DIIS WORKING PAPER

WORKING PAPER

Betwixt and between – chiefs and reform of Sierra Leone's justice sector

Peter Albrecht

DIIS Working Paper 2010:33

PETER ALBRECHT
is PhD Candidate at Copenhagen Business School and DIIS
paa@diis.dk

DIIS WORKING PAPER 2010:33

Danish Institute for International Studies, DIIS
Strandgade 56, DK-1401 Copenhagen, Denmark
Ph: +45 32 69 87 87
Fax: +45 32 69 87 00
E-mail: diis@diis.dk
Web: www.diis.dk
Cover Design: Carsten Schiøler
Layout: Ellen-Marie Bentsen
Printed in Denmark by Vesterkopi AS
ISBN: 978-87-7605-416-8
Price: DKK 25.00 (VAT included)
DIIS publications can be downloaded
free of charge from www.diis.dk

CONTENTS

ABSTRACT

This paper discusses the uneasy role of chiefs within three cycles of security and justice reform in Sierra Leone during the past decade. Interaction has been indirect, by default or marginal, and always hesitant. This has been the case, even though chiefs constitute the most important governing institution in Sierra Leone's rural communities. One of the key tensions, I argue, has been the tendency to cast chiefs as state or non-state, respectively, or even as a hybrid between the two. However, as illustrated in this paper, while they are formally and discursively tied into a 'state system' in the Constitution and in legislation, they are subjected to limited oversight, and therefore govern in relative autonomy. A new program, designed in 2010, might help to transcend the state-non-state dichotomy and prepare the ground for a more productive way of engaging chiefs that do not fit into either a state or non-state category. This is done by focusing on which actors are actually providing security and justice, rather than who donors would prefer did it, i.e., the state.

INTRODUCTION[1]

This paper analyses why donors have not adequately addressed the role of chiefs, specifically in the case of security and justice reform, and outlines a number of the implications of this. It pursues this analysis by focusing specifically on how internationally supported security and justice reform in Sierra Leone since the late 1990s has engaged with or, more accurately, impacted on chiefs as providers of security and justice. The importance of chiefs in governing communities outside Freetown, Sierra Leone's capital, is a fact and is readily recognised by international actors in the country. However, at least until 2010 limited effort has been made to engage these actors in reform initiatives. In this paper, I argue that this neglect has been informed by a rigid dichotomy between state and non-state actors that has dominated and continues to dominate the thinking of many academics and policy-makers. It is moreover informed by the fact that, fundamentally, the role of chiefs in Sierra Leone is not well-understood by international actors.

Although the trajectory of justice sector transformation has gradually changed since its beginning in 1998, it was always predominantly concerned with building a stronger central state (see Albrecht 2010). Collapsed but internationally recognised state institutions were to be rebuilt, and security was seen not only as a prerequisite for this process to take place but as the very foundation of managing and protecting state sovereignty (Albrecht and Buur 2009:292). It is a strong feature of current international interventions that state institutions receive by far the most attention and financial support, even if their monopoly over the means of violence has disappeared (if, indeed, it ever existed). The equation between peace-building and state-building strongly informs this trajectory (Stepputat and Engberg-Pedersen 2008).

While this equation has been true for Sierra Leone – that peace-building equals state-building – in 2010 it continues to define the outlook of major development agencies such as the United Kingdom Department for International Development (DFID). In a 2010 policy document with the telling title 'Building the State and Securing the Peace' it says: "The state equates with: (a) the institutions or rules which regulate political, social, and economic engagement across a territory and determine how power and authority are obtained, used and controlled (e.g., constitutions, laws, customs) […]" (DFID 2010, draft). The paper uses the common distinction between state and non-state and acknowledges the central role of the latter. However, non-state actors are predominantly defined as either marginal to decision-making (civil society organisations) or as 'informal groupings' (e.g., gangs and drug cartels) (ibid). Although the paper was written in 2009-2010, its concept of the state as central to peace was no less central to how security and justice reform were envisioned and taken forward in the 1990s.

In 2010, the re-establishment of Sierra Leone's justice sector has spanned more than a decade and has in that process informed international thinking and best practices of justice sector transformation as it is designed internationally. Notably, the Sierra Leone process has generated increased attempts to incorporate the so-called non-state providers of security and justice into international programming and policy-making.

The structure of this paper follows the phases of programming, mostly because the approach to chiefs has been different from one phase of

1 Thanks to Helene Maria Kyed for substantial comments on this paper and to Sofie Birkebæk for proofreading the final draft.

security and justice reform to the next. The first program was the Commonwealth Community Safety and Security Project (CCSSP), which began implementation in the midst of war during the late 1990s. It constituted the 'heyday' of police reform. Inclusion of chiefs was by default and through marginalisation rather than active engagement. In parallel to the CCSSP, the Law Reform Program primarily focused on the state-orientated court system. As a consequence, a separation was established at the level of policy and programming between access to legal mechanisms and provision of security.

This lack of coordination between programs in support of (re-)establishing the justice sector, in which I include the police and the court system, was addressed with initiation of the Justice Sector Development Programme (JSDP) in 2005. While a so-called Primary Justice Sector Coordinator was now appointed, it was Freetown-based providers that continued to receive by far the most attention and funding. The project was marred by a number of administrative problems and challenges, which impeded the ability of advisors to move it beyond Freetown.

The third phase of security and justice reform in Sierra Leone is the Improved Access to Security and Justice Programme (IASJP) that was designed in 2010. For the first time, donor driven programming began to focus on what was referred to as 'non-state justice and security actors', 'community mediation projects' and 'legal aid endeavours'. However, the definition of non-state actors which was initially used excluded the chiefs, who were referred to as 'chiefdom administration' and 'traditional authorities'. While chiefs were referred to in connection with 'GOSL MDAs' (Government of Sierra Leone Ministries, Departments and Agencies), non-state actors were mentioned in line with, but as separate from, NGOs and other civil society organisations and included driver's unions, market associations and so forth. In sum, chiefs, as before, were seen as part of the problem rather than as part of the solution. They were viewed as a negative, destabilising factor that had to be countered.

The puzzle is why international development agencies have had this uneasy approach to chiefs in Sierra Leone? Why are chiefs sometimes considered part of the state, and sometimes not? Before exploring how security and justice reform has evolved over time in Sierra Leone and engaged with the chiefs, I briefly explore why chiefs do not fit easily into neither state nor non-state categories. This is followed by a discussion of the position of chiefs within the three cycles of justice reform in Sierra Leone, the third starting in 2010 with the design of IASJP.

CHIEFS: BETWEEN STATE AND NON-STATE CATEGORIES

In national legislation, the paramount chieftaincy is recognised as an important institution in the governance of Sierra Leone. Constitutionally recognised, "the institution of the Chieftaincy, as established by customary law and usage" and "its non-abolition by law" are "guaranteed and preserved" (The Constitution of Sierra Leone 1991:72(1)). Indeed, the government has a legal obligation to restore the 'traditional role' of paramount chiefs, including their administrative and customary judicial responsibilities, on the basis of the Ruling Houses existing at independence in 1961.

The basic political unit of the chieftaincy system is the section, made up of a number of towns or villages, and is headed by a section chief or sub-chief. The paramount chief has jurisdiction over the sections within the chiefdom. Paramount chiefs and section chiefs form the political hierarchy together with town chiefs and village headsmen. Chiefs, also referred to

as traditional leaders, play a formal role in Sierra Leone's governance structures, nationally as members of parliament and as advisers through the National Council of Paramount Chiefs. At the local level, paramount chiefs are represented on the District and Town Councils and are members of ward committees. The 2004 Local Government Act stipulates that the paramount chiefs have a 'traditional function', for instance, in preventing offences in their area; in prohibiting illegal gambling; and in making and enforcing by-laws. The pillar of their power lies in their legal mandate to hold the land in trust for the people of the chiefdom, which means that they distribute the most important source of income generation.

Legally speaking, chiefs are thus closely integrated with state institutions. This makes the marginalisation of chiefs in security and justice reform all the more striking, especially when we consider the rather state-centred approach of the reform process. Having said this, the legal recognition of chiefs is unclear about the state's mandate to regulate and oversee the actions of chiefs. It is also unclear to what degree chiefs can act as free agents within their jurisdictions and ultimately as sovereign authorities within their chiefdoms.

It is a well-known fact that simply because legislation has been passed by parliament it does not necessarily mean that it is also enforced in a given locality. In addition, among some of the key personalities in Sierra Leone's security architecture the issue of limited reach and strength of the state appears to be a readily accepted fact that must be factored into all activities of Freetown-based institutions: "For us to get down to the chiefdom level to organise things, we need to get the chiefs into some structure. Right now they are not in any".[2]

Although it rarely happens, the Minister of Internal Affairs has the legal authority to recommend the suspension of a chief, but this Minister does not have "much by way of a structural thing that will link him to the chiefs. Except if he decides to visit some place; but there is nothing there really [by way of representing him]. There is no requirement for the chief to communicate with him. Now, there is no real requirement for the chief to communicate with anybody".[3] As chiefs are central to governing Sierra Leone and have their official roles recognised by state law, one would assume that chiefs are part and parcel of the state. To a degree this is also the case. Importantly, however, regulation of the chiefs by the state is limited.

Indeed, at chiefdom level empirical evidence suggests that it is the chief that regulates the state official and not the other way around, a relationship that became clear as I carried out fieldwork in Kamara Chiefdom in Western Kono. In fact, my fieldwork questions whether regulation by state institutions takes place at all, which ultimately gives the chief considerable powers. Chiefs, I suggest, belong neither to a pure non-state nor to a pure state category. This condition has made it difficult for international actors to engage robustly with chiefs, who have essentially refrained from clearly defining their functions and role as in-between state and non-state. In short, there does not seem to be a space for the type of actor that falls between categories. This will be explored further below, as I turn to the different phases of security and justice reform in Sierra Leone.

2 Interview, Kellie Conteh, 2009.

3 Interview, Kellie Conteh, 2009.

COMMONWEALTH COMMUNITY SAFETY AND SECURITY PROJECT (CCSSP) – 1999-2005

The CCSSP constitutes the 'heyday' of police reform in Sierra Leone, when massive donor investments in equipment and training occurred. The position of Inspector-General of Police (IGP) was held from 1999-2003 by a retired UK police officer. It was a program that focused exclusively on the state police (the Sierra Leone Police, from hereon SLP) and that sought to marginalise strong alternatives to the state and ignore weak ones. This process was greatly supported by having an IGP in place who not only believed in the concept of a central state, but knew nothing else.

The policing doctrine applied was conceived by international advisers and was defined as Local Needs Policing. It has guided reform efforts up until the time of writing. In its basic form, Local Needs Policing is a variety of community policing defined as: "Policing that meets the expectations and need of the local community and reflects national standards and objectives" (Adrian Horn quoted in Albrecht and Jackson 2009:32). As of 2010, all policing activities ideally, and to a degree also in practice, fall within Local Needs Policing.

Rebuilding the SLP under the CCSSP was an explicit state-building exercise with a mandate to provide internal security in Sierra Leone. Sierra Leone's collapsed, but internationally recognised, state institutions were to be rebuilt, and with the CCSSP all eyes were on the SLP. The main priority was to establish the state's monopoly over the means of violence within the borders of the country. Below, I focus on the implications of the community-based elements of the CCSSP.

Community-based policing and Local Needs Policing

Both community-based and paramilitary policing have played fundamental roles in shaping post-war SLP practices and its sense of itself as an organization. Local Needs Policing has been the guiding principle for both and reflects an attempt to make explicit that the SLP is serving the people and not the executive. This concept of policing based on local needs starkly contrasts with the high levels of police violence against citizens before and during Sierra Leone's war.

Nonetheless, what the first post-war IGP has referred to as 'policing by consensus' with respect to rolling out the SLP immediately after the conflict remains a reality. In short, the SLP does not hold the monopoly to provide security in the country. It is also clear that the so-called Local Policing Partnership Boards (LPPBs), discussed in greater detail below, are the most important national effort to engage chiefs in linking policing at the local level with the SLP. In this regard, it is telling that the initiative to establish the LPPBs did not come from the international advisors, but from the IGP, Brima Acha Kamara, in 2002-2003. Donors' general discomfort with engaging chiefs, particularly in the late 1990s and early 2000s, can likewise be seen in donor dealings with the Chieftain

Police.[4] Moves to integrate the Chieftain Police into the SLP were rejected during the life of the CCSSP and were not reconsidered during the second phase either. In the words of Keith Biddle, Sierra Leone's IGP from 1999-2003, who made the executive decision: "The practical aspects, due to the inept management of the Chieftain Police by the Ministry of Local Government and the chiefs and district officers, proved to be too problematic".[5]

At the same time, the SLP has been relatively successful in substituting popular fears or outright disrespect of the police with a more collaborative approach, in towns as well as in rural areas. Both the national level actors and actors at the level of the chiefdom headquarter town recognise in their statements and practices that working closely with chiefly authorities in villages and towns is vital to effective policing. This realisation is as much driven by practical concerns as by ideological conviction. There is a shortage of personnel as well as equipment within the SLP, which means that the government is essentially unaware of what happens in many parts of the country, not least in the porous border regions to Guinea and Liberia. The SLP is dependent on communities to acquire this information, but cannot expect to receive it as a matter of course.

Local Policing Partnership Boards (LPPBs)

One SLP initiative of particular importance in terms of building relationships with the authorities in Sierra Leone's towns and villages is the LPPBs. In 2002-2003, LPPBs were established in each police division, following the ethos of Local Needs Policing. The first Sierra Leonean IGP, who took office in 2003, came up with the idea to establish LPPBs. They were set up in Sierra Leone to ensure stakeholder participation in the process of policing, and thus signified a clearly perceived need within the police to rebuild relations with town and village chiefly authorities. The LPPBs are also a pragmatic response to the need of the SLP to engage citizens in providing their own security. Due to infrastructural challenges, general lack of resources and manpower this is not possible outside the main district and chiefdom headquarters towns.

In isolated towns and villages, the SLP relies wholly on LPPB members, who have been selected from among the civilian population by the chiefs to police their own areas. Only if deemed necessary by the LPPB member, who will be a close ally or family member of the Chief, will the matter be brought to the nearest police post or station, which often is not eas-

4 The Chieftain Police were created through a separate act than the SLP and were previously the enforcement arm of the District Councilors and Paramount Chiefs as 'Court Messengers'. Around 1956, as the British began to prepare Sierra Leone for independence, the SLP moved into the Protectorate. The Commissioner at the time was asked by the Colonial Secretary to absorb the Court Messengers. He considered it but eventually refused on almost the same grounds as the CCSSP. In short, the financial and management implications of doing so would have been too costly and time-consuming. Indeed, the UK police officer, who initially led international reform assistance and subsequently became the first post-war IGP in Sierra Leone, noted about the Chieftain Police: "I had enough on my plate without taking on the personnel problems that would emanate from such an amalgamation and suggested to Peter [Penfold, British High Commissioner in the late 1990s] that the CP [Chieftain Police] be left to wither on the vine with the SLP through LNP [Local Needs Police] and LPPB [Local Policing Partnership Board] filling the space. An issue that exercised my mind was the manner in which the PCs [Paramount Chief] and DOs [District Officers] managed the CP. Many were enforcing questionable practices and collecting 'local taxes' – extortion money – for the chiefs and DOs. In some chieftainships, they were used to drag recalcitrant girls to the Bundo Bush for FGM [Female Genital Mutilation]. Many of the PCs and DOs really opposed the suggestion [of incorporating the CP into reform efforts] as they were apprehensive that things might turn difficult for them and that they would lose their powerbase" (email communication, Keith Biddle, 2009). The CP were in other words left in place, under-resourced, with limited, if any, training, and under the jurisdiction of the PCs.

5 Interview, Keith Biddle, June 2009.

ily accessible due, primarily, to the poor conditions of infrastructure. Another reason is that the chiefs are expected by the SLP to deal with matters within their own jurisdiction. Murder, severe beatings (referred to locally as 'blood crimes'), substantial theft and sexual abuse of children will in most cases be dealt with by the police. Normally, the chiefs will make the call if a case is 'above' the town elders and leaders to deal with, and will in particular do so if he feels that he has something to lose from adjudicating on a given incident.

LPPB members are also expected to pass on relevant information, effectively intelligence, to the SLP. In places where the partnership boards are functioning there is no denying their importance in linking police and village/town authorities. Importantly, the police benefits as much from the LPPBs in their work as does the population. The biggest constraint to LPPB members is that they have no budget. They receive no money for their efforts and no 'transportation money' to attend LPPB meetings at district police stations, regardless of where they are travelling from. This has at times been a cause of complaint.

For these LPPB meetings to take place the members rely on the commitment of police officers and LPPB members. In Motema Division, Kono District, for example, this means that a disproportionate amount of time during meetings concerns fund-raising for the partnership board. For instance, an agricultural committee has been set up in Kono, which has suggested establishing a cassava farm to generate an income for the LPPB members. Other suggestions include fund-raising parties on bank holidays. Because state institutions such as the SLP cannot and, indeed, will not fund the LPPBs, the LPPBs have in eastern Kono turned into a local police-supported, semi-private entity, supporting security provision and in some instances wholly providing it. The LPPBs furthermore tend to be *de facto* under the supervision of the chiefs in their locality.

The LPPBs do not exist in all of Sierra Leone's districts. Indeed, in Eastern Kono, on the border to Guinea, they are few. What the LPPBs look like depends on the individual Local Unit Commander and his or her personal commitment and ambition. In Motema Division, one important incentive to establish LPPBs has been the IGP's personal involvement in designing the concept in the early 2000s. However, in Kenema and Kailahun, for instance, vast areas with limited road systems make it difficult for LPPB members to meet. Aside from Motema Division, Western Kono, Kailahun is the only other Division covering the whole District which has LPPBs in each chiefdom.

Understaffing combined with lack of vehicles hampers the effectiveness of the LPPBs, as it does the SLP itself (Hanson-Alp 2008). In Eastern Kono, there is a corridor between Koidu/Sefadu, the district headquarter town, and the Guinean border from where neither the police nor the army receive any information. No SLP-held information exists on the movement of goods and people. Kono is divided into two police divisions, Motema and Tankoro. LPPBs are few and concentrated in and around Koidu/Sefadu within the jurisdiction covered by Tankoro Division in Eastern Kono.

As indicated above, when involvement of 'the community' is mentioned by police officers, 'community' in practice means the local authorities, i.e. the chiefs (town chiefs or headmen, section and paramount chiefs), and not the general population. This is the concept of 'community' that state authorities, including the SLP, work according to. And it is to a large degree at odds with that of development agen-

cies, focusing on 'the poor', 'the marginalized' and 'the vulnerable'.

As a consequence of the almost complete overlap between chiefly authority and LPBB authority, the latter is not necessarily tribally or socially representative of the locality in which it operates. In Tombodu, the headquarter town in Kamara Chiefdom, Kono District, the police explicitly state that they are working for the paramount chief. It is said that the paramount chief, for instance, can have any police officer, even the Local Unit Commander who covers a division and several chiefdoms, removed at will by contacting police headquarters in Freetown. By extension, this is also the case for the LPPB chairmen who can only operate if they are accepted by the paramount chief. LPPB members are mostly appointed by the chiefs, and if they are not accepted by the local authorities they will have no legitimacy to operate.

At town and village levels, the LPPB Public Relations Officer (PRO), essentially an SLP representative that has been appointed by the chief, will typically be one of the authorities of the town. Specifically, and based on findings from my fieldwork, this means being either a member of a chiefly family or having proven one's loyalty to authorities of the town. When a criminal act takes place, the PRO will typically be supported by the young men of the village/town to make an arrest. These youth groups are the physical force of community provision of security. They could be referred to as vigilantes, but they do not act in isolation from the local authorities and are carefully selected according to allegiance to the local chief.

If the crime relates to physical harm, i.e., if it is a 'blood crime', it is seen as being 'above' the town authorities to deal with, and the SLP will be summoned. Bringing in a third party to adjudicate – and to blame – is a way of handing over difficult decisions that may end up harming town authorities. This particular division of labour between the authorities in a village/town and the police is similar to the set-up prior to the conflict. Certainly, town/village authorities in general also provided local security and justice in the past: state-sanctioned security provision by the police has for a long time been seen as somewhat of an external imposition and certainly as a rare good. But from the point of view of Freetown-based security providers, these community initiatives are considered a new development. "You're helping to develop his society", an interlocutor of Sierra Leone's security sector noted, "because of all of these interventions. At the end of the day, these paramount chiefs do not see themselves as part of the issue, part of the state. Right now they don't".[6] From a Sierra Leonean perspective it is a matter of integrating those different institutions that are central to the provision of justice and security, not breaking down one at the expense of the other. It is an argument that rarely crosses the lips of external interlocutors, but one that is put forward by Sierra Leoneans themselves, including key security sector actors:

> "I think they [international actors] should help to strengthen chieftaincies in the sense that our people, whether you like it or not, for now seem to respect that traditional setting. No amount of education from, you know, human rights organisations, international organisations, on this sort of thing would work right now. They would listen, yes, but as soon as you leave, they go back to their tradition. They [the general population] simply respect the chief. I think we should not undermine the authority of the chiefs by trying to introduce several layers of governance within

6 Interview, Kellie Conteh, 2009.

> the chiefdoms. At the end of the day it would only hurt government, because we would not have the capacity to do it properly, we simply don't. Let's not make ourselves look stupid on this matter. Let's go back to basics. This is how our people live. They live in these villages and in the village there's a town chief, they have a youth leader, a women's leader – these are structures that are there, and they all respect the chief. Even if you want to put lawyers and judges at chiefdom level, do you have the roads for these people to be travelling to court? You want the farmers to leave their farms to come to court? No, that is not going to happen, so leave it with them, empower the chiefs if you want to regulate it, yes, we can do that, I'm sure the chiefs are open to that. This is not just about security – it's the whole system we're looking at which goes far beyond the security sector. It's looking at transforming an entire culture, an entire society so that they would do things that will fit in security the country in order as to provide an enabling environment for development to take place".[7]

It is neither clear nor a given, as some scholars argue (see Baker 2008:158), that there is conscious intent behind state actions. It is not evident that 'it', 'the state', regardless of how 'disunified' or 'contradictory' it might be, a priori "seeks domination over all other organizations within the national territory and is intent on establishing binding rules regarding the other organizations' activities" (Albrecht and Buur 2009:397). This is, however, as suggested above, the perception that dominated international thinking when the CCSSP was implemented. Chiefs were involved through institutions such as the LPPBs, which were notably the invention of a Sierra Leonean rather than an international expert. However, there was no concerted effort by the CCSSP to do so.

Only in 2005, as the Justice Sector Development Programme (JSDP) began implementation, were the chiefs included more in programming. However, their role remained marginal, and the focus was mainly on human rights training.

JUSTICE SECTOR DEVELOPMENT PROGRAMME (JSDP) – 2005-2011

The JSDP constituted a fundamental break with both the approach and management of CCSSP. The most radical change was the switch from a focus on efficient internal security provision to one on the governing structures of the justice sector and on the delivery of services at the local level, including outside of Freetown. The CCSSP and the Law Reform Programme were implemented during a period with little appreciation of holistic approaches to reforming security sectors and, in particular, the justice sector.

By the time that JSDP began implementation, it was also evident that DFID as an organization was becoming more reluctant to finance projects that had an explicit security focus and that were not developmental in approach. On the one hand, this meant a stronger focus on the institutions that are supposed to govern the justice sector, and therefore implied a governance perspective. On the other hand, it meant more direct and explicit interaction with the ultimate beneficiaries of security and justice provision, namely the ordinary citizens, which in development parlance include in par-

7 Interview, Kellie Conteh, 2009.

ticular women, children, the poor and the vulnerable.

It was therefore almost a given that there would be a number of complications and dramatic changes involved in broadening the focus from what was predominantly a police project (CCSSP) to a sector-wide justice sector project (JSDP). First of all, £25 million were now earmarked not for the police alone, but also for the judiciary, the prisons and the Ministry of Internal Affairs. The difficulty for the SLP was that as support was refocused into other areas, the financial burden that remains for the Ministry of Finance in terms of both recurrent and capital replacement expenditure has, unsurprisingly, turned out to be unaffordable. Furthermore, the SLP continued to be dependent on contributions from international donors. This was something of a double blow. In the words of one of the JSDP advisers: "withdrawal of international funding inevitably leads to short-term paralysis and degradation of service with a real danger of attrition to the *status quo ante*" (Howlett-Bolton 2008:8).

The quest for establishing a sector-wide justice program came during the life of the CCSSP. Indeed, the design of the JSDP took place from June 2002 but was only approved in April 2004. Implementation began in March 2005 and the CCSSP officially came to an end in June 2005. This timeframe created significant start-up challenges. Some stakeholders were impatient to see activities starting. Others were concerned that the nature of support that had come through CCSSP would end. While not ending, the nature of the support changed dramatically.

The scope of support by the JSDP

With a holistic justice sector approach, priority reform areas were dramatically expanded to a disparate number of activities and institutions. First of all, there was a need to produce a long-term, costed sector-wide justice reform plan. Furthermore, in 2007, a raft of different priorities was considered important, as expressed in one of the so-called 'Output to Purpose Review,' an assessment produced by UK-based experts in collaboration with a Sierra Leonean counterpart. It shows the fundamental move away from direct support to security-related programming by DFID. Priority reform areas included out-of-date and inaccessible laws and procedures such as the indexing of customary law, prison overcrowding, delays in courts, absence of adequate juvenile justice provision, lack of support mechanisms which meet the "needs of the poor, vulnerable and marginalized to access justice and the lack of connection between community needs and police operations" (JSDP OPR 2007:9-10).

The focus on the SLP as an institution ensuring that it would be able to perform effectively as provider of internal security was taken over by a focus that fitted DFID's preoccupation with development. This shift had a great deal to do with the political direction coming from London and a deep-rooted hesitant approach of DFID to security-related programming. The shift was held consistently by the JSDP, both at the central level and in Moyamba District, which was the program's only 'pilot district' outside Freetown and the Western Area.

In Freetown, a heavy emphasis was put on what can best be described as governance-related activities among a number of state-centered institutions. A Justice Sector Reform Strategy and Investment Plan for 2008-2010 (JSRS-IP) was launched in February 2008. As a strategic document, it has been regarded as an important contribution to Freetown-based reform efforts across the justice sector (particularly by the donor community). A Justice Sector Co-ordination Office was established in July 2007, located next to the Attorney General and Solicitor General's offices within the Ministry of Justice. Again, this body has by

external assessors been viewed as a pivotal link within the overall justice sector. The Anti-Corruption Commission, established in 2000, was also supported by the JSDP.

The actual impact of these initiatives and their long-term sustainability are difficult to ascertain from available sources. The fairest conclusion is that transforming how a justice sector operates is a process that spans several decades and ultimately is about social engineering. Few justice sector advisers would disagree with this assessment. It is also relatively few justice advisers that are willing to engage in a targeted and robust way with the institution of the chief. Perhaps a good indication of this, within JSDP, is the limited reach of the program outside Freetown and the Western Area.

The Moyamba District JSDP pilot

Moyamba District was selected as the first district outside of Freetown in which the JSDP would pilot its work. It was selected because it had a number of state-related justice institutions, including a prison, four police stations and five police posts, encompassing 14 chiefdoms and a population of 260,000. The district was also chosen because of its easy accessibility from Freetown. The original program concept suggested that further districts would be added. However, this did not happen. Direct JSDP impact on the delivery of security and justice has therefore been limited outside Moyamba District.

Indeed, a 2009 review referred to Moyamba in the context of JSDP as little more than "a district test-bed for new projects and ideas" (JSDP Annual Review, March 2009). The general focus of the JSDP in Moyamba has been on community access to courts and, more generally, the police institutions such as LPPBs, which interface with the population. A so-called 'circuit court', holding sessions across Moyamba, was established which helped overcome the inaccessibility to many parts of the district. An assessment from 2007 notes, however, that there was limited understanding of how the court deals with types of exclusion other than those of a physical variety (e.g. related to gender, identity and social standing). An example is given of four juveniles who were sentenced to beating with a cane in open court. There was limited defense representation or paralegal support. Civil society did, however, provide some oversight and also contributed to awareness raising (JSDP OPR, April 2007).

From fieldwork carried out in Kono District in 2008-2009 it is evident that the effectiveness of LPPBs depended directly on how important the Local Unit Commander found the LPPB initiative. Effectiveness here refers to whether the partnership boards have been established at all, regularity of meetings and communication between members and the SLP, and collaboration between town/village authorities appointing LPPB members and the SLP. In 2009-2010, the only two police divisions where the LPPBs existed in all chiefdoms were in Motema (western Kono) and Kailahun (District-wide). The JSDP revived the LPPBs in Moyamba, extended them to chiefdom level, where they amounted to what appeared to the external observer as a 'House Watch' scheme. Indeed, a decrease in some crimes, including larceny (63%, 297/109) and housebreaking (67%, 22/7) was reported in 2006 compared to 2005. Supposedly, an assessment notes that the "pilot neighbourhood watch scheme set up by the youths is working well and is helping in the reduction of crime" (JSDP OPR, April 2007). It should be kept in mind that the organisation of youth groups as security forces is not new in Sierra Leone. It has been a common method to provide a semblance of community security in places where the SLP has not been present.

As my fieldwork in Kono suggests, the absence of state-sanctioned security provision

does not by definition mean that chaos and insecurity prevails. Assessments conducted by consultants sometimes give credit to intervention programs for results that, in fact, they did not deliver. This may simply be out of ignorance of the context in which a given program is being implemented.

Chiefs in security and justice

In December 2005, a National Policy Framework for the Justice Sector in Sierra Leone was presented within the framework of the JSDP. It represented a "holistic sector-wide approach to support the development of an effective, efficient, impartial and accountable Justice Sector that is capable of meeting the needs of all the people of Sierra Leone" (JSDP, December 2005:2).

The document is not short of formulations about the importance of including so-called 'Customary/Traditional Laws and Practices'. These are *inter alia*: development of policies on the judicial role of traditional leaders, implementation of initiatives that promote constitutional principles and human rights, and enhanced accountability of traditional leaders to the public. Likewise, the Justice Sector Reform Strategy and Investment Plan, launched in February 2008, has as one of six targets to "improve public satisfaction levels with Local Courts, Paramount and Local Chiefs" (GOSL, December 2007: V). As one of the JSDP advisors notes: "Each system will have its own advantages and disadvantages and both need support, even if the state system will inevitably require a greater share of financial resources" (Howlett-Bolton 2008:8). To some degree, this statement is of more theoretical than practical application. It never became a central objective in the JSDP.

Even if paramount chiefs would be considered 'non-state' in current SSR policy-thinking, they certainly cannot be considered as separate from the state. A 2007 assessment says, "[l]ocal courts constitute the lowest level of the formal system" (JSDP OPR, April 2007). They are under the oversight of, but not managed by, the Ministry of Local Government, which in practice remains too weak to play a meaningful role in this capacity. According to the Ministry of Local Government, the Ministry also lacks the will to actively regulate the local courts, primarily because it is accepted that this is the task of the chiefs. Simultaneously, the IGP suggested: "our own role is quite different from the Chiefdoms, because we are accountable to the law".[8] The question is whether the implication of this statement is that chiefs are not accountable to the law but to sets of rules and regulations defined at the local level. To a degree that is the case.

As noted above, substantive work has been undertaken in Freetown around the institutions that external advisers identify with the state. Inevitably, as the focus moves to chiefdom level, as in Moyamba District, any attempt by the JSDP to influence institutions controlled by the chiefs touches on local level distribution of power. It is therefore a deeply political endeavour. Indeed, during the implementation of JSDP there was no attempt to fundamentally alter the institution of the Local Court system. Rather, focus has been on how to confine chiefs to their legally defined role in arbitrating cases, a management role which presumably can only be played by state institutions – the Local Councils and the SLP. However, as already alluded to, in many cases representatives of state bodies, which have been 'treated' and 'built' by external actors as belonging to the state, are *de facto* accountable to the paramount chiefs rather than the other way around. By extension, the question remains whether there is

8 Interview, Brima Acha Kamara, June 2009

political will, from Freetown and/or from the Local Councils and the SLP, to overrule chiefs. Importantly, programs at chiefdom level occur in a context where national-level politicians strive for enough leverage over the local communities to achieve political (e.g. votes) and economic (e.g. diamonds) resources. It is therefore doubtful that state officials will take it upon themselves to openly interfere in the dealings of paramount chiefs, who tend to be the gatekeepers to the political and economic resources available at the local level.

In Moyamba, direct work with the chiefs was channelled through human rights training along with support to the Magistrates Court. Inevitably, conflicts occurred. A 2009 assessment reported on a Local Court Chairman who complained that cases were no longer being reported to him. Such complaints could reflect that a redistribution of power in the chiefdom had occurred as a result of the program. However, it could also be due to the fact that Local Court fines are a source of income for court employees, who are not paid regularly, if at all. This implies, of course, that JSDP has had some impact on how justice is delivered. As the assessment suggests, however, this is also partly due to civil society activities in the District, in particular in Local Courts, where officials have presided over cases that were not under their jurisdiction. The issue remains whether the balance of power in Moyamba has been fundamentally altered. This, however, is unfortunately not a question that technically focused assessments of security and justice reform are inclined to ask and therefore it remains unanswered in their report. It is unfortunate, because OPRs, Output to Purpose Reviews, are an important tool of donors to strengthen their programs.

Given the role of chiefs as providers of 80% of local level justice, an estimate put forward already in 2002 in Sierra Leone (Albrecht and Jackson 2009:42), it is striking how little direct attention they appear to have received from the JSDP.[9] Apart from providing support to the drafting of a Local Courts Bill and a restatement program around customary law in Moyamba District, the JSDP has not prioritised support to Local Courts that are overseen by the chiefs or other traditional justice systems. The 2007 assessment cited above notes that "the majority of disputes are resolved through the informal system outside the Local Courts (headmen, section chief, village elders or paramount chief). This is a weakness of the program, which has put greater emphasis on formal justice institutions" (JSDP OPR, April 2007:15).

This circumstance ultimately reflects the default position of the donor community and the technical experts they hire: to work with the institutions that they know and understand, i.e. those of a state entity, and avoid other 'non-state' or 'informally' organised groups providing security and justice.[10] It is rarely something that international advisers take upon themselves to do, often because they are convinced of state institutions being the rightful holders of the monopoly over internal security provision. This is also implicitly reflected in assessments of the JSDP carried out in 2007, 2008 and 2009, where remarkably little space is devoted to chiefs as primary powerbrokers and security and justice providers. There are several

9 A World Bank baseline survey carried out in 2007 revealed that the two most popular institutions for reporting crimes in rural Sierra Leone are the village headmen and the elders. A total of 85% of the crimes and conflicts cited in the survey are reported first to these village-level traditional leaders. Of these, 60.8% are first reported to the village headman court (also referred to as town chief) and 24.7% are reported to village elders, and after that to section chief courts.

10 £679,950 out of £1.5m allocated invoiced to October 2006 for formal justice, versus £369,440 out of £1.3m for informal justice.

reasons for this (see also Albrecht and Buur 2009).

First of all, the function and rationale of how chiefs operate, their political role, is not well-understood by international actors who, somewhat naively, believe that the institutions of the chief will wither as state institutions are built. While they accept the importance of including chiefs in justice programs, the donors and the consultants they hire have difficulties designing appropriate programs targeting chiefs. Secondly, because chiefs are constitutionally obliged to serve the 'government of the day' and because they are deeply political in their own right, it is difficult for donor agencies to find the appropriate balance between support of centrally governed state institutions and chiefs. This in turn raises questions about state sovereignty: while national-level officials might agree that chiefs are vital leaders in Sierra Leone, they might not accept that donor support is channelled directly to chiefs, thereby bypassing the central and internationally recognized government.

IMPROVED ACCESS TO SECURITY AND JUSTICE PROGRAMME IN SIERRA LEONE (IASJP) – 2010-2013

In 2009, DFID in Sierra Leone produced a document, proposing a 'new intervention', with the title Improved Access to Security and Justice Programme in Sierra Leone (IASJP). It is intended to run for a three-year period (2010- 2013). At the time of writing, the project design process is taking place and the implementation is being planned. The terms of reference (TORs) for this process suggest that the program will place delivery of improved access to security and justice in Sierra Leone "at both the centre of our ongoing state-building and human development interventions" (IASJP TOR, 2009). It also suggests that a key threat to building sustainable peace in Sierra Leone is "a lack of individual or community legal redress or rights" (ibid). The program is expected to support the JSDP, which is described as "operating in several districts" (ibid). Importantly, the document presents the first example in Sierra Leone's security and justice sector reform process of a program design that recognises that 'the non-state' security and justice providers are at least as vital as 'state' providers.

It is not clear who these non-state providers are, how they operate, and what sources of capital they draw on to consolidate authority. At least these issues are not dealt with in any depth. The program document simply refers to 'informal' and 'traditional' security and justice providers, presumably denominating civil society groups and chiefs. It is ensured that these providers will be consulted and engaged in the new program. The TORs are in other words not clear about what is meant when using the concepts of 'informal', 'traditional' and 'non-state'. This, however, is critical. If donors are truly preoccupied with strengthening security and justice provision at the local level in Sierra Leone, the aim must be to engage with the most localised tier of governing structures, not least because they cannot merely be defined by their relationship to the state.

The interim project design document alleges that IASJP will interact with 'non-state justice and security actors', 'community mediation projects' and 'legal aid endeavors'. However, the documents' definition of non-state excludes the chiefs, who are instead referred to as 'chiefdom administration' and 'traditional authorities'. While chiefs are referred to in connection with 'GOSL MDAs' (Government of Sierra Leone Ministries, Departments and Agencies), non-state actors are mentioned in line with, but separate from, NGOs and other

civil society organisations and include driver's unions, market associations and so forth.

In the final program document, produced in mid-2010, this has changed somewhat and chiefly institutions now have a central and more explicit role. The 'Chiefdom Administration and the local courts', while mentioned in connection with 'justice sector MDAs [Ministries, Departments and Agencies]', are not categorized as either state or non-state but merely considered in need of support. In a similar vein, paralegal and mediator organisations are mentioned in connection with LPPBs, all of which have mixed sources of authority derived from Freetown-based, national, and more localised institutions. This might be the most appropriate way of approaching the state-non-state dichotomy, namely to avoid seeking to construct programs of support around pre-defined distinctions. Rather, what the program document appears to prepare the ground for is to look at *who* is providing security and justice, *how* it is being done, and *what* the best way of supporting the systems that are already in place are.

CONCLUSION

Throughout security and justice sector reform in Sierra Leone since the late 1990s, the chiefs have constituted a layer of actors that donors have found it difficult to interact with. Interaction has been indirect, by default or marginal, and always hesitant. This has happened despite the chiefs' central role as governing institutions in Sierra Leone's local communities, including in local security and justice provision. At the time of writing, IASJP is being developed as a new program and there is a risk that chiefs will, yet again, be seen as the problem rather than as part of the solution to strengthening provision of these services.

At the same time, the 2010 program document for IASJP alludes to a potentially significant conceptual shift in how chiefs and the institutions that they oversee are being understood and incorporated into programming. Rather than seeking to cast chiefs as state or non-state, respectively, or even as a hybrid between the two, it now appears feasible, at least on a conceptual level, to step out of this dichotomous impasse. The practical necessity for this is evident. Chiefs represent the most important authority across most of Sierra Leone and dominate local politics, economic life, security and justice provision.

The marginalisation of chiefs in past programming has reflected that neither state institutions nor international actors have the resources or the will to fundamentally alter how Sierra Leone's localities are currently governed. At the same time, as this paper has illustrated, because of their central governing role, chiefs have also *de facto* been integral actors in the implementation of security and justice sector reform, the LPPBs being one key example. Indeed, the success of local initiatives is directly tied to the role that chiefs play.

This becomes all the more important considering their somewhat ubiquitous role vis-à-vis Freetown-based institutions. As illustrated in this paper, while they are formally and discursively tied into a 'state system' in the Constitution and in legislation, they are subjected to limited oversight and therefore govern in relative autonomy. The fact that the program document for IASJP goes beyond the state-non-state dichotomy may be seen as preparing the ground for a more productive way of engaging chiefs and similar institutions in other contexts that do not fit neatly into either a state or non-state category. From a donor perspective, the importance of this shift is that focus no longer is on whom donor agencies would prefer to see providing security and justice across Sierra Leone, but on who is actually doing it.

REFERENCES

Albrecht, P. 2010. Transforming internal security in Sierra Leone – Sierra Leone Police and broader justice sector reform, *DIIS Report* 2010:07. Copenhagen: DIIS.

Albrecht, P. and L. Buur. 2009, An uneasy marriage: non-state actors and police reform, in *Policing and Society,* Vol. 19. No. 4, pp. 390-405.

Albrecht, P. and P. Jackson. 2009. *Security system transformation in Sierra Leone, 1997-2007, Global facilitation network for security sector reform*, Birmingham: University of Birmingham.

Baker, B. 2008. *Multi-choice policing in Africa*, Uppsala: Nordic Africa Institute.

CCSSP. 2000. Report of the Consultant Appointed to Review the Current Operation of the Sierra Leone Police in Relation to Crime Management (unpublished document).

CCSSP Report. December 2000. Commonwealth Community Safety and Security Project, Report of the Finance and Administration Adviser (unpublished document).

GOSL. 1991. *The Constitution of Sierra Leone*, Access via: http://www.sierra-leone.org/Laws/constitution1991.pdf.

GOSL. December 2007. *Government of Sierra Leone Justice Sector Reform Strategy and Investment Plan 2008-2010.*

CPDTF Report. July 1998. The Commonwealth Police Development Task Force for Sierra Leone, assembled at the Commonwealth Secretariat, Marlborough House, London (unpublished document).

DFID. January 2010. Building the State and Securing the Peace, *Policy and Practice Paper*, DFID, London (unpublished document).

Hanson-Alp, R. 2008. Security System Transformation in Sierra Leone, 1997-2007: Civil Society's Role in Sierra Leone's Security Sector Reform Process Experiences from Conciliation Resources' West Africa Programme, *Working Paper Series*, Security System Transformation in Sierra Leone, 1997-2007, Paper No. 12, Global Facilitation Network for Security Sector Reform (GFN-SSR) and International Alert, Birmingham: University of Birmingham.

Howlett-Bolton, A. 2008. Aiming for Holistic Approaches to Justice Sector Development, *Working Paper Series*, Security System Transformation in Sierra Leone, 1997-2007, Paper No. 7, Global Facilitation Network for Security Sector Reform (GFN-SSR) and International Alert, Birmingham: University of Birmingham.

IASJP. 2009. Final Terms of reference for the Design of DFID's Improved Access to Security and Justice Porgramme in Sierra Leone (IAJSP (2010-2013) (unpublished document).

JSDP National Policy Framework for the Justice Sector in Sierra Leone. December 2005.

JSDP Report. 10 April 2007. Sierra Leone Justice Sector Development Programme Output to Purpose Review Report (unpublished document).

JSDP Report. March 2009. Justice Sector Development Programme – Annual Review (unpublished document).

Krogstad, E. G. 2010. Police reform as global governance: colonial and current experiences in Sierra Leone, conference paper, 'Glocal security workshop, Free University, Berlin, 22-23 January 2010.

Stepputat, F. and L. Engberg-Pedersen. 2008. Fragile States: Definitions, Measurements and Processes. Fragile Situations, *DIIS Report* 2008:11, Copenhagen: DIIS.