

March, 2011

21 Days:

Enough Time to Save Your Neck?

March 2011

AdvocAid

AdvocAid's goal is to support access to justice and strengthened rights for girls, women and their children in conflict with the law in Sierra Leone.

Founded in 2006, the organisation aims to foster an increased ability for women in conflict with the law to understand and claim rights and to empower them as active citizens.

Background: The Death Penalty in Sierra Leone

Judges in Sierra Leone are still sentencing to death people convicted for the offences of murder, treason and mutiny. The death penalty is mandatory in Sierra Leone for these offences. Judges have no discretion to consider the circumstances of the offence or any mitigating circumstances but instead are compelled to order a death sentence.

In March 2011 there were 12 condemned men and 3 condemned women in the country, totalling 15 persons¹. This includes an 18 year old girl sentenced to death by a Judge in Kenema High Court in November 2010. Although there is currently an unofficial moratorium on the carrying out of executions, no official moratorium in Sierra Leone exists. In reality, this means that executions could resume at any time; those on death row are constantly worried that today may be their last day. In fact, male death row prisoners in Pademba Road are detained in a separate area – next to the gallows – so they are unable to forget their perilous state.

21 Day Appeal Time Limit

Section 65 of the Courts Act 1965 provides the right to appeal any criminal sentence. It provides a 21 day time limit within which one must lodge a notice of appeal. However, it restricts the right to appeal by providing that extensions of time outside the 21 day period CANNOT be granted to people sentenced to death.² This clause therefore restricts the right to appeal for those sentenced to the most severe sentence, that of death, which is final and irrevocable. AdvocAid submits that such restriction is disproportionate and arbitrary as it does not allow consideration of the cause for failure

¹ Source, AdvocAid prison visits to Pademba Road Prison and Freetown Female Prison on 26 March 2011.

² "Where a person convicted desires to appeal to the Court of Appeal, or to obtain the leave of that Court to appeal, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by Rules of Court within 21 days of the date of conviction:

Provided that, except in the case of a conviction involving sentence of death, or corporal punishment the time within which notice of appeal or notice of an application for leave to appeal may be given, may be extended at any time by the Court of Appeal or by the Court before whom the appellant was convicted." S 65, Courts Act 1965



to lodge within that time period. The reasons preventing a person sentenced to death from filing within the 21 day period are many, such as: lack of knowledge of the time limit, lack of funding for a competent lawyer to draft an appeal, or the fact that a person's file is lost or has been made unavailable by court personnel.

The majority of death row prisoners are poor, illiterate, hail from the provinces and cannot afford the services of a lawyer. Sometimes they are not informed of their right to appeal by the Judge who presided over their trial or by court staff, lawyers or prison officers. If they do desire to appeal they are at the mercy of the prison welfare officer or pro bono lawyers to file the appeal timeously. Lodging appeals, particularly from the provinces, is time consuming and problematic as the Court of Appeal office is situated only in Freetown.

Confliction with Fair Trial Rights

The 1991 Constitution provides for the right to a fair trial under Articles 23(1)³ and 23(5)(b)⁴.

International human rights instruments, which Sierra Leone has ratified, confirm that the right to appeal is a fundamental aspect of the right to a fair trial, e.g.:

- a. Article 14(5) of the International Covenant on Civil and Political Rights - *"Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."*⁵
- b. Article 7 of the African Charter on Human and People's Rights - *"1. Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;"*⁶
- c. Article 6 of the United Nations Economic and Social Council (ECOSOC) Safeguards, guaranteeing protection of the rights of those facing the death penalty, states:

*"Anyone sentenced to death has the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory."*⁷

Current legislation provides for a right to appeal⁸ and that the execution of death sentences may not occur until appeals have been exhausted.⁹ However, the strict 21 days time limit severely undermines the intended protection of these laws to the extent that they are rendered null.

³ "Whenever any person is charged with a criminal offence he shall unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."

⁴ "Every person who is charged with a criminal offence - shall be given adequate time and facilities for the preparation of his defence."

⁵ Article 14(5) of the International Covenant on Civil and Political Rights, ratified on 23 Nov 1996.

⁶ Article 7(1)(a) of the African Charter of Peoples and Human Rights, ratified on 21 Sep 1983.

⁷ The ECOSOC Safeguards were endorsed by the UN General Assembly in resolution 39/118 of 14 December 1984



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In the case of *Forum of Conscience v. Sierra Leone*¹⁰ in 2000, the African Commission on Human and Peoples' Rights held Sierra Leone to be in violation of Article 4 [the right to life] and Article 7(1)(a) [the right to appeal to national organs against violation of fundamental rights] of the African Charter on Human and Peoples' Rights. This was because the right to appeal to a higher tribunal from a court martial was denied to 24 soldiers who were executed following a court-martial decision. In this particular case the court martial process did not allow for an appeal against the decision at all and so it was in plain breach; however it is submitted that when institutional constraints prevent a person from exercising their right to appeal against their conviction within the given deadline then effectively there is no right of appeal and so the 21 days restriction would also be in breach of the provisions of the African Charter.

Urgent Change Required

We respectfully urge the Government and the Attorney General to change the above provision. We note particularly that the current Attorney-General in September 1994 resigned in protest over the use of the death penalty when 12 soldiers were executed after being convicted by courts martial.¹¹

Three cases of women on death row are currently before the Court of Appeal. All but one of them was able to lodge an appeal within the 21 days limit. With the filing of these appeals in court by AdvocAid, Judges appear to be sympathetic to the plight of these women and have used judicial activism to circumvent the 21 days restriction in order to consider their appeals. However, there is a possibility that the Attorney-General could appeal any such circumvention to the Supreme Court. It is also a possibility that other Judges will not agree to circumvent this unfair and archaic provision in the same way. We submit therefore that such a fundamental right should be clearly provided for in the laws of Sierra Leone, rather than placing judges in a difficult position of exercising their discretion to decide cases based on traditional notions of equity.

The draft Criminal Procedure Act 2010 is to be submitted to Parliament shortly. This is a prime opportunity to change this clause in the Courts Act 1965, given that the Courts Act is not entrenched legislation.

AdvocAid suggests the following amendment to section 64 of the Courts Act 1965 (and the same in section 39 of the Court of Appeal Rules 1985):

"64. Where a person convicted desires to appeal to the Court of Appeal, or to obtain leave of that Court to appeal, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may directed by Rules of Court within twenty-one days of conviction:

⁸ s.212 Sierra Leone Criminal Procedure Act 1965

⁹ s.213 Sierra Leone Criminal Procedure Act 1965

¹⁰ Comm. No. 223/98 (2000)

¹¹ Amnesty International, *Sierra Leone: Amara CONTEH and 11 others*, AI Index: AFR 51/06/94 available at http://www.africa.upenn.edu/Urgent_Action/amnst_srlene.html



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Provided that the time within which notice of appeal or notice of an application for leave to appeal may be given, shall be extended at any time by the Court of Appeal or by the Court before whom the appellant was convicted, upon a showing of exceptional circumstances or if doing so is deemed to be in the interests of justice”.

AdvocAid further suggests that an amendment be made to section 212 of the Criminal Procedure Act No.32 of 1965 (now s244 of the proposed Bill) to read:

“212. The Court shall inform every person condemned to death at the time of sentencing of their right to appeal and of the period within which, if he desires to appeal, his notice of appeal may be given. The time within which notice of appeal or notice of an application for leave to appeal may be given, shall be extended at any time by the Court of Appeal or by the Court before whom the appellant was convicted, upon a showing of exceptional circumstances or if doing so is deemed to be in the interests of justice”¹²

213. The Court shall also order that a full copy of the court file be made available to the person without payment of fee within 7 days of sentencing.

This amendment would resolve this issue as soon as possible rather than waiting until the whole Courts Act 1965 is reviewed in the future.

In conclusion, AdvocAid submits that considering the current climate of misplaced files, inadequate legal aid for filing appeals, and poor and illiterate accused persons, 21 days is not enough time to save a convicted person’s neck from the gallows or from the firing squad. Action needs to be taken now to revise this unjust provision; this is the perfect opportunity as Sierra Leone celebrates its independence jubilee.

Contact

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¹² Suggested amended clause – s 224 draft Criminal Procedure Bill 2010 (additional words in italics)

