to the judicial system.<sup>235</sup> In practice, however, discrimination, for example on the grounds of gender, limits access to justice.<sup>236</sup>

## 6.10. RESTRICTIONS ON THE RIGHTS OF VICTIMS AND THEIR FAMILIES

As noted above in Section 5.3, victims are not able to obtain the full range of reparation against convicted persons to which they are entitled under international law. In addition, there are a number of significant restrictions on the ability of victims to participate meaningfully in criminal and civil proceedings, including the absence of a legal framework for victim-initiated civil claims based on universal jurisdiction and no legal guarantee of victims' rights, including to notice of their rights, support and protection in criminal and civil proceedings (see Sections 2.5 and 5.4 above).

## 6.11. AMNESTIES

Amnesties and similar measures of impunity for crimes under international law are prohibited under international law.<sup>237</sup>

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<sup>233</sup> See prohibition on discrimination before the law in Article 26 of the International Covenant on Civil and Political Rights. Other characteristics besides gender for which a person might suffer discrimination include age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status. See, for example, Article 21 (3) of the Rome Statute.

<sup>234</sup> 1991 Constitution, Ch. III, Sect. 27.

<sup>235</sup> See Constitution, Ch. III, Sect. 27 (2). Discretion exercised by public officers in civil and criminal proceedings may not be reviewed for discrimination by any court. Sect. 27 (8). However, complaints or allegations about possible discrimination on these grounds would fall within the jurisdictions of both the Sierra Leone Human Rights Commission and the Ombudsman Office (see Section 2.6 above).

<sup>236</sup> For example, it has been reported that the adjudication of cases involving sexual and gender-based violence may not provide justice due to low rates of prosecution, out-of-court settlements, and interferences by traditional leaders, who may undermine the judiciary in these cases. See Human Rights Council Working Group on the Universal Periodic Review, *Compilation by OHCHR*, para. 32-33. For an overview of marginalized populations and the discrimination they may face in the customary and common law justice systems, see World Bank, *Access to Justice in Sierra Leone: A Review of the Literature*, 2008, pp. 11-.14.

<sup>237</sup> See, for example, Amnesty International, *Sierra Leone: Special Court for Sierra Leone: denial of right to appeal and prohibition of amnesties for crimes under international law (SCSL: Right to appeal and prohibition of amnesties)*, Index: AI: AFR 51/012/2003, November 2003 (<http://www.amnesty.org/en/library/info/AFR51/012/2003/en>). The Committee against Torture has concluded that amnesties for torture and enforced disappearances are prohibited under international law. Committee against Torture, General Comment 2, U.N. Doc. CAT/C/GC/2, 2008, para. 5. See also Committee against Torture,

Sierra Leone has recognized amnesties barring prosecution for crimes, including crimes under international law, committed in Sierra Leone, but there appears to be no provision in national legislation or jurisprudence recognizing amnesties granted by foreign states. The Abidjan Peace Accord, signed by the Government of Sierra Leone and the rebel fighting forces, mandated that the Government of Sierra Leone “ensure that no judicial or official action [be] taken against any member of the RUF/SL [rebel forces] in respect of anything done by them in pursuit of their objectives” before the signing of that accord in 1996.<sup>238</sup> Subsequently, after the resumption of fighting, the Lomé Peace Agreement, which was signed by the Government of Sierra Leone, the Special Representative of the Secretary-General of the United Nations, and the leader of the rebel forces, granted “an absolute and free pardon and reprieve to all combatants and collaborators” involved in the Sierra Leone civil war and prohibited the Government of Sierra Leone from instituting proceedings against members of the various fighting forces for any actions done in pursuit of their objectives from 1991 until the signing of the Lomé Agreement in 1999.<sup>239</sup> The Lomé Agreement and its amnesty provisions were subsequently incorporated into national legislation.<sup>240</sup>

However, at the signing of the Lomé Agreement, the Special Representative of the UN Secretary-General attached a reservation that the amnesty provisions of the accord would not apply to crimes under international law including genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law. In addition, the UN Secretary-General, the UN Security Council, the UN High Commissioner for Human Rights, and the UN Commission on Human Rights (predecessor to the Human Rights Council) all recognized that the amnesty provision did not apply to crimes under international law.<sup>241</sup> Likewise, the statute establishing the Special Court for Sierra Leone overrides this provision.<sup>242</sup> Amnesty International has consistently put forward that Article 14 of the Abidjan Accord and Article IX of the Lomé Agreement not only have no place in an international system of justice, but they are also prohibited under international law.

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Concluding observations – Spain, U.N. Doc. CAT/C/ESP/CO/5, 2009, para. 21.

<sup>238</sup> Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (Abidjan Accord) (30 November 1996), art. 14.

<sup>239</sup> Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (Lomé Peace Agreement) (7 July 1999), Art. IX.

<sup>240</sup> The Lomé Peace Agreement (Ratification) Act, 1999 (Act No. 3 of 1999), Sched. 1, Art. IX.

<sup>241</sup> Amnesty International, *SCSL: Right to appeal and prohibition of amnesties*, pp. 12 - 15.

<sup>242</sup> Statute of the Special Court for Sierra Leone, art. 10.

# 7. EXTRADITION AND MUTUAL LEGAL ASSISTANCE

As discussed below, there are a number of obstacles to extradition (Section 7.1) and mutual legal assistance (Section 7.2) that may limit the ability of Sierra Leone to obtain and to provide effective cooperation with other states in the investigation and prosecution of crimes under international law. In addition, there are a number of inadequate human rights safeguards governing extradition and mutual legal assistance.

## 7.1. EXTRADITION

Sierra Leone faces various obstacles, both when seeking extradition of persons suspected of committing crimes under international law (or persons who have been convicted of such crimes but who have not completed their sentences) from other states (active extradition) and when responding to requests by other states for extradition from Sierra Leone of suspects or sentenced persons who have escaped (passive extradition). The legal frameworks for active and passive extradition are explained below and then the obstacles to extradition, whether active or passive, are then described, noting any differences in approach depending on whether the extradition is active or passive. Human rights safeguards or their absence are discussed in Section 7.1.2.

**Active extradition.** Requests by Sierra Leone for extradition from other countries are generally regulated by bilateral and multilateral treaties. Although the Extradition Act, 1974 (Extradition Act) establishes the legal framework for passive extradition (see below), this law does not explicitly outline the procedure for active extradition. Only Sections 24 and 25 of the Extradition Act appear to address active extradition, establishing that a person extradited to Sierra Leone may not generally be tried for any previous crime, only the crime upon which the extradition is grounded, and that a person extradited to Sierra Leone may be released at the discretion of the Attorney General if that person is not tried within six months.<sup>243</sup> In this section, since the Extradition Act refers to the Attorney General, not to the current title of the office holder, Attorney General and Minister of Justice, a single official, the term “Attorney General” is used.<sup>244</sup>

**Passive extradition.** Extradition from Sierra Leone is governed by the Extradition Act, which anchors and incorporates bilateral and multilateral treaties.<sup>245</sup> The Extradition Act, which takes precedence in case of a conflict with a treaty, sets forth general requirements for extradition and specific stipulations for;

- Commonwealth states (First Schedule);
- the Republic of Guinea (Second Schedule); and
- the other states with which Sierra Leone has an extradition treaty (Third Schedule).<sup>246</sup>

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<sup>243</sup> The Extradition Act, 1974 (Act No. 11 of 1974) (Extradition Act), Sects. 24-25.

<sup>244</sup> However, it is understood that the official with the combined title can exercise all the powers in the Extradition Act assigned to the Attorney General. As explained below in Section 7.1.1.1, this is important since the person holding the combined title is a political official, not an independent professional law enforcement official.

<sup>245</sup> See Extradition Act, Sect. 1.

<sup>246</sup> Without a recent list of bilateral extradition treaties or updated schedules to the Extradition Act, it is not

If extradition is sought by a state not listed as a treaty state in one of the three schedules, extradition may not be granted. For all countries listed in the schedules except the Republic of Guinea, extradition may be made for an enumerated list of serious offences – including murder, rape, and abduction – which, in certain circumstances, could amount to crimes under international law (the same reasons that make prosecution of persons for ordinary crimes under national law conduct that constitutes crimes under international law – see Section 6.1 above – apply with equal force to extradition).<sup>247</sup> For the Republic of Guinea, extradition may be made for any crime that is also a crime in Sierra Leone, with some further restrictions (see Section 7.1.1 below).<sup>248</sup>

**Passive extradition – bilateral treaties.** It has not been possible to locate a complete list of bilateral extradition treaties to which Sierra Leone is a party. However, it is a party to an antiquated bilateral treaty with the United Kingdom<sup>249</sup> and that treaty has also been made applicable to the USA.<sup>250</sup>

**Multilateral agreements.** As discussed below, Sierra Leone is also a party or signatory to a number of multilateral agreements addressing extradition, including the Economic Community of West African States Convention on Extradition (ECOWAS Extradition Convention), which covers extradition between fifteen West African member states,<sup>251</sup> and the London Scheme for Extradition within the Commonwealth (London Scheme), which makes recommendations for extradition between 54 nations in the Commonwealth.<sup>252</sup> As noted above in Section 2, under the 1991 Constitution,

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possible to account accurately for how extradition to individual states (including states discussed in this chapter) would be handled in a particular case. The states listed in the Third Schedule as of 1974 (no updated list has been found) are: Albania, Argentina, Belgium, Bolivia, Cameroon, Chile, Columbia, Cuba, Czechoslovakia, Denmark, Ecuador, Finland, France, Germany, Greece, Guatemala, Haiti, Hungary, Iceland, Iraq, Israel, Italy, Liberia, Luxemburg, Mexico, Monaco, the Netherlands, Nicaragua, Norway, Panama, Paraguay, Peru, Poland, Portugal, Romania, Salvador, San Marino, Siam, Spain, Switzerland, Tonga, the United States of America, Uruguay, and Yugoslavia.

<sup>247</sup> Extradition Act, Sects. 17, 23. These offences include, among others: murder; manslaughter; larceny; rape; abduction; child stealing; burglary and housebreaking; arson; robbery with violence; bribery; sinking or destroying a vessel at sea; assault on board a ship on the high seas with intent to destroy life or do grievous bodily harm; offences in connection with the Slave Trade committed on the high seas or on land; kidnapping; false imprisonment; malicious or wilful damage to property; offences against legislation relating to dangerous drugs; offences against the person; and any offence of a nature or category similar to any of the above mentioned offences which is for the time being punishable in Sierra Leone. This includes any conspiracy or attempt to commit any of the mentioned offences and the counselling, procuring, commanding, aiding or abetting of any such offence or being an accessory before or after the commission of the offence. Extradition Act, Sched. 4. Subsequent legislation has made corruption, trafficking in persons, and money laundering extraditable offences subject to the Extradition Act. Anti-Corruption Act, Sect. 126; Anti-Human Trafficking Act, 2005 (Act No. 7 of 2005), Sect. 17; The Anti-Money Laundering Act, 2005 (Act No. 6 of 2005) (Anti-Money Laundering Act), Sect. 42.

<sup>248</sup> Extradition Act, Sect. 22.

<sup>249</sup> Extradition treaty between the United Kingdom and Sierra Leone, ratifications exchanged in London, 4 August 1932 (<http://internationalextraditionblog.files.wordpress.com/2011/03/sierra.pdf>).

<sup>250</sup> Extradition treaty between the United States and Sierra Leone, T.S. 849; 1931 U.S.T. LEXIS 60; 12 Bevans 482; entered into force 24 June 1935 (<http://internationalextraditionblog.files.wordpress.com/2011/03/sierra.pdf>).

<sup>251</sup> Economic Community of West African States Convention on Extradition (ECOWAS Extradition Convention) ([http://www.iss.co.za/AF/RegOrg/unity\\_to\\_union/pdfs/ecowas/4ConExtradition.pdf](http://www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/ecowas/4ConExtradition.pdf)). The fifteen members of ECOWAS are: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

<sup>252</sup> London Scheme for Extradition within the Commonwealth (London Scheme), November 2002

provisions of these or any instruments are not enforceable under the laws of Sierra Leone unless they are incorporated into national legislation.<sup>253</sup> However, as a signatory to the ECOWAS Extradition Convention, Sierra Leone has agreed to act in good faith not to defeat the object and purpose of that treaty,<sup>254</sup> and, as a member of the Commonwealth, Sierra Leone is encouraged to adopt legislation giving effect to the London Scheme.<sup>255</sup> Sierra Leone has not amended its legislation since the 1974 Extradition Act to implement either the ECOWAS Convention or the London Scheme. Some provisions in these agreements contain obstacles to extradition, such as: exceptions to extradition for military offences, exceptions to extradition for amnesties and *ne bis in idem* prohibitions.

**Procedure.** The Extradition Act provides that extradition requests made through the usual diplomatic channels are to be addressed to the Attorney General, a political official, who then originates an order to the Commissioner of Police to apprehend the desired suspect or convicted person.<sup>256</sup> Alternatively, a magistrate may issue a provisional warrant of apprehension, but must send a report of the provisional warrant and the evidence on which it is based to the Attorney General for further action.<sup>257</sup> The person sought must then appear before a justice of the High Court to show cause why he should not be extradited.<sup>258</sup>

If there is sufficient evidence warranting extradition, the justice must then notify the fugitive criminal or accused that he or she will be held for a period of time determined by the Attorney General during which the detainee may apply to the Chief Justice of the Supreme Court for a writ of *habeas corpus*.<sup>259</sup> At the expiration of this period, or if the Chief Justice determines to return the writ, the Attorney General may – subject to his or her own discretion on public policy and similar

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([http://www.thecommonwealth.org/shared\\_asp\\_files/uploadedfiles/%7B56F55E5D-1882-4421-9CC1-71634DF17331%7D\\_London\\_Scheme.pdf](http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7B56F55E5D-1882-4421-9CC1-71634DF17331%7D_London_Scheme.pdf)). The 54 members of the Commonwealth are : Antigua and Barbuda, Australia, the Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, Cameroon, Canada, Cyprus, Dominica, Fiji Islands, the Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, Rwanda, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Swaziland, Tonga, Trinidad and Tobago, Tuvalu, Uganda, United Kingdom, United Republic of Tanzania, Vanuatu, and Zambia. Fiji was suspended in 2009.

<sup>253</sup> See 1991 Constitution, Ch. V, Sect. 40 (4).

<sup>254</sup> As of 1 September 2012, all attempts by Amnesty International to determine whether Sierra Leone had ratified this treaty in requests for information from ECOWAS, the depository of the treaty, and the Sierra Leone Ministry of Foreign Affairs, were unsuccessful, although one Sierra Leone lawyer has stated that Sierra Leone had not ratified this treaty by this date. Although for the purposes of determining state responsibility it matters whether Sierra Leone has ratified this treaty or not, it does not matter for purposes of this paper since regardless of the ratification status it has not been implemented in national law and, therefore, cannot be enforced by Sierra Leone courts.

<sup>255</sup> See London Scheme, para. 22. The London Scheme is a non-binding agreement on principles between Commonwealth nations. Kimberly Prost, 'Cooperation in Penal Matters in the Commonwealth', *International Criminal Law, Volume II: Multilateral and Bilateral Enforcement Mechanisms*, M. Cherif Bassiouni (ed.), Leiden: Martinus Nijhoff Publishers / Brill, 3rd ed., 2008, pp. 414 – 423.

<sup>256</sup> Extradition Act, Sect. 4, Sched. 6.

<sup>257</sup> Extradition Act, Sect. 5.

<sup>258</sup> Extradition Act, Sect. 7. The Attorney General has the authority to specify a class of crimes for which this function may be carried out by a magistrate rather than a High Court judge. Extradition Act, Sect. 9.

<sup>259</sup> The time determined by the Attorney General must not be less than fifteen days. Extradition Act, Sect. 10 (1).

considerations (see Section 7.1.1 below) – order the suspect or convicted person delivered to a representative of the requesting state.<sup>260</sup>

This law appears to cover all forms of extradition requests by foreign countries, but it is possible that other forms of transfer from Sierra Leone, such as deportation from another country, are covered when the deportation or transfer is a disguised extradition.<sup>261</sup> There does not appear to be any authoritative judicial decision or executive interpretation on this point.

#### 7.1.1. OBSTACLES TO ACTIVE AND PASSIVE EXTRADITION

There are a number of obstacles to active and passive extradition to and from Sierra Leone, including: political control over the making or granting of requests, double criminality requirements, and the Attorney General's discretion to prevent extradition based on his or her assessment that the underlying crime for which extradition is sought is "of a political character."

##### 7.1.1.1. Political control over the making or granting of extradition requests

The Extradition Act does not state which official makes requests for extradition by Sierra Leone to a foreign country (active extradition). Decisions concerning the granting of requests by foreign countries to Sierra Leone (passive extradition) are made by the Attorney General and Minister of Justice. Although an initial order of extradition is subject to judicial review, the Attorney General may ultimately decide in his or her discretion not to extradite based on public policy and other similar considerations after the judicial review process has completed. Under the Extradition Act, the Attorney General's discretion in the granting of extradition is extensive (and extends to obstacles detailed below).

For Commonwealth countries (First Schedule), extradition will not be granted if the Attorney General determines that certain factors in a particular case weigh against extradition. These factors include: the case is of a trivial nature; the underlying accusation was not made in good faith or the interests of justice; or, having regard to all the circumstances, it would be unjust, oppressive or too severe a punishment to return the convicted or accused.<sup>262</sup> Considering these factors before extradition is not in itself a problem. However, because a political official makes these decisions rather than an

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<sup>260</sup> Extradition Act, Sect. 10 (2). Fugitive criminals not conveyed out of Sierra Leone within two months may be discharged. Sect. 11.

<sup>261</sup> The difference between deportation and extradition has been explained by the Constitutional Court of South Africa as follows:

"In principle there is a clear distinction between extradition and deportation. Extradition involves basically three elements: acts of sovereignty on the part of two states; a request by one state to another state for the delivery to it of an alleged criminal; and the delivery of the person requested for the purposes of trial or sentence in the territory of the requesting state. Deportation is essentially a unilateral act of the deporting state in order to get rid of an undesired alien. The purpose of deportation is achieved when such alien leaves the deporting state's territory; the destination of the deportee is irrelevant to the purpose of deportation. One of the important distinguishing features between extradition and deportation is therefore the purpose of the state delivery act in question".

*Mohamed v. President of the Republic of South Africa*, Judgment, Case No. CCT 17/01, Const. Ct. So. Afr., 28 May 2001, para. 29 (citations omitted). See also Clive Nicholls, Clare Montgomery and Julian B. Knowles, *The Law of Extradition and Mutual Assistance – International Criminal Law: Practice and Procedure*, London, Cameron May, 2002, Sect. 12.7 (noting that there was a conflict of authority on whether English courts could inquire into the circumstances of a transfer to the United Kingdom and whether it involved an abuse of process).

<sup>262</sup> The Attorney General may also consider whether: the offence is of a political character; the request for surrender was in fact made for discriminatory purposes; the person returned may face an unfair trial or other improper treatment; and the person sought to be returned has already been convicted or acquitted of the offence. Extradition Act, Sect. 15.

independent and impartial court, there is a risk the Attorney General's decision on these points could be subject to political pressure.

For Guinea (Second Schedule), extradition will not be granted if, in the circumstances of the particular case, it appears to the Attorney General in his or her discretion that it would be contrary to the public policy of Sierra Leone to do so.<sup>263</sup>

For countries outside of the Commonwealth listed in the Third Schedule, the same discretion applies.<sup>264</sup> Although this provision encompasses considerations of "fundamental rights and the principles of humane treatment generally accepted among civilised nations," it also includes considerations such as "the interests of security, public order, and good morals," which, if left undefined, could be broadly construed to disguise underlying political motivations for denying extradition.

For all other countries, there is no provision in the Extradition Act authorizing extradition.

#### 7.1.1.2. Nationality

For Commonwealth countries (First Schedule), the Attorney General may decide in his or her discretion not to extradite a citizen or permanent resident of Sierra Leone who is not also a national of the requesting Commonwealth state.<sup>265</sup> The London Scheme contains a similar measure.<sup>266</sup>

For Guinea (Second Schedule), the Extradition Act does not grant the Attorney General this discretion.

For other states listed in the Third Schedule, the Extradition Act does grant the Attorney General this discretion.

The ECOWAS Extradition Convention grants states discretion on whether to extradite their own citizens to other West African countries,<sup>267</sup> but the measure is not enforceable without implementing legislation. Therefore, it appears Sierra Leonean law contains no measure governing the extradition of nationals to West African states and to states outside of the Commonwealth.

#### 7.1.1.3. Double criminality and territorial jurisdiction

For Commonwealth countries (First Schedule), the Attorney General's consent is required to extradite a suspect for an offence that would not constitute a crime under the laws of Sierra Leone.<sup>268</sup> The London Scheme further provides that the offence must be punishable by at least two years' imprisonment in both the requesting and requested state,<sup>269</sup> although this provision is not enforceable without being incorporated into national legislation.

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<sup>263</sup> See Extradition Act, Sect. 2.

<sup>264</sup> Extradition Act, Sect. 2.

<sup>265</sup> Extradition Act, Sect. 20.

<sup>266</sup> According to this provision, nationality is to be determined at the time of the extradition request. See London Scheme, para. 15 (3).

<sup>267</sup> According to this provision, nationality is to be determined at the time of the extradition request. See ECOWAS Extradition Convention, art. 10.

<sup>268</sup> See Extradition Act, Sect. 17.

<sup>269</sup> London Scheme, para. 2 (2).

No extradition will be granted to the Republic of Guinea (Second Schedule) unless the crime in question is a crime punishable under the laws of Sierra Leone, was committed in Guinea, and the accused or convicted has not – and is not liable to be – punished in Sierra Leone.<sup>270</sup>

For countries outside the Commonwealth listed in the Third Schedule, no extradition may be made unless the crime is also punishable in Sierra Leone with a prison term of at least twelve months.<sup>271</sup>

For states not listed in any of these schedules, there is no provision in the Extradition Act authorizing extradition.

The ECOWAS Extradition Convention, of which Sierra Leone is a signatory, further stipulates that extradition to and from other West African states will not be granted for offences punishable by less than two years' imprisonment both in the requesting and requested state.<sup>272</sup> However, this provision is not enforceable under the laws of Sierra Leone without being incorporated into national legislation.

The Extradition Act's double criminality requirements do not make clear whether Sierra Leone must also have extraterritorial jurisdiction over the act or omission if the requesting state is seeking to exercise extraterritorial jurisdiction.<sup>273</sup> In addition, its double criminality requirements do not indicate whether the conduct would have to be criminal in Sierra Leone at the time of the crime's commission, at the time of the extradition request or when extradition is to take place.<sup>274</sup> (For a more detailed discussion of the concept of double criminality under international law, see Section 6.4 above).

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<sup>270</sup> Extradition Act, Sect. 22.

<sup>271</sup> In limiting this requirement to states listed in Schedule 3, this provision does not appear to apply to requests made by the Republic of Guinea. Extradition Act, Sect. 23.

<sup>272</sup> In the case where an extradition request is based on multiple offences, some of which are punished by a deprivation of liberty not reaching two years, the sending state may still grant extradition for the extraditable offence that has a punishment reaching two years. ECOWAS Extradition Convention, art. 3.

<sup>273</sup> The ECOWAS Extradition Convention provides that a requested state may refuse to extradite a person for an offence that occurred in its territory. It also provides that a requested state may only refuse extradition on extraterritorial jurisdiction grounds if the offence for which extradition is sought occurs outside the requested states' territory and its law also does not allow prosecution for the same category of offence when committed outside its territory or does not allow for extradition of the offence. ECOWAS Extradition Convention, art. 11.

The London Scheme provides that an otherwise extraditable offence remains so notwithstanding its commission outside the territory of the requesting state where extradition for such offences is permitted under the law of the requested state. London Scheme, para. 2(4). The London Scheme also permits a competent authority to refuse extradition if the offence for which extradition is requested has been committed outside the territory of either the requesting or requested country and the law of the requested country does not enable it to assert jurisdiction over such an offence committed outside its territory in comparable circumstances. London Scheme, para. 14 (b).

<sup>274</sup> It is possible that, under a conservative interpretation of the state's extradition authority, Sierra Leone would be restricted from extraditing a person whose act or omission did not constitute a crime in Sierra Leone at the time of the act or omission even if the act or omission constituted a crime in the requesting state at that time. This would be the result of reading the non-retroactivity provision of the Constitution into the double criminality requirements in the Extradition Act (see Section 7.1.1.7 below for non-retroactivity as an obstacle to Extradition). There does not, however, appear to be any authoritative judicial decision or executive interpretation on this point.

#### 7.1.1.4. Political offence

The Extradition Act provides that no one will be extradited for an offence that the Attorney General determines to be “of a political character.”<sup>275</sup> This applies to countries in the Commonwealth, to the Republic of Guinea (Second Schedule), and to countries outside of the Commonwealth listed in the Third Schedule. Similar political offence exceptions are found in the London Scheme for Extradition within the Commonwealth and the ECOWAS Extradition Convention, both of which apply to Sierra Leone.<sup>276</sup> Including a political offence exception to extradition is not in itself a problem. The problem arises when states fail to define political offences – or, in the case of Sierra Leone, “offences of a political character” – in a manner that expressly excludes crimes under international law.

There is no internationally agreed definition of what constitutes a political offence.<sup>277</sup> Some guidance is provided by treaties such as the Genocide Convention, which expressly states that genocide is not a political crime for the purposes of extradition,<sup>278</sup> and the 1997 International Convention for the Suppression of Terrorist Bombings and the 1999 International Convention for the Suppression of the Financing of Terrorism, both of which exclude the crimes listed from the definition of political offence.<sup>279</sup> It can be argued that when the offence concerned is a crime under international law, it should not be treated as a political offence for the purposes of extradition. The London Scheme for Extradition within the Commonwealth and the ECOWAS Convention on Extradition both exclude some crimes under international law from the political offence exception,<sup>280</sup>

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<sup>275</sup> Extradition Act, Sects. 15, 23.

<sup>276</sup> The ECOWAS Extradition Convention provides that extradition will not be granted to another West African nation for a political offence or for “an offence connected with a political offence.” ECOWAS Extradition Convention, art. 4. In addition, the London Scheme states that extradition will be precluded within the Commonwealth if the competent authority “is satisfied that the offence is of a political character.” London Scheme, para. 12 (a).

<sup>277</sup> There is no internationally accepted definition of a political offence. A leading authority on extradition has stated:

“Even though widely recognized, the very term “political offence” is seldom defined in treaties or national legislation, and judicial interpretations have been the principle source for its meaning and its application. This may be due to the fact that whether or not a particular type of conduct falls within that category depends essentially on the facts and circumstances of the occurrence. Thus, by its very nature it eludes a precise definition, which could constrict the flexibility needed to assess the facts and circumstances of each case”.

M. Cherif Bassiouni, *International Extradition: United States Law and Practice*, Oxford University Press – Oceana, 5<sup>th</sup> ed., 2007, p. 653 (footnotes omitted).

<sup>278</sup> Genocide Convention, art. VII states: “Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.”

<sup>279</sup> The International Convention for the Suppression of Terrorist Bombing, art. 11, and the International Convention for the Suppression of the Financing of Terrorism, art. 14, state:

“None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives”.

<sup>280</sup> The ECOWAS Extradition Convention states that the political offence exception does not amend states’ obligations under the Geneva Conventions, its additional protocols, and other multilateral international

as do treaties imposing *aut dedere aut judicare* obligations with respect to the crimes defined in those treaties.<sup>281</sup>

#### 7.1.1.5. Military offence

Sierra Leonean law does not contain a provision expressly barring extradition for purely military offences, such as conduct unbecoming an officer or mutiny.

However, the London Scheme permits states to refuse extradition within the Commonwealth on the grounds that the offence for which extradition is sought is an offence only under military law or a law relating to military obligations.<sup>282</sup> Similarly, the ECOWAS Extradition Convention, of which Sierra Leone is a signatory, bars extradition to other West African countries when extradition is sought for an offence under military law that is not also an offence under ordinary criminal law.<sup>283</sup> Neither the London Scheme nor the ECOWAS Extradition Convention is enforceable in Sierra Leone without implementing legislation.

#### 7.1.1.6. *Ne bis in idem*

Section 15 of the Extradition Act provides that extradition will not be granted to Commonwealth countries (First Schedule) if, in the circumstance of the particular case, it appears to the Attorney General that the person sought has been convicted or acquitted of the offence of which he or she is accused, whether within or outside the Commonwealth.<sup>284</sup> This mirrors the London Scheme.<sup>285</sup>

For Guinea (Second Schedule), there is no provision precluding extradition based on a *ne bis in idem* prohibition.

For other countries listed in the Third Schedule, there is no provision precluding extradition based on a *ne bis in idem* prohibition.

The ECOWAS Extradition Convention, to which Sierra Leone is a signatory, prohibits extradition to other West African states if competent authorities have passed a final judgment on the person sought for the offences underlying the extradition request.<sup>286</sup> The Convention also allows states to

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conventions. ECOWAS Extradition Convention, art. 4. The London Scheme, para. 12 (b), states that the political offence exception does not apply to:

- “(i) offences established under any multilateral international convention to which the requesting and requested countries are parties, the purpose of which is to prevent or repress a specific category of offences and which imposes on the parties an obligation either to extradite or prosecute the person sought;
- (ii) offences for which the political offence or offence of political character ground of refusal is not applicable under international law”.

<sup>281</sup> See treaties discussed in Section 4.2 above.

<sup>282</sup> London Scheme, para. 14 (d).

<sup>283</sup> ECOWAS Extradition Convention, art. 7.

<sup>284</sup> The person sought may be extradited if, although convicted, he or she is unlawfully at large or at large in breach of a license to be at large. Extradition Act, Sect 15 (g), (h).

<sup>285</sup> See London Scheme, para. 13 (c).

<sup>286</sup> This includes situations where competent authorities have decided either not to institute or to otherwise terminate proceedings for the same offences. ECOWAS Extradition Convention, art. 13.

refuse extradition if proceedings are pending for the same offences.<sup>287</sup> However, this instrument is not enforceable without implementing national legislation (see discussion above in Section 6.7 regarding the limitations of the *ne bis in idem* prohibition under international law)

It does not appear that the Extradition Act contains another provision expressly barring extradition of a person who has been previously acquitted or convicted, although this limitation may be implicit in the double jeopardy requirement found in the Constitution.<sup>288</sup>

#### 7.1.1.7. Non-retroactivity

There is no express prohibition in the Extradition Act of extradition on the basis that the conduct for which extradition is sought was not a crime under the law of the requesting state or Sierra Leone at the time it occurred, although this restriction may be implicit in the double criminality requirement in the Extradition Act and the non-retroactivity provision in the Constitution.<sup>289</sup> (See discussion above in Section 6.6 regarding the inapplicability of the prohibition of retroactive criminal law to *national* law enacted after the conduct became criminal under *international* law.)

#### 7.1.1.8. Statutes of limitation

There is no express prohibition in of the Extradition Act of extradition on the basis that the prosecution would be barred in the requesting state or in Sierra Leone on the basis of a statute of limitation, although it may be implicit in the double criminality requirement in that act.

The London Scheme provides that states should refuse extradition to other Commonwealth countries if satisfied that “the passage of time since the commission of the offence” would make extradition unjust, oppressive, or too severe a punishment.<sup>290</sup> In addition, states may refuse extradition if the person sought has gained immunity due to a lapse of time, among other reasons.<sup>291</sup>

Similarly, the ECOWAS Extradition Convention, of which Sierra Leone is a signatory prohibits extradition when, according to the law of either state, the person sought has “become immune by reason of lapse of time from prosecution or punishment, at the time of receipt of the request for extradition by the requested [s]tate”.<sup>292</sup> Neither the London Scheme nor the ECOWAS Extradition Convention is enforceable in Sierra Leone without implementing legislation (see discussion above in Section 6.3 regarding the prohibition of statutes of limitations for crimes under international law).

#### 7.1.1.9. Amnesties, pardons and similar measures of impunity

There is no provision in Sierra Leonean law expressly prohibiting extradition on the basis that the prosecution would be barred in either the requesting state or in Sierra Leone on the basis of an amnesty, pardon or other measure of impunity.

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<sup>287</sup> ECOWAS Extradition Convention, art. 12.

<sup>288</sup> See 1991 Constitution, Ch. III, Sect. 23 (9).

<sup>289</sup> 1991 Constitution, Ch. III, Sect. 23 (7), states: “No person shall be held guilty of an offence on an account of any act or omission which did not, at the time it took place, constitute such an offence.”

<sup>290</sup> London Scheme, para. 13 (b) (iii).

<sup>291</sup> London Scheme, para. 14 (b).

<sup>292</sup> ECOWAS Extradition Convention, art. 15.

The London Scheme permits states to refuse extradition on the grounds that the person sought has been given an amnesty.<sup>293</sup> Similarly, the ECOWAS Extradition Convention, of which Sierra Leone is a signatory, prohibits extradition when the requested state has granted an amnesty for the offence and it would have otherwise had competence to prosecute the offence under its own criminal law.<sup>294</sup> However, these instruments are not enforceable under Sierra Leonean law without implementing legislation (see discussion above in Section 6.10 regarding the prohibition of amnesties and similar measures of impunity).

#### 7.1.1.10. Other obstacles

*Ad hoc court.* Under the ECOWAS Extradition Convention, to which Sierra Leone is a [signatory] extradition to another West African state may be refused if the person sought “has been sentenced, or would be liable to be tried, in the requesting [s]tate by an extraordinary or Ad Hoc Court or Tribunal.”<sup>295</sup> Without being incorporated into national legislation, however, this provision is not enforceable under the laws of Sierra Leone.

*Territorial requirement.* For active extradition, there is no express requirement under Sierra Leonean law that an accused has been in Sierra Leone at any point before Sierra Leone can make an extradition request.

#### 7.1.2. SAFEGUARDS

The Extradition Act provides that extradition will not be granted to Commonwealth countries (First Schedule) if the Attorney General determines that certain factors in a particular case weigh against extradition.<sup>296</sup> Similarly, no extradition will be granted to the Republic of Guinea (Second Schedule) and to countries outside the Commonwealth listed in the Third Schedule if the Attorney General in his or her discretion determines that granting extradition in the particular case would be contrary to the public policy of Sierra Leone. This includes considerations of “fundamental human rights and

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<sup>293</sup> London Scheme, para. 14 (c).

<sup>294</sup> ECOWAS Extradition Convention, art. 16.

<sup>295</sup> ECOWAS Extradition Convention, art. 8.

<sup>296</sup> Extradition Act, Sect. 15 states:

“[E]xtradition shall not be granted if in the circumstances of the particular case it appears to the Attorney-General that

- a. the offence is an offence of a political character; or
- b. the request for surrender although purporting to be made for a returnable offence was in fact made for the purpose of prosecuting or punishing any person on account of his race, religion, nationality, or political opinions; or
- c. the person returned may be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions; or
- d. the case is of a trivial nature;
- e. the accusation against the fugitive was not made in good faith or in the interests of justice; or
- f. having regard to all the circumstances it would be unjust or oppressive or too severe a punishment to return the fugitive; or
- g. the fugitive has been convicted of the offence for which he is accused and is neither unlawfully at large nor at large in breach of a condition of a license to be at large; or
- h. the fugitive has been acquitted, whether within or outside the Commonwealth, of the offence of which he is accused”.

the principles of human treatment generally accepted among civilised nations” in addition to considerations of public order, security, and good morals.<sup>297</sup> The Extradition Act does not specify what falls under the umbrella of fundamental human rights for the purposes of extradition. However, Chapter III of the 1991 Constitution outlines “fundamental human rights and freedoms of the individual” recognized in Sierra Leone.<sup>298</sup> Sierra Leone is a party to, among others, the following human rights treaties: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities.

#### 7.1.2.1. Fair trial

The only express prohibition in Sierra Leonean law of the extradition of a suspect or convicted person on the grounds that he or she risks facing an unfair trial is found in Section 15 of the Extradition Act. Section 15 provides that extradition will not be granted to Commonwealth countries (First Schedule) if, in the circumstances of a particular case, the Attorney General determines that the case is trivial, made in bad faith or otherwise not in the interests of justice, or that “the person returned may be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.”<sup>299</sup> This mirrors the London Scheme,<sup>300</sup> which also permits states to refuse extradition on the grounds that the person sought has been tried *in absentia*.<sup>301</sup> However, the London Scheme is not legally binding.

With respect to Guinea (Second Schedule), there is no express prohibition of extradition on the grounds that the person sought risks facing an unfair trial.

With respect to states listed in the Third Schedule, there is no express prohibition of extradition on the grounds that the person sought risks facing an unfair trial.

However, Sierra Leone recognizes fair trial guarantees as fundamental human rights.<sup>302</sup> Therefore, under Section 2 of the Extradition Act, the Attorney General may determine in his or her discretion that extradition to a country outside of the Commonwealth, where a suspect or convicted person risks facing an unfair trial, would contravene the public policy of Sierra Leone.

The ECOWAS Extradition Convention, of which Sierra Leone is a signatory, provides that extradition will not be granted to other West African states if the person sought has not received, or would not receive “the minimum guarantees in criminal proceedings, as contained in Article 7 of the African Charter on Human and People’s Rights.”<sup>303</sup> The Convention also permits states to refuse extradition on the grounds that the person sought has been tried *in absentia* if the requested state believes that

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<sup>297</sup> Extradition Act, Sect. 2.

<sup>298</sup> Included are the rights to: life liberty, security of person, the enjoyment of property, and the protection of law; freedom of conscience, of expression and of assembly and association; respect for private and family life; and protection from the deprivation of property without compensation. 1991 Constitution, Ch. III, Sect. 15.

<sup>299</sup> Extradition Act, Sect. 15 (c), (d), (e).

<sup>300</sup> See London Scheme, para. 13 (a) (ii), (b).

<sup>301</sup> See London Scheme, para. 14 (a).

<sup>302</sup> See 1991 Constitution, Ch. III, Sect. 17.

<sup>303</sup> ECOWAS Extradition Convention, art. 5.

the proceedings leading to the judgment did not satisfy the minimum rights of defendants.<sup>304</sup> This instrument is not enforceable in Sierra Leone without implementing legislation.

#### 7.1.2.2. Torture and other cruel, inhuman or degrading treatment or punishment

There is no express prohibition in Sierra Leonean law of the extradition of a suspect or convicted person on the ground that he or she is at risk of torture or other ill treatment. Although the ECOWAS Extradition Convention expressly prohibits extradition of a person that has been, or would be, subjected to torture or cruel, inhuman or degrading treatment or punishment,<sup>305</sup> this safeguard is not enforceable in Sierra Leone because it has not been incorporated into national legislation.

It is noteworthy that Sierra Leone recognizes freedom from torture and other forms of inhuman or degrading treatment as a fundamental human right.<sup>306</sup> Therefore, under Section 2 of the Extradition Act, the Attorney General may determine in his or her discretion that extradition to a country outside of the Commonwealth, where the suspect or convicted person risks torture or ill treatment, would contravene the public policy of Sierra Leone.

#### 7.1.2.3. Death penalty

There is no express prohibition in the Extradition Act of the extradition of a suspect or convicted person on the grounds that he or she might face the death penalty. Sierra Leone has an official moratorium / is abolitionist in practice, but it has not yet abolished this penalty.<sup>307</sup>

The ECOWAS Extradition Convention only prohibits extradition on death penalty grounds if the requested state's law does not provide for the death penalty as punishment for the offence.<sup>308</sup> The London Scheme permits refusal of extradition on the same grounds.<sup>309</sup> However, neither provision is enforceable in Sierra Leone without being incorporated into national legislation.

The death penalty is the ultimate denial of human rights. It is the premeditated and cold-blooded killing of a human being by the state. This cruel, inhuman and degrading punishment is done in the name of justice. It violates the right to life as proclaimed in the Universal Declaration of Human Rights. Amnesty International opposes the death penalty in all cases without exception regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to kill the prisoner.

#### 7.1.2.4. Other human rights safeguards

The Extradition Act prohibits extradition to Commonwealth countries if, under the circumstances of the particular case, the Attorney General determines in his or her discretion that the request for surrender, although purportedly made for a returnable offence, was in fact made to prosecute or

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<sup>304</sup> However, extradition should be granted if the requesting state guarantees the person sought a retrial safeguarding the rights of defence. ECOWAS Extradition Convention, art. 14.

<sup>305</sup> ECOWAS Extradition Convention, art. 5.

<sup>306</sup> See 1991 Constitution, Ch. III, Sect. 20.

<sup>307</sup> Amnesty International, *Abolitionist and Retentionist Countries* (<http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries>).

<sup>308</sup> ECOWAS Extradition Convention, art. 17.

<sup>309</sup> See London Scheme, para. 15 (2).

punish the requested person on account of race, religion, nationality, or political opinion.<sup>310</sup> This mirrors the London Scheme for Extradition within the Commonwealth.<sup>311</sup>

Similarly, the ECOWAS Extradition Convention, of which Sierra Leone is a signatory does not permit extradition if the request for extradition, though superficially made for an ordinary criminal offence, has in fact been made for the purpose of prosecuting or punishing the person sought on account of race, tribe, religion, nationality, political opinion, sex or status.<sup>312</sup> This provision, which concerns extradition among West African states, is not enforceable in Sierra Leone without implementing legislation.

#### 7.1.2.5. Humanitarian concerns

There is no express provision in Sierra Leonean law barring extradition due to humanitarian concerns, whether such a decision would be made by a court or a political official.

The London Scheme does not contain such a provision with respect to Commonwealth countries. The ECOWAS Extradition Convention permits states to refuse extradition to other West African states when it would be “incompatible with humanitarian considerations in view of age or health.”<sup>313</sup> However, this provision is not enforceable under the laws of Sierra Leone because it has not been incorporated into national legislation.

Prohibiting extradition on the basis of humanitarian concerns is an appropriate safeguard. However, it should be noted that this safeguard could be abused, as it was in the *Pinochet* case,<sup>314</sup> particularly if a political official has discretion over this concern instead of an independent and impartial court.

#### 7.1.2.6. Speciality

In cases of passive extradition, Sierra Leonean law does not appear to limit the scope of the crimes for which a foreign state may exercise jurisdiction to those listed in its extradition request. In cases of active extradition, however, Section 25 of the Extradition Act provides that Sierra Leone courts cannot try a person extradited to Sierra Leone for a crime committed prior to his or her extradition, apart from the crime upon which the extradition request is grounded, unless the sending state otherwise agrees.<sup>315</sup> The ECOWAS Extradition Convention has similar speciality guidelines both for

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<sup>310</sup> Extradition Act, Sect. 2 (b).

<sup>311</sup> See London Scheme, para. 13 (a) (i).

<sup>312</sup> ECOWAS Extradition Convention, art. 4 (3).

<sup>313</sup> ECOWAS Extradition Convention, art. 6.

<sup>314</sup> BBC, ‘*Pinochet* “unfit to face trial”’, 12 January, 2000.

<sup>315</sup> Extradition Act, Sect. 25. There is judicial authority for this provision under the Extradition Act, 1962 (Act No. 60 of 1962), which includes a similar provision as the 1974 Act. See Bankole Thompson, *The Criminal Law of Sierra Leone* 177 - 207 (1999) (citing the Sierra Leone Court of Appeal case *Lansana and Eleven Others v. Reginam*, ALR SL 186 (1970 - 72), where the Court held that a fugitive extradited to Sierra Leone from Liberia may only be tried for the offence for which he has been extradited or for a cognate offence provable by or arising out of the facts on the basis of which the extradition order was made; therefore, a fugitive extradited for false imprisonment may not be tried for treason or treason felony). See also *Fornah and Fourteen Others v. The State*, ALR SL 48 (1974-82), upholding the *Lansana* decision after the passage of the 1974 Act.

active and passive extradition,<sup>316</sup> and the London Scheme also has a specialty rule,<sup>317</sup> though provisions of the Convention and Scheme are not enforceable without implementing legislation.

## 7.2. MUTUAL LEGAL ASSISTANCE

In Sierra Leone, provisions for mutual legal assistance can be found piecemeal in legislation defining particular crimes. At this writing, there are express provisions for mutual assistance in the investigation and prosecution of offences related to drug abuse and distribution,<sup>318</sup> corruption<sup>319</sup> and money laundering.<sup>320</sup>

Sierra Leonean law does not expressly outline mutual assistance procedures for crimes under international law or for other crimes under national law, such as murder and rape, which could amount to crimes under international law. In the absence of any legislation or treaties providing a legal basis for mutual assistance for these crimes, apart from some limited assistance provisions in extradition cases, it may not be possible for Sierra Leone authorities to provide mutual legal assistance. However, the Sierra Leone criminal law framework is comprised of separate pieces of legislation rather than a unified criminal code, and the provisions found enabling mutual legal assistance are generally consistent. Therefore, if law enforcement officials can provide mutual legal assistance informally by in the absence of express legislative provisions, it can be assumed that the procedure for requesting and granting mutual assistance would be the same for other crimes under national and international law as those enumerated in the state's more recent legislation governing drugs, corruption, and money laundering. The provisions available are referenced in this chapter for guidance. They also provide models for reform of law and practice regarding mutual legal assistance for crimes under international law (see Recommendations section below).

**Mutual legal assistance – bilateral treaties.** It has not been possible to locate a complete list of bilateral mutual legal assistance treaties to which Sierra Leone is a party. However, it is a party to an antiquated bilateral extradition treaty with the United Kingdom that contains limited mutual legal assistance provisions in extradition cases.<sup>321</sup> That treaty also has been made applicable to the USA.<sup>322</sup>

**Multilateral agreements.** Sierra Leone is also a state party to a number of multilateral agreements with mutual legal assistance provisions, including Protocol I to the Geneva Conventions<sup>323</sup> and the Convention against Torture.<sup>324</sup> As discussed below, regional organizations to which Sierra Leone belongs also have agreements providing for mutual legal assistance, including the Economic Community of West African States Convention on Mutual Assistance in Criminal Matters (ECOWAS Mutual Assistance Convention)<sup>325</sup> and the Scheme Relating to Mutual Assistance in Criminal Matters

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<sup>316</sup> See ECOWAS Extradition Convention, art. 20.

<sup>317</sup> See London Scheme, para. 20.

<sup>318</sup> See National Drugs Control Act, 2008 (Act No. 10 of 2008) (Drugs Control Act), Sects. 70 - 84.

<sup>319</sup> See Anti-Corruption Act, Sects. 103 – 118.

<sup>320</sup> See Anti-Money Laundering Act, Sects. 27 – 41.

<sup>321</sup> Extradition treaty between the United Kingdom and Sierra Leone, ratifications exchanged in London, 4 August 1932 (<http://internationalextraditionblog.files.wordpress.com/2011/03/sierra.pdf>).

<sup>322</sup> Extradition treaty between the United States and Sierra Leone, T.S. 849; 1931 U.S.T. LEXIS 60; 12 Bevans 482; entered into force 24 June 1935 (<http://internationalextraditionblog.files.wordpress.com/2011/03/sierra.pdf>).

<sup>323</sup> See Protocol I, art. 88.

<sup>324</sup> See Convention against Torture, art. 9.

<sup>325</sup> Economic Community of West African States Convention on Mutual Assistance in Criminal Matters (ECOWAS

in the Commonwealth (Harare Scheme).<sup>326</sup> Provisions of these instruments are not enforceable in Sierra Leone unless they are directly incorporated into national legislation.<sup>327</sup> However, as a signatory to the ECOWAS Mutual Assistance Convention, Sierra Leone has agreed to act in good faith not to defeat the object and purpose of the treaty, and, as a member of the Commonwealth, Sierra Leone is encouraged to adopt legislation giving effect to the Harare Scheme.<sup>328</sup> Some provisions in these agreements contain inappropriate bars to mutual legal assistance, including: political offence exceptions to mutual assistance, *ne bis in idem* prohibitions, and double criminality requirements.

#### 7.2.1. UNAVAILABLE OR INADEQUATE PROCEDURES

There are a couple of mutual legal assistance procedures in Sierra Leone that are unavailable or inadequate, either with regard to requests by Sierra Leone for assistance or with regard to requests by foreign states to Sierra Leone for assistance, particularly: video conferencing and the recognition of and enforcement of foreign awards of reparation. Almost all of the available procedures are not applicable to crimes under international law.

##### 7.2.1.1. Conducting investigations

Sierra Leone authorities may request that foreign authorities assist in criminal investigations or seek evidence in their states (for example, through *commission rogatoire*/letters rogatory) for certain crimes, including: drug trafficking, corruption and money laundering, but not for crimes under international law.<sup>329</sup> The law also permits Sierra Leone authorities to seek evidence and conduct criminal investigations in territories subject to its jurisdiction at the request of a foreign state.<sup>330</sup>

Both the Harare Scheme and the ECOWAS Mutual Assistance Convention also provide for this type of assistance between nations in the Commonwealth and West African states, respectively.<sup>331</sup>

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Mutual Assistance Convention), Annex: Document 5, *Cooperating for Peace in West Africa: an Agenda for the 21<sup>st</sup> Century*, Anatole Ayissi (ed.), Geneva: United Nations Institute for Disarmament Research, 2001, pp. 55 – 74. As of 1 September 2012, all attempts by Amnesty International to determine whether Sierra Leone had ratified this treaty in requests for information from ECOWAS, the depository of the treaty, and the Sierra Leone Ministry of Foreign Affairs, were unsuccessful, although one Sierra Leone lawyer has stated that Sierra Leone had not ratified this treaty by this date. Although for the purposes of determining state responsibility it matters whether Sierra Leone has ratified this treaty or not, it does not matter for purposes of this paper since regardless of the ratification status it has not been implemented in national law and, therefore, cannot be enforced by Sierra Leone courts.

<sup>326</sup> Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth (Harare Scheme), October 2005 ([http://www.thecommonwealth.org/shared\\_asp\\_files/uploadedfiles/2C167ECF-OFDE-481B-B552-E9BA23857CE3\\_HARARESCHEMERELATINGTOMUTUALASSISTANCE2005.pdf](http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/2C167ECF-OFDE-481B-B552-E9BA23857CE3_HARARESCHEMERELATINGTOMUTUALASSISTANCE2005.pdf)).

<sup>327</sup> See 1991 Constitution, Ch. V, Sect. 40 (4).

<sup>328</sup> The Harare Scheme is a non-binding agreement on principles between Commonwealth nations. See Kimberly Prost, 'Cooperation in Penal Matters in the Commonwealth', *International Criminal Law, Volume II: Multilateral and Bilateral Enforcement Mechanisms* 423 – 435 (2008).

<sup>329</sup> See Drugs Control Act, Sects. 72 (1), 74 - 75; Anti-Corruption Act, Sects. 109 - 111; Anti-Money Laundering Act, Sects. 34 - 35.

<sup>330</sup> See Drugs Control Act, Sects. 72, 77-79; Anti-Corruption Act, Sects. 104, 107; Anti-Money Laundering Act, Sects. 28, 31; High Court Rules, Order 33.

<sup>331</sup> See Harare Scheme, para. 3; ECOWAS Mutual Assistance Convention, art. 2.

#### 7.2.1.2. Tracing, freezing, seizing and forfeiting assets

Sierra Leone authorities may request that foreign authorities trace, freeze, seize or forfeit assets or property of a suspect or convicted person in a foreign state for certain crimes, including: drug trafficking, corruption and money laundering, but not for crimes under international law.<sup>332</sup> The law also permits Sierra Leone authorities to trace, freeze, seize or forfeit assets or property of a suspect or convicted person in Sierra Leone at the request of a foreign state for such crimes.<sup>333</sup> The Extradition Act provides very limited mutual legal assistance in extradition cases:

“Any property found in the possession of the fugitive criminal at the time of his arrest which may be material evidence of the offence of which he is accused may be taken into the custody of the police and shall, if he is extradited, and unless the Judge on the application of the fugitive otherwise orders, be delivered into the custody of the authorities of the state to which he is extradited.”<sup>334</sup>

Both the Harare Scheme and the ECOWAS Mutual Assistance Convention also provide for this type of assistance between Commonwealth nations and West African states, respectively.<sup>335</sup>

#### 7.2.1.3. Video-conferencing and other special measures to present evidence

Sierra Leonean law does not provide for the use of video-conferencing and other special measures to present evidence.

#### 7.2.1.4. Acceptance of foreign official documents

Sierra Leone authorities may obtain evidence or documents or other articles produced in evidence in a foreign state and may provide such evidence and documents to foreign states if so requested for certain crimes, including: drug trafficking, corruption and money laundering, but not for crimes under international law.<sup>336</sup> In addition, both the Harare Scheme and the ECOWAS Mutual Assistance Convention provide for this type of assistance between Commonwealth nations and West African states, respectively, although neither has been implemented in national law.<sup>337</sup>

In corruption cases, a document produced is considered authenticated if signed by a judge, magistrate, or officer in or of the requesting state. It must be authorized by the oath or affirmation of a witness or sealed with an official or public seal.<sup>338</sup>

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<sup>332</sup> See Drugs Control Act, Sect. 72(1); Anti-Corruption Act, Sect. 109; Anti-Money Laundering Act, Sects. 21.

<sup>333</sup> See Drugs Control Act, Sects. 72, 80 - 81; Anti-Corruption Act, Sects. 105 - 106; Anti-Money Laundering Act, Sects 29 - 30.

<sup>334</sup> Extradition Act, Sect. 6.

<sup>335</sup> See Harare Scheme, para. 3; ECOWAS Mutual Assistance Convention, art. 2.

<sup>336</sup> See Drugs Control Act, Sect. 72.

<sup>337</sup> See Harare Scheme, para. 3; ECOWAS Mutual Assistance Convention, art. 2.

<sup>338</sup> The seal must be that of a Minister, Department of State, or Department or officer in or of the government of the requesting state or, in the case of a territory, protectorate or colony, of the person administering the government of the requesting territory, protectorate or colony, or of a person administering a department of that territory, protectorate or colony. See Anti-Corruption Act, Sect. 112.

In drug trafficking, money laundering and corruption cases, evidence taken pursuant to a mutual assistance request in a court of a foreign state is accepted as *prima facie* evidence in any proceedings in Sierra Leone to which the evidence relates.<sup>339</sup>

#### 7.2.1.5. Recognition and enforcement of awards of reparation

Sierra Leone does not appear to have a framework in place for the recognition and enforcement of awards of reparation made in foreign states, but it does have a bilateral arrangement for recognition of its judgments in the United Kingdom. The United Kingdom's reciprocal enforcement framework, guided by its Administration of Justice Act, 1920 and Foreign Judgments (Reciprocal Enforcement) Act, 1933, provides that judgments made in Commonwealth countries – including monetary reparations – can be recognized and enforced in the United Kingdom. Progressive orders in council extended this arrangement to Sierra Leone.<sup>340</sup> Within the framework, judgments made in Sierra Leone can be enforced in the United Kingdom if the judgments have been registered in the United Kingdom within 12 months of the date of judgment or within a longer period by extension.<sup>341</sup>

No Sierra Leonean law could be found providing for the domestic recognition and enforcement of awards of reparation made in foreign states. Neither the Harare Scheme nor the ECOWAS Mutual Assistance Convention expressly provide for this type of assistance.

#### 7.2.1.6. Procedure for requesting and accepting requests for assistance

The general procedure for requesting assistance from a foreign state in drug trafficking, money laundering and corruption cases (there is no such procedure for requesting assistance in other cases) is as follows: The competent authority must set out in a writing that is dated and signed:

- (1) the name of the authority conducting the investigation or proceeding to which the request relates;
- (2) a description of the nature of the proceeding and a statement setting out a summary of the relevant facts and laws;
- (3) a description of the purpose of the request and of the nature of the assistance being sought;
- (4) a statement setting out any wishes concerning confidentiality relating to the request and the reasons for those wishes; and
- (5) details of the period within which Sierra Leone wishes the request to be complied with.<sup>342</sup>

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<sup>339</sup> See Drugs Control Act, Sect. 75; Anti-Corruption Act, 2008 (Act No. 12 of 2008), Sect. 111; Anti-Money Laundering Act 2005 (Act No. 6 of 2005), Sect. 35.

<sup>340</sup> See Reciprocal Enforcement of Judgments (Administration of Justice Act, 1920, Part II) (Consolidation) Order, 1984.

<sup>341</sup> The judgment to be enforced must be final and for a specific sum. Contesting judgment debtors may apply to have the judgment registration set aside for jurisdictional and other reasons. Administration of Justice Act, 1920, Pt. II, Sect. 9. Sierra Leone legislation enacted as recently as 2007 continues to reference the Foreign Judgments (Reciprocal Enforcement) Act, Cap. 21 of the Laws of Sierra Leone. See the High Court Rules, Order 45.

<sup>342</sup> See Drugs Control Act, Sect. 73; Anti-Corruption Act, 2008 (Act No. 12 of 2008), Sects. 113 - 115; Anti-Money Laundering Act, Sects. 36 - 38.

In the case of a request to confiscate property believed on reasonable grounds to be located in the foreign state, the writing must also include details of the offence in question, particulars of any investigation or proceeding commenced in respect of the offence, and be accompanied by a copy of any relevant restraining, confiscation, or forfeiture order.<sup>343</sup> This may be done by facsimile.<sup>344</sup>

Sierra Leone also accepts requests in drug trafficking, money laundering and corruption cases from foreign states made in a similar manner. Such requests will not be invalidated simply for failing to comply with the procedure set out by law so long as the Attorney General or relevant competent authority is satisfied that the request complies enough to enable proper execution of the request.<sup>345</sup>

#### 7.2.2. INAPPROPRIATE BARS TO MUTUAL LEGAL ASSISTANCE

As the legal framework exists now, the main bar to mutual legal assistance is the absence of any legislation expressly providing for such assistance with respect to crimes under international law. The only express bar to mutual legal assistance in drug trafficking, money laundering and corruption cases is the Attorney General's discretion to deny wholly or in part requests for mutual legal assistance on the grounds that the request might impinge on the sovereignty, security, or other essential public interest of Sierra Leone. However, regional organizations to which Sierra Leone belongs have agreements providing for mutual legal assistance (none of which are binding on Sierra Leone courts) that contain a number of inappropriate bars to mutual legal assistance, including: political offence exceptions to mutual assistance, *ne bis in idem* prohibitions, and double criminality requirements.

##### 7.2.2.1. Nationality

There is no provision in Sierra Leonean law expressly prohibiting the granting of requests for mutual legal assistance when the person concerned is a Sierra Leone national.

Neither the Harare Scheme nor the ECOWAS Mutual Assistance Convention expressly prohibit the granting of requests for mutual legal assistance on the grounds that the assistance concerns an offence alleged to have been committed by a national of the requested state.

##### 7.2.2.2. Political offence

Sierra Leonean law does not expressly prohibit the making and granting of requests for mutual legal assistance with respect to political offences or associated offences.

However, the Harare Scheme allows a requested state to refuse provision of mutual assistance on the grounds that the criminal matter concerns an offence that appears, in the opinion of the requested state, to be of a political character.<sup>346</sup> Importantly, the Scheme states that crimes under international law whose parent treaties contain an *aut dedere aut judicare* clause are excluded from the political offence exception.<sup>347</sup> Likewise, the ECOWAS Mutual Assistance Convention, to which Sierra Leone is a signatory, permits the refusal of mutual assistance on the basis that the requested

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<sup>343</sup> See Drugs Control Act, Sect. 73 (1) (d); Anti-Corruption Act, 2008 (Act No. 12 of 2008), Sect. 115; Anti-Money Laundering Act, Sect. 38.

<sup>344</sup> See Drugs Control Act, Sect. 73 (3); Anti-Corruption Act, 2008 (Act No. 12 of 2008), Sect. 113; Anti-Money Laundering Act, Sect. 36.

<sup>345</sup> See Drugs Control Act, Sects. 73 (2), 82; Anti-Corruption Act, 2008 (Act No. 12 of 2008), Sect. 116; Anti-Money Laundering Act, Sects. 39.

<sup>346</sup> Harare Scheme, para. 8 (1) (c).

<sup>347</sup> Both the requesting and requested state must be party to the treaty containing the obligation. See Harare Scheme, para. 8 (4).

state regards the offence as political in nature.<sup>348</sup> Unlike the Harare Scheme, however, the Convention fails to define what constitutes an offence “of a political nature” and does not expressly exclude crimes under international law from the political offence exception. It is important to note that neither instrument is enforceable under the laws of Sierra Leone without implementing legislation. (See Section 7.1.1.4. above for further discussion of political offences).

#### 7.2.2.3. *Ne bis in idem*

Sierra Leonean law does not expressly prohibit the making and granting of requests for mutual legal assistance on the grounds that the person concerned has been previously tried and convicted in a court. Neither does the Harare Scheme.

However, the ECOWAS Mutual Assistance Convention, to which Sierra Leone is a signatory, provides that mutual assistance may be refused if it would violate the requested state’s laws on double jeopardy or if the request relates to an offence that is already subject to an investigation or prosecution in the requested state.<sup>349</sup> This would constitute an inappropriate bar to mutual assistance if the previous trial was a sham or unfair.

#### 7.2.2.4. Double criminality

There is no express prohibition in Sierra Leonean law on the making or granting of requests for mutual legal assistance on the grounds that the conduct was not criminal in both the requested state and the requesting state. In addition, the ECOWAS Mutual Assistance Convention does not contain this prohibition.

However, under the Harare Scheme, requested states may refuse to provide mutual assistance on the grounds that the conduct underlying the criminal matter would not constitute an offence under the law of the requested state.<sup>350</sup>

#### 7.2.2.5. Jurisdiction

Sierra Leonean law does not expressly prohibit the making or granting of requests for mutual legal assistance when jurisdiction in the requested or requesting state is based on universal jurisdiction or a form of jurisdiction not recognized in the requested state.

Neither the Harare Scheme nor the ECOWAS Mutual Assistance Convention contains such a prohibition.

#### 7.2.2.6. Amnesties or similar measures of impunity

Sierra Leonean law does not expressly prohibit the making or granting of requests for mutual legal assistance because a prosecution is barred in either state based on an amnesty, pardon or similar measure of impunity.

Neither the Harare Scheme nor the ECOWAS Mutual Assistance Convention contains such a prohibition.

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<sup>348</sup> ECOWAS Mutual Assistance Convention, art. 4 (1) (b).

<sup>349</sup> Harare Scheme, art. 4 (1) (d). The Convention also permits states to postpone the execution of a request if its immediate execution would interfere with an ongoing investigation or prosecution in the requested state’s territory. Art. 4 (3)

<sup>350</sup> Harare Scheme, para. 8 (a).

#### 7.2.2.7. Other inappropriate bars to mutual legal assistance

**Sovereignty and other concerns.** The discretion of the Attorney General and Minister of Justice, a single political official, to deny wholly or partly a request for mutual assistance on the grounds that the request is likely to prejudice the sovereignty, security, or other essential public interest of Sierra Leone could become an inappropriate bar to mutual legal assistance. Such grounds are inappropriate when the crimes concerned are crimes under international law, which are crimes against the entire international community. In addition, such broad grounds may be abused under political pressure. The Attorney General also has even broader and essentially unfettered discretion to grant wholly or partly the request “on such terms and conditions he sees fit” in some cases.<sup>351</sup>

Similarly, the Harare Scheme gives states discretion to refuse assistance when it appears to a state-appointed authority that compliance would “prejudice the security, international relations or other essential public interests of that country.”<sup>352</sup> Likewise, the ECOWAS Mutual Assistance Convention permits refusal of extradition on the grounds that, if granted, the requested state believes it would prejudice a state’s sovereignty, security and public order.<sup>353</sup> Such considerations, particularly when made under the discretion of a political official rather than under the discretion of an independent court, could be abused.<sup>354</sup>

**Comparative procedure.** The Harare Scheme states that no person should be compelled to give evidence – either through the production of a document or in answer to a question – that he or she would not be compelled to give in criminal proceedings both in the requesting and requested Commonwealth state.<sup>355</sup> The Scheme also provides that states may refuse to grant assistance if such assistance would require steps to be taken that could not, under the law of the requested state, be taken in respect of criminal matters arising in that state.<sup>356</sup> Similarly, the ECOWAS Mutual Assistance Convention, to which Sierra Leone is a signatory, provides that mutual assistance may be refused if such assistance would require the giving or gathering of evidence in a manner that does not comport with the requested state’s law and practice.<sup>357</sup> Such grounds are inappropriate when the crimes concerned are crimes under international law, which are crimes against the entire international community. However, in some instances, these requirements may safeguard human rights and, to that extent, would be appropriate provisions. Nevertheless, neither the Harare Scheme nor the ECOWAS Mutual Assistance Convention is enforceable under the laws of Sierra Leone without implementing legislation.

#### 7.2.3. SAFEGUARDS

Sierra Leonean law does not expressly prohibit the making or granting of requests for mutual legal assistance on the grounds that the assistance provided could lead to an unfair trial, torture, inhuman

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<sup>351</sup> See Drugs Control Act, Sect. 70 (3). The Anti-Corruption Commissioner has similar authority in corruption cases. See Anti-Corruption Act, Sect. 108 (b). However, unlike the Attorney General and Minister of Justice, the Commissioner is only a public prosecutor and not also a political official. The Attorney General, Director General of the Central Intelligence and Security Unit, and the Governor of the Bank of Sierra Leone, and any persons appointed by any one of them constitute competent authorities who would have similar discretion in money laundering cases. See Anti-Money Laundering Act, Sects. 1 (1), 32 (b).

<sup>352</sup> Harare Scheme, para. 8 (2) (a).

<sup>353</sup> ECOWAS Mutual Assistance Convention, art. 4 (1) (a).

<sup>354</sup> The Convention does not specify what official or body constitutes a “competent authority” with discretion over this consideration. See ECOWAS Mutual Assistance Convention, art. 3.

<sup>355</sup> Harare Scheme, para. 21.

<sup>356</sup> Harare Scheme, para. 8 (3).

<sup>357</sup> See ECOWAS Mutual Assistance Convention, arts. 4 (1) (e), 12, 16 (2).

treatment, or the death penalty. However, legislation enabling mutual legal assistance in drug trafficking, money laundering and corruption cases prohibits Sierra Leone authorities from complying with requests contrary to the Constitution,<sup>358</sup> which would arguably preclude compliance with requests that could assist unfair trials and torture. The Harare Scheme also permits Commonwealth nations to refuse to provide assistance on constitutional grounds.<sup>359</sup> The ECOWAS Mutual Assistance Convention does not contain these safeguards.

#### 7.2.3.1. Fair trial

There is no express prohibition in Sierra Leonean law on the making or granting of requests for mutual legal assistance in drug trafficking, money laundering and corruption cases on the grounds that the person concerned faces an unfair trial. However, the Sierra Leone Constitution recognizes fair trial guarantees as fundamental human rights,<sup>360</sup> so requests that assist an unfair trial may be barred as contrary to the Constitution.

Neither the Harare Scheme nor the ECOWAS Mutual Assistance Convention expressly prohibits the making or granting of requests for mutual legal assistance on the grounds that the person concerned faces an unfair trial.

#### 7.2.3.2. Torture and other cruel, inhuman or degrading treatment or punishment

There is no express prohibition in Sierra Leonean law on the making or granting of requests for mutual legal assistance in drug trafficking, money laundering and corruption cases on the grounds that the person concerned faces torture or other ill-treatment. However, the Sierra Leone Constitution recognizes freedom from torture and other forms of inhuman or degrading treatment as fundamental human rights,<sup>361</sup> so requests that contribute to proceedings leading to or tainted by torture may be barred as contrary to the Constitution.

Neither the Harare Scheme nor the ECOWAS Mutual Assistance Convention expressly prohibits the making or granting of requests for mutual legal assistance on the grounds that the person concerned faces torture or other ill-treatment.

#### 7.2.3.3. Death penalty

There is no express prohibition in Sierra Leonean law on the making or granting of requests for mutual legal assistance on the grounds that the person concerned faces the death penalty, although Sierra Leone is abolitionist in practice (see Section 7.1.2.3 above).

Neither the Harare Scheme nor the ECOWAS Mutual Assistance Convention expressly prohibits the making or granting of requests for mutual legal assistance on the grounds that the person concerned faces the death penalty.

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<sup>358</sup> See Drugs Control Act, Sect. 71; Anti-Corruption Act, Sect. 108 (a); Anti-Money Laundering Act, Sect. 32 (a).

<sup>359</sup> See Harare Scheme, para. 8 (2) (a).

<sup>360</sup> See 1991 Constitution, Ch. III, Sect. 17.

<sup>361</sup> See 1991 Constitution, Ch. III, Sect. 20.

#### 7.1.2.4. Other safeguards

There does not appear to be any other prohibition in Sierra Leone legislation on the making or granting of mutual legal assistance.

The Harare Scheme contains a specialty rule<sup>362</sup> and permits Commonwealth states to refuse assistance on the grounds that such assistance could further discriminatory purposes.<sup>363</sup> The ECOWAS Mutual Assistance Convention, to which Sierra Leone is a signatory, also provides that extradition may be refused if there are substantial grounds for believing the request for assistance has been made for discriminatory purposes.<sup>364</sup> The ECOWAS Convention also has a speciality rule.<sup>365</sup>

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<sup>362</sup> See Harare Scheme, para. 12.

<sup>363</sup> See Harare Scheme, para. 8 (2) (b).

<sup>364</sup> See ECOWAS Mutual Assistance Convention, art. 4 (1) (c), which states that extradition may be refused if:

“there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that persons’ race, sex, religion, nationality, ethnic origin or political opinions, or that that person’s position may be prejudiced for any of those reasons.”

<sup>365</sup> See ECOWAS Mutual Assistance Convention, art. 8, which states:

“The requesting Member State shall not, without the consent of the requested Member State use or transfer information or evidence provided by the requested Member State for investigation or proceedings other than those stated in the request. However, in cases where the charge is altered, the material provided may be used in so far as the offence, as charged, is an offence in respect of which mutual assistance may be provided under this Convention.”

## 8. SPECIAL IMMIGRATION, POLICE AND PROSECUTOR UNITS

**Special immigration units.** Sierra Leone does not have a special immigration unit designed to screen persons suspected of crimes under international law (see Section 2.4 above). Such a unit would have a mandate not only to exclude such persons from travel (either when seeking a visa abroad or when arriving at the border), but also to refer their files to police or prosecuting authorities for investigation and, where there is sufficient admissible evidence, prosecution.

**Special police units.** Sierra Leone does not have a special police unit, or a joint police and prosecution unit, with a mandate to investigate and prosecute crimes under international law (see Section 2.4 above). However, Sierra Leone has recently established a Transnational Organized Crime Unit (TOCU), which investigates crimes under national law of international concern (such as drug trafficking and cyber crime) and a Family Support Unit (FSU) of the police, which handles domestic and gender-based crimes. The establishment of these institutions demonstrates that it is affordable and feasible to establish specialized units in the investigation of crimes under international law. The FSU and TOCU and other unit established within the SLP should provide lessons learned and a blueprint for the creation of a special police unit to investigate persons suspected of crimes under international law.

**Special prosecution units.** Sierra Leone does not have a special prosecution unit, or a special police and prosecution unit, with a mandate to investigate and prosecute crimes under international law (see Section 2.4 above). Moreover, the Department of Public Prosecution is short-staffed and lacks capacity to investigate and prosecute crimes under international law.<sup>366</sup>

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<sup>366</sup> Interviews with Sierra Leonean lawyers, in Freetown, Sierra Leone (19 September 2011, 21 September 2011, 10 October 2011).

## 9. JURISPRUDENCE

There appear to be no cases in Sierra Leone involving universal criminal or universal civil jurisdiction nor does there appear to be relevant jurisprudence on extraterritorial jurisdiction or the scope of crimes under international law.

# RECOMMENDATIONS

Sierra Leone should take the following steps to ensure that it is not a safe haven for persons responsible for the worst possible crimes in the world.

## 1. SUBSTANTIVE LAW REFORM

Ratify, without limiting reservations, all treaties requiring states to extradite or prosecute persons suspected of committing crimes under international law, as has been done with Protocols I and II to the four Geneva Conventions and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment. These treaties include:

the Convention on the Non-Applicability of Statutory Limitations for War Crimes and Crimes against Humanity;

the International Convention for the Protection of All Persons from Enforced Disappearance; and

international humanitarian law treaties listed in Section 4.3 above.

Define the following crimes under international law as crimes under Sierra Leonean law, ensuring their definitions conform to the strictest requirements of international law, as has been done with grave breaches of the Geneva Conventions:

war crimes in both international and non-international armed conflict, to the extent that they have not yet been incorporated in national law (see Section 4.3 above detailing the gaps);

crimes against humanity;

genocide;

torture, including the torture of adults (see Section 4.3.4);

extrajudicial executions; and

enforced disappearances.

Define each of the crimes against humanity listed in Article 7 of the Rome Statute as crimes against humanity, if committed as part of a widespread and systematic attack against civilians, in strict accordance with their definition under international law (see Section 4.3.2.).

Modernize the definition of rape under Sierra Leonean law to include marital rape and to incorporate men and boys among potential victims. Delete the requirement of lack of consent and include all coercive circumstances recognized by international law as set forth in the elements of rape in the Elements of Crimes (see Section 4.3.2).

Define principles of criminal responsibility in accordance with the strictest standards of international law and, in particular, ensure that the same strict standards of criminal responsibility apply both to commanders and to other superiors.

Define defences in accordance with the strictest standards of international law and, in particular, exclude as permissible defences superior orders, duress and necessity, but permit them to be taken into account in mitigation of punishment.

## 2. STRENGTHENING JURISDICTION

Provide that courts have universal criminal and civil jurisdiction over all conduct amounting to crimes under international law, whether that conduct is currently labelled in Sierra Leonean law as an ordinary crime or as a crime under international law.

Provide that Sierra Leone has an *aut dedere aut judicare* obligation to extradite a person suspected of crimes under international law in territory subject to its jurisdiction or to submit allegations of conduct constituting a crime under international law to its prosecution authorities for the purpose of prosecution.

Where Sierra Leone has not yet defined such conduct as a crime under national law, ensure that it can extradite a suspect to a country willing and able to prosecute in a prompt and fair trial without the death penalty or other human rights violations.

Ensure that Sierra Leone can open an investigation, issue an arrest warrant and seek extradition of anyone suspected of a crime under international law even if that suspect has never entered territory subject to Sierra Leone's jurisdiction.

However, also ensure that the person suspected of such crimes is in territory of Sierra Leone subject to its jurisdiction a sufficient time before the start of a trial in order to prepare for trial.

Ensure that legislation provides that the first state to exercise jurisdiction, whether universal, active personality, passive personality, protective or territorial, to investigate or prosecute a person has priority over other states with regard to the crimes unless a second state can demonstrate that it is more able and willing to do so in a prompt and fair trial without the death penalty or other human rights violations.

## 3. REFORM OF PROCEDURE RELATED TO SUSPECTS AND ACCUSED

Establish rapid, effective and fair arrest procedures to ensure that anyone arrested on suspicion of committing crimes under international law will appear for extradition, surrender to an international criminal court or be subject to criminal proceedings in Sierra Leone.

Ensure that the rights of suspects and accused under international law and standards related to a fair trial are fully respected.

Ensure that national law provides for the exclusive jurisdiction of civilian courts over all crimes under international law, including crimes under international law committed by members of the armed forces.

Ensure that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Follow up the official moratorium on the death penalty by abolishing it in law.

## 4. REFORM OF PROCEDURE RELATED TO VICTIMS

Expressly provide that victims and their families are able to institute criminal proceedings based on universal jurisdiction over crimes under international law through a private prosecution, *action civile*, *actio popularis* or similar procedures.

Ensure that victims and their families are able to file civil claims for all five forms of reparation (restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition) in civil and in criminal proceedings based on universal jurisdiction over crimes under international law.

Ensure that victims and their families are fully informed of their rights and of developments in all judicial proceedings based on universal jurisdiction concerning crimes under international law.

Ensure that victims and their families receive support and protection at all stages of criminal and civil proceedings involving crimes under international law.

## 5. REMOVAL OF LEGAL, PRACTICAL AND POLITICAL OBSTACLES

### A. ELIMINATION OF LEGAL OBSTACLES

Provide that any claimed state or official immunities will not be recognized with regard to crimes under international law or to torts amounting to such crimes or to other human rights violations.

Ensure that statutes of limitation do not apply to crimes under international law or to torts amounting to such crimes or to other human rights violations no matter when they were committed. Abolish any statutes of limitations that apply to such crimes or torts no matter when they were committed.

Ensure that the principle of *ne bis in idem* does not apply to proceedings in a foreign state concerning crimes under international law so that Sierra Leone courts can exercise jurisdiction when foreign proceedings were shams that shielded the suspect from justice or were unfair.

Ensure that Sierra Leone courts can exercise jurisdiction over all conduct that was recognized under international law as a crime at the time that it occurred even if it occurred before it was defined as a crime under national law.

Provide that amnesties and similar measures of impunity granted by a foreign state with regard to crimes under international law have no legal effect with respect to criminal or civil proceedings in Sierra Leone.

Set aside amnesty provisions of the Abidjan Accord and Lomé Agreement, which contribute to prevailing impunity for crimes under international law committed in Sierra Leone.

### B. ELIMINATING PRACTICAL OBSTACLES

#### 1. Improvements in identifying suspects seeking to enter Sierra Leone

Establish a special immigration unit for screening foreigners seeking to enter Sierra Leone, including immigrants, visa applicants and asylum seekers, to determine whether they are suspected of crimes under international law and to inform police and prosecuting authorities that such persons are suspected of crimes under international law.

Ensure that such a unit cooperates fully with police and prosecuting authorities in a manner that fully respects the rights of all persons to a fair trial.

#### 2. Improvements in investigation and prosecution in Sierra Leone

Establish a special unit of police and prosecutors with responsibility for investigating and prosecuting crimes under international law committed in Sierra Leone or abroad.

Ensure that such a unit:

- has sufficient financial resources;
- has sufficient material resources;
- has sufficient, experienced, trained personnel;
- provides effective training on a regular basis of all staff in all relevant subjects, including international criminal law, human rights and international humanitarian law, as well as issues related to sexual and gender-based violence;
- has staff that are experts in investigating and prosecuting sexual and gender-based violence; and
- has staff that are experts in investigating and prosecuting crimes involving children, whether as victims, witnesses or perpetrators.

### 3. Ensure all members of judicial system are trained in relevant international law

Ensure that all judges, prosecutors, defence lawyers and others in the criminal and civil justice systems are effectively trained in relevant subjects, including crimes under international law and in matters related to sexual and gender-based violence and issues related to crimes involving children, whether as victims, witnesses or perpetrators.

### 4. Improving the protection of and support for victims and witnesses

Establish an effective victim and witness protection and support unit, based on the experience of such units in international criminal courts and national legal systems, that is able to protect and support victims and witnesses involved in proceedings in Sierra Leone, in foreign states and in international criminal courts, including through relocation.

## C. ENDING POLITICAL OBSTACLES

Ensure that the criteria for deciding whether to investigate or prosecute crimes under international law are developed in a transparent manner, made public, and decided in close consultation with civil society. Ensure that such criteria are impartial and non-discriminatory and exclude all political considerations.

Amend the Constitution to ensure that final decisions to investigate or prosecute are taken by independent prosecutors in accordance with these neutral criteria, subject to appropriate review by courts, and not by political officials.

Ensure that decisions on whether to extradite persons suspected of crimes under international law and on whether to provide mutual legal assistance are made in accordance with neutral criteria and human rights safeguards and exclude all inappropriate criteria, such as the prohibition of the extradition of nationals.

Amend the Extradition Act to ensure that the final decision on whether to extradite persons suspected of crimes under international law is taken by an independent prosecutor, subject to judicial review, and not by a political official.

Amend the Extradition Act to ensure that the final decision on whether to provide mutual legal assistance is taken by an independent prosecutor, subject to judicial review, and not by a political official.

## 6. IMPROVING COOPERATION WITH INVESTIGATIONS AND PROSECUTIONS IN OTHER STATES

Ensure that requests from foreign states for mutual legal assistance, including *commissions rogatoires* (commissions rogatory), in investigating and prosecuting crimes under international law do not face unnecessary obstacles or delays, provided that the procedures are fully consistent with international law and standards concerning the right to a fair trial and that cooperation is not provided when there is a risk that it could lead to an unfair trial or the imposition of the death penalty, torture or other cruel, inhuman or degrading treatment or punishment.

Ensure that all foreign judgments awarding civil reparation, whether in civil or criminal proceedings, regardless of the basis of geographic jurisdiction, can be recognized and enforced in a simple, speedy and fair procedure, unless the defendant in the foreign proceeding can demonstrate that the proceeding violated international law and standards for a fair trial.

Ensure that other requests for mutual legal assistance by foreign states can be transmitted to the Sierra Leone police or prosecutors directly, without going through cumbersome diplomatic channels, but ensure that such requests are not complied with when there is a risk that it could lead to the

imposition of the death penalty, torture or other cruel, inhuman or degrading treatment or punishment or an unfair trial.

Enhance and improve procedures in Sierra Leone for conducting investigations abroad, including through the use of joint international investigation teams, with all the necessary areas of expertise, and seek to enter into effective extradition and mutual legal assistance agreements with all other states, subject to appropriate safeguards.

Eliminate in law and practice any unnecessary procedural obstacles for foreign states seeking to gather information in territory subject to Sierra Leone's jurisdiction concerning crimes under international law.

Eliminate in law and practice any unnecessary procedural obstacles that would delay or prevent the introduction of admissible evidence from abroad. Exclude any evidence that cannot be demonstrated as having been obtained without the use of torture or other cruel, inhuman or degrading treatment.

Appoint a contact person responsible for crimes under international law who will be responsible for participating in meetings such as the Interpol Expert Meetings on Genocide, War Crimes, and Crimes against Humanity and other international and bilateral meetings. Cooperate with Interpol in the maintenance of the database on crimes under international law.

Take steps, in cooperation with other states, to draft, adopt and ratify promptly a new multilateral treaty under UN auspices providing for extradition of persons suspected of crimes under international law and mutual legal assistance with regard to such crimes, excluding inappropriate grounds for refusal and including bars on extradition and mutual legal assistance where there is a risk of the death penalty, torture or other ill-treatment, an unfair trial or other human rights violations.

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([http://www.iss.co.za/AF/RegOrg/unity\\_to\\_union/pdfs/ecowas/4ConExtradition.pdf](http://www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/ecowas/4ConExtradition.pdf))

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# APPENDIX I – LIST OF PAPERS IN THE NO SAFE HAVEN SERIES PUBLISHED SO FAR

**Bulgaria** (<http://www.amnesty.org/en/library/info/EUR15/001/2009/en>);

**Burkina Faso** (to be published late 2012)

**Germany** (<http://www.amnesty.org/en/library/info/EUR23/003/2008/en>);

([https://doc.es.amnesty.org/cgi-](https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/ALEMANIA%20LA%20LUCHA%20CONTRA%20LA%20IMPUNIDAD%20A%20TRAVES%20DE%20LA%20JURISDICCION%20UNIVERSAL?CMD=VEROBJ&MLKOB=27141201313)

[bin/ai/BRSCGI/ALEMANIA%20LA%20LUCHA%20CONTRA%20LA%20IMPUNIDAD%20A%20TRAVES%20DE%20LA%20JURISDICCION%20UNIVERSAL?CMD=VEROBJ&MLKOB=27141201313](https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/ALEMANIA%20LA%20LUCHA%20CONTRA%20LA%20IMPUNIDAD%20A%20TRAVES%20DE%20LA%20JURISDICCION%20UNIVERSAL?CMD=VEROBJ&MLKOB=27141201313))

(Spanish)

**Ghana** (to be published late 2012)

**Sierra Leone** (to be published late 2012)

**Solomon Islands** (<http://www.amnesty.org/en/library/info/ASA43/002/2009/en>);

**Spain** (<http://www.amnesty.org/es/library/info/EUR41/017/2008/es>) (Spanish only);

**Sweden** (<http://www.amnesty.org/en/library/info/EUR42/001/2009/en>);

**Vanuatu** (to be published late 2012)

**Venezuela** (<http://www.amnesty.org/en/library/info/AMR53/006/2009/en>);

(<http://www.amnesty.org/es/library/info/AMR53/006/2009/es>) (Spanish)

## APPENDIX II – FULL NAMES OF TREATIES LISTED IN CHART I

- **Piracy:** 1958 Convention on the High Seas ([http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXI-2&chapter=21&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-2&chapter=21&lang=en)) and 1982 United Nations Convention on the Law of the Sea ([http://treaties.un.org/pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtmsg3&lang=en](http://treaties.un.org/pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtmsg3&lang=en));
- **Counterfeiting:** 1929 International Convention for the Suppression of Counterfeiting Currency (<http://treaties.un.org/Pages/LONViewDetails.aspx?SRC=LONONLINE&id=551&lang=en>);
- **Narcotics trafficking:** 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs ([http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VI-18&chapter=6&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-18&chapter=6&lang=en));
- **Violence against passengers or crew on board a foreign aircraft abroad:** 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) (<http://www.icao.int/icao/en/leb/StatusForms/>);
- **Hijacking a foreign aircraft abroad:** 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention) (<http://www.icao.int/icao/en/leb/StatusForms/>);
- **Sale of psychotropic substances:** 1971 Convention on Psychotropic Substances ([http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VI-16&chapter=6&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-16&chapter=6&lang=en));
- **Certain attacks on aviation:** 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal Convention) (<http://www.icao.int/icao/en/leb/StatusForms/>);
- **Attacks on internationally protected persons, including diplomats:** 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents ([http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-7&chapter=18&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-7&chapter=18&lang=en));
- **Hostage taking:** 1979 International Convention against the Taking of Hostages ([http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-5&chapter=18&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-5&chapter=18&lang=en));
- **Theft of nuclear materials:** 1979 Convention on the Physical Protection of Nuclear Material ([http://www.iaea.org/Publications/Documents/Conventions/cppnm\\_status.pdf](http://www.iaea.org/Publications/Documents/Conventions/cppnm_status.pdf));
- **Attacks on ships and navigation at sea:** 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (<http://www.imo.org/About/Conventions/StatusOfConventions/Documents/status-x.xls>);
- **Use, financing and training of mercenaries:** 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries ([http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-6&chapter=18&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-6&chapter=18&lang=en));
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- **Transnational crime - Transnational organized crime:** 2000 UN Convention against Transnational Organized Crime  
([http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=XVIII-12&chapter=18&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XVIII-12&chapter=18&lang=en));
- **Transnational crime - Trafficking of human beings:** 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children  
([http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=XVIII-12-a&chapter=18&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XVIII-12-a&chapter=18&lang=en));
- **Transnational crime – Firearms:** 2001 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition  
([http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=XVIII-12-c&chapter=18&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XVIII-12-c&chapter=18&lang=en));
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(<http://www.africa-union.org/root/au/Documents/Treaties/Text/Convention%20on%20Combating%20Corruption.pdf>);  
and
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# APPENDIX III – LIST OF ABBREVIATIONS OF IHL TREATIES LISTED ON CHARTS III AND V

1925 Geneva Protocol Geneva	Protocol of 17 June 1925 for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare ( <a href="http://www.icrc.org/ihl.nsf/FULL/280?OpenDocument">http://www.icrc.org/ihl.nsf/FULL/280?OpenDocument</a> ).
1954 CCP	Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954 ( <a href="http://www.icrc.org/ihl.nsf/FULL/400?OpenDocument">http://www.icrc.org/ihl.nsf/FULL/400?OpenDocument</a> ), art. 28.
Hague Prot. 1954	Protocol for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954 ( <a href="http://www.icrc.org/ihl.nsf/FULL/410?OpenDocument">http://www.icrc.org/ihl.nsf/FULL/410?OpenDocument</a> ).
BWC 1972	Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Opened for Signature at London, Moscow and Washington, 10 April 1972 ( <a href="http://www.icrc.org/ihl.nsf/FULL/450?OpenDocument">http://www.icrc.org/ihl.nsf/FULL/450?OpenDocument</a> ), art. IV
ENMOD Conv. 1976	Convention on the prohibition of military or any hostile use of environmental modification techniques, 10 December 1976 ( <a href="http://www.icrc.org/ihl.nsf/FULL/460?OpenDocument">http://www.icrc.org/ihl.nsf/FULL/460?OpenDocument</a> ), art. IV
CCW 1980	Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, Geneva, 10 October 1980 ( <a href="http://www.icrc.org/ihl.nsf/FULL/500?OpenDocument">http://www.icrc.org/ihl.nsf/FULL/500?OpenDocument</a> ).
CCW Prot. I 1980	Protocol on Non-Detectable Fragments (Protocol I), Geneva, 10 October 1980 ( <a href="http://www.icrc.org/ihl.nsf/FULL/505?OpenDocument">http://www.icrc.org/ihl.nsf/FULL/505?OpenDocument</a> ).
CCW Prot. II 1980	Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), Geneva, 10 October 1980 ( <a href="http://www.icrc.org/ihl.nsf/FULL/510?OpenDocument">http://www.icrc.org/ihl.nsf/FULL/510?OpenDocument</a> ).
CCW Prot. III 1980	Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), Geneva, 10 October 1980 ( <a href="http://www.icrc.org/ihl.nsf/FULL/515?OpenDocument">http://www.icrc.org/ihl.nsf/FULL/515?OpenDocument</a> ).
CWC 1993	Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, Paris 13 January 1993 ( <a href="http://www.icrc.org/ihl.nsf/FULL/553?OpenDocument">http://www.icrc.org/ihl.nsf/FULL/553?OpenDocument</a> ).
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