



CHRISTIAN LAWYERS CENTRE LEGAL LINK



Motto: "Defending the Rights of Vulnerable Groups in Society"

The Honorable Chief Justice
Judiciary of the Republic of Sierra Leone
Chambers of the Chief Justice
Law Courts Building
Siaka Stevens Street
Freetown
4th February 2022

My lord,

Decongesting the Prisons in Sierra Leone through a Judicial Week is good but not Sustainable

It is out of a deep sense of cosmic responsibility, love for our justice system, country and the many innocent victims behind bars that we write you this open letter.

But before delving into the thrust of our message, let us start by acknowledging the great strides you and your team are undertaking in the judiciary to ensure novel reforms within our criminal justice system.

We note in particular the following: the setting up of specialized courts, the expansion of our court system in every District in Sierra Leone, the beautification of the court rooms, the hiring of key judicial staff, the separation of inferior courts from the buildings used by superior courts and increased access to justice in the country to name but a few. We commend the introduction of these novel interventions within the justice system and salute your leadership in that regard.

Notwithstanding the above however, as you rightly noted in your press conference launching the Judicial Week, overcrowding in Correctional Centres across Sierra Leone has been of GRAVE CONCERN within the criminal justice system of Sierra Leone. And many of these ugly situations have been largely created by the justice system itself.

According to the 2020 'State of Human Rights Report' of the Human Rights Commission of Sierra Leone, the country is estimated to have 21 prisons, designed to hold 2,375 inmates, but currently holding 3,808 as of August 2020. The severest example of overcrowding was in the Freetown Male Correctional Center, designed to hold 324 inmates, which instead held 1,407 individuals. According to the report, some prison cells measuring six feet by nine feet held nine or more inmates. The NGO Prison Watch and the Sierra Leone Correctional Service reported that 13 prisons and detention centres were moderately overcrowded.

As a way of mitigating this overcrowding of prisoners across the Country, you have designed a novel program through a Judicial week, supported by UNDP and the government of Sierra Leone to embark on the process of decongesting prisons across the Country. According to your statement at the press conference launching the judicial week, ***'the sittings will be held in such prisons by 26 Judges and they are expected to release about 1000 prisoners upon completion of the judicial exercise.'***

While we commend the Judiciary for undertaking such a radical move to decongest the prisons, as an organization that defends the rights of vulnerable groups, advances the course of justice, human rights, legal and policy reforms in the country, we make bold however to say that such a move, though commendable, is perhaps not a sustainable way of decongesting prison facilities and ensuring justice for prisoners behind bars and persons on remand awaiting trials within our criminal justice system in Sierra Leone.

In this open letter therefore, we have stated seven (7) additional steps that you and /or the Judiciary of Sierra Leone can undertake if the issue of congestion in our prison facilities is to be sustainably addressed.

Listed below are recommendations aimed at sustainably decongesting our prisons.

1) Remove the use of discretion regarding bail for misdemeanor offences under Section 79 (3) of the Criminal Procedure Act (1965).

My lord, you will recall that Section 79 (3) of the Criminal Procedure Act No. 32 of 1965 deals with bail regarding misdemeanor offences. In the said section, the law states thus:

'When a person is charged with any offence other than those referred to in subsections (1) (murder and treason) and (2) (felonies), the Court shall admit him to bail, unless it sees good reason to the contrary.'

My lord, judging from a literal construction of the above section, it stands to reason that even for misdemeanor offences, bail can be refused by the courts.

This state of affairs, we humbly submit my lord, has been the very precursor for the overcrowding of our prison facilities since misdemeanor offences form the bulk of the cases presided over by Magistrates within our criminal justice system on a daily basis.

Removing therefore the use of discretion and making bail as of right for all accused persons charged with misdemeanor offences before the court would be a more sustainable way of decongesting our prison facilities in the country.

We therefore recommend that section 79 (3) of the Criminal Procedure Act be amended forthwith in order to ensure that bail is granted as of right to all accused persons charged with misdemeanor (minor) offences and not subject to the discretion of the Magistrate. This will help certainly to mitigate the high rate of persons remanded or being sent to prison on account of such minor offences thereby leading to UNNECESSARY overcrowding.

2) Expunge the use of longhand within our justice system

My lord, it is no gainsaying to opine that when Magistrates and Judges record proceedings by hand, there is the high likelihood for such proceedings to be delayed or prolonged. Where proceedings are being delayed, not only is justice being denied but the resulting effect also is that prisoners on remand will continue to stay much longer in prison facilities and ultimately paving the way for overcrowding to take place.

In order to mitigate this problem, we recommend that you get rid of the longhand system and ensure that stenographers are recruited to help all the Judges and Magistrates in the recording of proceedings. These typists (stenographers) will now have the burden of taking down the records of the proceedings and making them available at a small fee to legal practitioners after the close of proceedings.

Such a practice will allow the Magistrate or Judge to concentrate on the proceedings and ensure speedy trial of cases that come before the courts. The use of stenographers also brings the added advantage of protecting the records of proceedings since they can now be saved in both soft and hard copies. Also, the need to make use of audio visual recordings and gadgets as additional means of recording proceedings cannot be overemphasized.

LEGAL LINK is of the opinion that the longhand system is currently outdated and ineffective in terms of ensuring speedy and timely administration of justice. We therefore aver that the use of stenographers, audio visual recordings and gadgets, being the modern trend used in keeping records of court proceedings in many jurisdictions, can enhance speedy administration of justice in Sierra Leone thereby leading to decongestion of our prison facilities.

3) Timing of Proceedings:

Honorable Chief Justice, you will further agree with us that another factor that often gives rise to congestion of our prison facilities is when court proceedings are delayed and unnecessarily prolonged at the detriment of accused persons behind bars. Admittedly, while such delays are often occasioned by all the parties to the proceedings (lawyers, witnesses, police prosecutors and even Magistrates and Judges), it is important to emphasize that at the end of the day, it is the criminal justice system that shares bulk of the blame and bashing from the public.

LEGAL LINK therefore recommends that a policy or practice direction geared towards the speedy timing of proceedings be introduced by you. Such policy directive may include the following:

That trials regarding all misdemeanor (minor) offences must not last beyond 3 months; and adjournments in such proceedings must not exceed one week per sitting.

That trials regarding all felonious (serious) offences must not last beyond 5 months; and adjournments in such proceedings must not exceed one week.

We are of the firm belief that if such a practice direction is instituted and effectively monitored, not only will our criminal justice system be positively impacted but the turnover rate of cases will certainly improve thereby leading to decongestion of our prison facilities in a sustainable way.

4) Enforcing the Constitutional Time limit provided for the Delivery of Judgments

My lord, the Chief Justice, by the dictates of section 120 (16) of the 1991 Constitution of Sierra Leone, ***“Every court established under this constitution shall deliver its decision in writing not later than three months after the conclusion of the evidence and final addresses or arguments of appeal, and furnish all parties to the cause or matter determined with duly authenticated copies of a decision on the date of the delivery thereof.”***

No doubt my lord, you will agree with us that there have been serious infractions by the Benchers of the superior courts regarding this constitutional timing for the delivery of judgments. While it is clear that not much has been done to remedy this situation, such statusquo has seriously impacted on prison facilities thereby leading to overcrowding. An accused on remand that has been denied bail and whose judgment is being prolonged beyond the constitutional time limits would certainly become an albatross on the neck of the correctional facility and wastage of taxpayer’s monies.

Ensuring in a strict way that judges in the superior courts follow this constitutional injunction will provide a sure and sustainable path towards decongesting our prison facilities in the country.

As for courts that are not created by the constitution, such as the Local Courts and Magistrates Courts, we recommend in the absence of clear legal provisions in their enabling pieces of legislation creating them, that a policy directive be floated to ensure that judgments are handed down not later than ***four months*** after the close of proceedings.

My lord, we strongly recommend that any infraction regarding these timelines for the delivery of judgments should attract some administrative sanctions including but not limited to the withholding of salaries and other emoluments.

5) Speedily Listing and Assigning of cases before a Judge or Magistrate:

Honourable Chief Justice, LEGAL LINK further maintains that delay in the administration of cases by the courts is sometimes occasioned by the delay in listing and assignment of cases before Judges and Magistrates.

While such act is purely an administrative problem as the responsibility of listing and assignment of cases falls under the purview of the Deputy Assistant Registrar (for Magistrate Courts), Master & Registrar and /or the Chief Justice (For the superior courts), it stands to reason that such deficiency has negatively impacted on the justice system in Sierra Leone, paving way for delayed justice and unfair trial to reign.

Recent cases in point are: the matter filed by the Bar Association regarding the legality of the Commissions of Inquiry and the recent application filed raising jurisdictional issues regarding the tribunal set up to investigate the suspended Auditor-General, Lara Taylor-Pearce. It is our understanding that these applications, as important as they are, have still not been assigned for hearing before a judge or the Supreme Court.

My lord, we believe that if a case, when filed to court is listed and assigned swiftly, the ends of justice would certainly be served and public trust in the judicial system regained since undue delay will become a thing of the past in our jurisdiction.

6) The practice of Judges and Magistrates lashing out too - many custodial sentences must be discouraged.

Your lordship, if our prison facilities are to be sustainably decongested, there is also the need for Judges and Magistrates presiding over cases to avoid imposing too many custodial sentences as a form of punishment to accused persons found guilty in the trial.

My lord, we recommend particularly for misdemeanor offenders that incarceration be replaced with other forms of non- custodial punishments such as street cleaning or sweeping exercises, public apology, payment of fines and compensations, community services, farming activities etc. Such non- custodial sentencing will ultimately help decongest prison facilities and save the unwise use of tax-payers monies for the upkeep of these offenders. The introduction of a new sentencing guideline for the courts to achieve this objective might also be welcoming.

7) Expansion and Relocation of the Male Correctional Center in Freetown:

My lord, without doubt, the need for expansion and /or relocation of our prison facilities to more spacious areas cannot be over-emphasized. The Male Correctional Facility in Freetown for example needs complete overhauling and even repositioning to meet the demands of the criminal justice system in contemporary times. Other Correctional facilities in the country also need expansion and restructuring to adequately cater for the prison population. The ***Mandela Rules*** dictates that 'prison facilities must not be overcrowded and that a prisoner's right to health must be respected at all times.' But where expansion is lacking regarding our prison facilities, then decongestion will be far - fetched and the abuse of prisoner's rights will become the order of the day.

Conclusion

In sum therefore, my lord, while we commend the step taken by you, supported by the Government of Sierra Leone, the United Nations Development Programme and the judges in decongesting prison facilities this week, it is vital to also pinpoint that, in addition to the judicial week, the above steps recommended by us must be given due consideration if the objective to decongest prison facilities is to be sustainably secured in the future.

Certainly, the number of cases that have been discharged and /or acquitted during the Judicial Week has revealed in fundamental terms that there is an 'albatross on the neck' of our criminal justice system. To solve it therefore, would require our very justice system going beyond abracadabra approaches.

Faithfully Submitted:



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On behalf of the Interns, Researchers and Legal Team of LEGAL LINK

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Christian Lawyers Centre (a.k.a LEGAL LINK) is registered with the Corporate Affairs Commission of Sierra Leone as a non-profit legal advocacy group comprising of lawyers, law students and human right activists that seeks to provide legal assistance to religious communities as well as vulnerable groups in Sierra Leone through legal advocacy, public interest litigations, state and private sector accountability, enforcement of the rule of law and ensuring respect for domestic and international laws that guarantee fundamental human rights and freedoms.

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