

## Bridging Justice Gap to Fulfill the Promise of Law in Sierra Leone

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### Article History

Received: 16.02.2026

Accepted: 20.03.2026

Published: 06.04.2026

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**Abstract:** While human rights are inherent in all individuals, such rights remain inaccessible for many because of structural, legal, and socio-economic barriers. Globally, over 1.5 billion people are unable to resolve their legal problems, and in Sierra Leone, as in many other African countries, nearly 85% of citizens rely on the customary justice system because of the country's bifurcated legal order, leaving the poor and marginalized especially vulnerable. This article employs a doctrinal methodology to examine how legal aid services can bridge the justice gap and fulfill the promise of law in Sierra Leone, particularly for vulnerable populations. The article understands the promise of law as the assurance of equal justice, the safeguarding of human dignity, and the principle that no one is above or beneath the protection of the law. Despite the enactment of the Legal Aid Act 2012, the article argues that implementation of the legal aid scheme remains weak because of limited funding, insufficient state accountability, and inadequate integration of paralegals and community-based justice services. The study concludes that, when effectively implemented, legal aid must extend beyond mere courtroom representation to include legal literacy, alternative dispute resolution mechanisms, and grassroots justice delivery systems, and accordingly recommends the adoption of targeted and coordinated reforms involving key stakeholders, including the government, the legal profession, Civil Society Organisations, universities, and Sierra Leone's General Legal Council, in order to ensure that legal aid evolves from a purely constitutional guarantee into a practical and accessible reality for all.

**Keywords:** *Promise of Law, Legal Aid, Human Rights, Access to Justice, Bifurcated Legal System.*

### Cite this Article

U. A. Akchievere Sesay, (2026) Bridging Justice Gap to Fulfill the Promise of Law in Sierra Leone *GRS Journal of Multidisciplinary Research and Studies*, Vol-3 (Iss-4).01-11

## Background

Historically, the adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly on the 10<sup>th</sup> day of December 1948 marked a pivotal moment in world history leading to the establishment of universal standards for the recognition, protection, and promotion of human rights.<sup>1</sup> However, decades later, critical questions continue to crop up with grave concerns in respect of both the effectiveness of the right to protection and the effective restoration of violated rights at local and international levels.<sup>2</sup>

According to the Global Justice Gap (GJG), one of the world's leading justice organizations, the realization of rights outlined in national and international human rights instruments is hindered by what has been termed an "unbearable justice gap" because people continue to wallow in different forms of injustices at different levels world over.<sup>3</sup> This gap has been illustrated by the shocking

reality that approximately 1.5 billion people lack access to justice for civil, administrative, or criminal matters, while 4.5 billion being excluded from the protections and opportunities that the law is meant to provide.<sup>4</sup> Even more alarming, 253 million people live in extreme conditions of injustice, such as modern slavery, statelessness, or systemic discrimination.<sup>5</sup> These figures highlight a global crisis where justice systems fail to serve the majority, reinforcing inequality, undermining human dignity, and obstructing sustainable development and social cohesion.<sup>6</sup>

To address these challenges, various national constitutions, regional and international human rights instruments have over the years introduced the concept of legal aid to recognize the equal status of all individuals before the law, the presumption of innocence, and the right to legal representation all aimed at fulfilling the promise to those who would otherwise be neglected and excluded from the opportunities provided by law.<sup>7</sup> In this vain, the United Nations Sustainable Development Goals (SDGs), the world's sustainable blueprint, especially goal 16 further reinforces this commitment by promising to 'ensure equal access to justice for all,' advocating for a just, equitable, tolerant, open, and

<sup>1</sup> Serhii Kivalov *Legal Clinics As An Important Element Of Human Right For Free Legal Aid* Vol. 8(2019) P. 169

<sup>2</sup> *Ibid*

<sup>3</sup> Measuring the Justice Gap: A People-Centered Assessment of Unmet Justice Needs Around the World is produced by the World Justice Project 2019

<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*

<sup>6</sup> *Ibid*

<sup>7</sup> *Ibid*

socially inclusive world that meets the needs of the most vulnerable.<sup>8</sup>

Bearing in mind the pretty promise of law, this article seeks to explore how legal aid services in Sierra Leone serve as a vital mechanism to bridge the justice gap and uphold the promise of law for vulnerable populations. It could be argued that the nexus between legal aid and the promise of law is essential to guaranteeing equality and justice, underpinned by respect for human dignity.

In some countries, such as India, legal aid has been made compulsory and state-funded. In the landmark case of *Ajmal Kasab vs. State of Maharashtra*,<sup>9</sup> the Supreme Court of India affirmed the constitutional right to legal representation, mandating state-provided legal aid where defendants cannot afford private lawyers irrespective of the gravity of the offence for which the accused stands charged. In contrast, Sierra Leone, while having ratified numerous regional and international human rights treaties, including having constitutional and statutory provisions for the provision of legal aid, struggles with the effective implementation of legal aid services; thereby raising crucial questions about the position of citizens in a justice system that often fails to provide essential services for the enjoyment of the opportunities provided by law.

## Problem

In many developing countries, like Sierra Leone, laws fail to provide equal opportunity and protection to large segments of the population, particularly the poor and disadvantaged groups. Although national constitutions, including that of Sierra Leone, recognize the right to legal aid, its practical implementation remains significantly inadequate for the fulfillment of the promise of law.<sup>10</sup>

In Sierra Leone, legal aid services are largely inaccessible to the vast majority of citizens due to the complexities arising from the country's dual legal system and the concentration of lawyers primarily in the capital city.<sup>10</sup> According to the United Nations Development Programme (UNDP), Sierra Leone's Human Development Index (HDI) for 2022 is 0.458, placing it at 184<sup>th</sup> out of 193 countries and territories, with over 70% of the population living on less than \$1.25 a day. This extreme poverty makes it nearly impossible for most individuals or families to afford legal representation when faced with legal conflicts. Approximately 85% of Sierra Leone's population, out of a little over 8 million people,<sup>11</sup> resolves justice issues through customary local courts, where lawyers have no hearing, except in cases in which they are representing themselves, pursuant to section 19 of the Local Courts Act of 2011.<sup>12</sup>

Despite the introduction of a paralegal system in Sierra Leone, by some Non-Governmental Organisations and in later years the establishment of the Government's Legal Aid Board, aimed at

addressing justice needs, significant gaps still remains.<sup>13</sup> In the formal justice system, a majority of the prison population is held awaiting trial, with little or no understanding of how to circumnavigate the justice system.<sup>14</sup> These challenges collectively considered create substantial barriers to realizing the promise of law and the fundamental human rights; and fulfilling the justice needs of many Sierra Leoneans entangled in legal conflicts.<sup>15</sup>

## Administration of Justice in Sierra Leone

Sierra Leone is a country in West Africa, founded on the Atlantic Ocean covering an area of 72,000 square kilometres. The country is bounded on the north and north-east by the Republic of Guinea, on the West by the Atlantic Ocean and on the east by the Republic of Liberia.<sup>16</sup> The country is a constitutional republic with a directly elected president and a unicameral legislature.<sup>17</sup>

The Country's legal system is 'bifurcated' in nature, in that, there is a formal legal system based on the former British colonial model existing in parallel with a customary legal system, based on traditional approaches to justice and delivered through local courts.<sup>18</sup> The customary system is more prevalent in the provinces and rural areas; whereas the formal justice system is most evident in the urban centers.<sup>19</sup> While other researches refer to the former as informal justice system, this study regards the same as Customary Justice System due to its application of customary laws of each of the chiefdoms in Sierra Leone.

The formal Justice system applies the common law, statutes and the Constitution.<sup>20</sup> This is reemphasized in section 170 of the Constitution of Sierra Leone 1991 and section 74 of the Courts Act of 1965. There are established inferior and superior courts of judicature in Sierra Leone pursuant to section 120(4) of the 1991 Constitution of Sierra Leone.<sup>21</sup>

The Customary Justice system consists principally of Local Courts established in each of the chiefdoms that generally apply customary law.<sup>22</sup> While it is recorded that there are about 191 chiefdoms in Sierra Leone,<sup>23</sup> it is equally reported that there are over 300 Local Courts. This is so because some of the chiefdoms have only one local court, while the larger ones have up to three or

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<sup>13</sup> *Ibid*

<sup>14</sup> *Ibid*

<sup>15</sup> UNODC *Handbook on ensuring quality of legal services in criminal justice processes: A practical guidance and promising practices* (United Nations May 2019) available at <https://www.unodc.org>

<sup>16</sup> Kane, M. et al. (2004). *Sierra Leone: Legal and judicial sector Recognizes the assessment*. World Bank

<sup>17</sup> 2019 HUMAN RIGHT REPORT

<sup>18</sup> Vivek Maru, *supra*

<sup>19</sup> Section 2 of the Local Courts Act 2012

<sup>20</sup> Section 170 of the Constitution of Sierra Leone, 1991 Act No. 6 of 1991

<sup>21</sup> Constitution of Sierra Leone, 1991 Act No. 6 of 1991

<sup>22</sup> *Ibid*

<sup>23</sup> Sierra Leone Web. Laws of Sierra Leone. Available at: <https://www.sierra-leone.org/laws.html>

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<sup>8</sup> United Nations General Assembly, 'Transforming our world: the 2030 Agenda for Sustainable Development' (28 September 2015) UN Doc A/RES/70/1.

<sup>9</sup> (2012) 9 SCC 1

<sup>10</sup> Vivek Maru, *Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide*, Yale Journal of International Law 31-32 (2006).

<sup>11</sup> World Bank. *Population, total – Sierra Leone*. World Development Indicators

<sup>12</sup> Vivek Maru, *supra*

four Local Courts;<sup>24</sup> thereby accounting for several Customary Local Courts in Sierra Leone established pursuant to section 2 of the Local Courts Act.<sup>25</sup>

In Sierra Leone, Local Courts are established in all chiefdoms with the exception of the capital city, Freetown.<sup>26</sup> The sole aim of establishing these courts is to meet the particular needs of people residing in rural areas by dispensing justice within the specific context of the customs of their localities. It is estimated that the vast majority of Sierra Leoneans residing in rural areas access Local Courts, especially in relation to land disputes, to seek legal redress with 85% of the country's population using this system.<sup>27</sup> Pursuant to Section 15 of the Local Courts Act of 2011 both civil and minor criminal matters arising within the chiefdoms or transferred to it by customary law officer are determined.<sup>28</sup>

## Evolution of Legal Aid for the Promise of Law

A trace in history on legal aid services can be made to the time when the "Poor man's Law" movement was started.<sup>29</sup> It was based upon the principles of equal opportunity, equitable distribution of wealth, and public responsibility for citizens unable to avail themselves of the minimal provisions for a good life.<sup>30</sup> This was linked to the evolution of access to justice with a focus on providing access to legal representation in the courts for the economically disadvantaged.<sup>31</sup> This evolution was rooted in strengthening the ability of communities to 'understand, use and shape the law'.<sup>32</sup>

In Western Europe, the movement developed independently around the 1400s in the United Kingdom,<sup>33</sup> but was limited to civil litigation and misdemeanor cases until in the 18<sup>th</sup> Century.<sup>34</sup> In the

early 18<sup>th</sup> and 19<sup>th</sup> centuries, France, Austria and Germany, through Bar Associations and Churches, started providing legal aid;<sup>35</sup> during which period, a number of delivery models emerged, including the services of duty lawyers, community legal clinics, and the payment of lawyers to deal with cases for individuals who were entitled to legal aid.<sup>36</sup> Onto the early 20<sup>th</sup> century, many European countries had no formal approach to legal aid, and the poor relied on the charity of lawyers.<sup>37</sup>

In Northern America, legal aid started in United States when The Freedman's Bureau (1865-1872) provided legal assistance in civil cases.<sup>38</sup> In 1876, there was an exponential increase in the provision of legal aid leading to the formation of women's clubs and settlement houses developed for legal assistance for working women.<sup>39</sup> However, it was not until 1963 that the U.S. Supreme Court ruled that the Constitution requires the states to provide Defense Attorneys to criminal defendants charged with serious offenses who cannot afford lawyers themselves. In Canada, there existed an assigned counsel model similar to the European approach providing for payment of lawyers by the government in both civil and criminal matters.<sup>40</sup>

In Latin America, legal aid started in the 20<sup>th</sup> Century in the form of *Pro Bono* services by private practitioners and authorization from the courts to appoint lawyers to defendants.<sup>41</sup> Due to changes in social and political movements between 1930s-1960s,<sup>42</sup> different initiatives were started for the provision of legal services.<sup>43</sup> In this region, only Mexico, Argentina Colombia, and Costa Rica offered legal services for the poor in civil and administrative cases.<sup>44</sup> This development led to the establishment of two key institutions: the Inter-American Association of Public Defenders (AIDEP) and the Inter-American Commission on Human Rights (IACHR).<sup>45</sup> Their primary goal is to promote and protect human rights, uphold the rule of law, and ensure access to legal aid services—thereby

<sup>24</sup> Kane, M.*et al.* (2004). *supra*

<sup>25</sup> Section 2 local courts Act 2011

<sup>26</sup> *Ibid*

<sup>27</sup> Kane, M.*et al.* (2004). *supra*

<sup>28</sup> Section 15 Local Courts Act of 2011

<sup>29</sup> Wikipedia contributors, Legal Aid, Wikipedia, [https://en.wikipedia.org/wiki/Legal\\_aid](https://en.wikipedia.org/wiki/Legal_aid)

<sup>30</sup> Encyclopaedia Britannica, Welfare State, <https://www.britannica.com/money/welfare-state>

<sup>31</sup> Riding the Third Wave: *Rethinking Criminal Legal Aid Within an Access to Justice Framework*

<sup>32</sup> Chapman, Peter (2018) "The Legal Empowerment Movement and its Implications," *Fordham Law Review Online*: Vol. 87 , Article 30. Available at: <https://ir.lawnet.fordham.edu/flro/vol87/iss1/30>

<sup>33</sup> UNODC/UNDP *Global study on legal aid: Global report* (United Nations) 2009 available at <https://www.unodc.org>

<sup>34</sup> Mr. Justice Mostyn, "Magna Carta and Access to Justice in Family Proceedings", National Access to Justice and Pro Bono Conference, Sydney 18-19 June 2015.

<sup>35</sup> UNODC/UNDP *Global study on legal aid: Global report* (United Nations) 2009 available at <https://www.unodc.org>

<sup>36</sup> UNODC/UNDP *supra*

<sup>37</sup> *Ibid*

<sup>38</sup> *Ibid*

<sup>39</sup> *Ibid*

<sup>40</sup> *Ibid*

<sup>41</sup> *Ibid*

<sup>42</sup> Joseph R. Thom, "Inter-American Legal Services Association (ILSA): History, Functions and Future", November 1982

<sup>43</sup> James A. Gardner, *Legal Imperialism: American Lawyers and Foreign Aid in Latin America*. (Madison, Wisconsin, University of Wisconsin Press, 1980) see als

<sup>44</sup> Maria Dacoliás, "The Judicial Sector in Latin America and the Caribbean. Elements of Reform", World Bank Technical Paper No. 319 (Washington D.C., World Bank, 1996)

<sup>45</sup> Winston McCalla, "Legal Aid Developments in the Caribbean", *University of Miami Inter-American Law Review*, vol. 12, No. 2 (1980)

advancing the fulfillment of the promise of justice and equality under the law.

In Sub-Saharan Africa, the justice system is characterized by a mixed model of dispute resolution systems drawn from traditional/religious/customary practices, colonial influences and post-independence reform processes.<sup>46</sup> Even though early post-independence constitutions, such as the ones in Nigeria, Uganda, Sierra Leone, Ghana and Kenya, overlooked access to legal aid, today, a great number of constitutions in the region stipulate the right to legal representation at the expense of the State, although they do not, as a rule, guarantee lawyers to all defendants.<sup>47</sup>

In Sierra Leone, the government's responsibility was made in the 1991 constitution of Sierra Leone. However, it was not until in 2012, that parliament of Sierra Leone passed into law the legal aid Act for the provision of legal aid through an established Legal Aid Board.<sup>48</sup> The model in Sierra Leone recognizes paralegals in the bifurcated legal system of formal and customary justice administration.

## Legal Aid and the Promise of Law

There is a host of literature on Legal aid services. The concentration however had been on the connection between legal aid and access to justice. To this end, the concept of legal aid has been at the core to the provision of access to Justice by states.<sup>49</sup> Access to justice is "the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards."<sup>50</sup> According to Edita G and Stefan K, little attention had been given to the connections between legal aid and human rights until 2005<sup>51</sup> when States through Universal Periodic Review (UPR) expressed that Legal aid plays a crucial role in enabling people to navigate the justice system, to make informed decisions, as well as to obtain justice remedies.<sup>52</sup> Lord Denning opined that "the greatest revolution in the law since post Second World War has been the evolution of the mechanism of legal aid. According to Denning, it means that in many cases the lawyer fees and expenses are paid for by the state: and not by the party concerned. It is a subject of such importance that he ventures to look at the law above costs- as it was-as it is-

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<sup>46</sup> UNODC/UNDP *Global study on legal aid: Global report* (United Nations) 2009 available at <https://www.unodc.org>

<sup>47</sup> *Ibid*

<sup>48</sup> UNODC/UNDP *Global study on legal aid: Global report* (United Nations) 2009 available at <https://www.unodc.org>

<sup>49</sup> Making legal aid a reality: *A Resource Book for Policy Makers and Civil Society* (Public Interest law Institute) 2009 available at [www.pili.org](http://www.pili.org)

<sup>50</sup> United Nations Development Programme, *Access to Justice Practice Note* (2004): *United Nations Office on Drugs and Crime, Access to Justice: Legal Defence and Legal Aid* (2006)

<sup>51</sup> Edita Gruodytė and Stefan Kirchner, *Legal aid for intervenors in proceedings before the European Court of Human Rights*

<sup>52</sup> UNODC/UNDP *Global study on legal aid: Global report* (United Nations) 2009 available at <https://www.unodc.org>

and as it should be.<sup>53</sup> Samuel Rice reasons that Legal aid is any 'legal assistance'—provided to criminal suspects and defendants and to parties in non-criminal proceedings, funded by the state, and limited to people who cannot afford to purchase legal assistance in the market.<sup>54</sup> He holds the view that the elements of legal aid differ from state to state<sup>55</sup> and extend to the provision of 'legal education, access to legal information and ... alternative dispute resolution mechanisms and restorative justice processes'.<sup>56</sup>

In establishing a distinction between legal aid and legal services, Clarence J, stated that "legal aid" is the provision of the services of the legal profession to ensure that no individual is deprived of the right to receive legal advice (or, where necessary, legal representation before courts or tribunals) for-lack of financial resources<sup>57</sup> whereas "legal services" includes measures taken to ensure that the operation of the legal system does not vary with the income level, wealth, or resources of the individual.<sup>58</sup>

Flynn *et al*, argue that access to legal aid is necessary in order to ensure the effective availability of legal counsel, and so, the accused's right to a fair trial.<sup>59</sup> Monjurul Kabir on the other hand has stated that legal aid is increasingly seen as a vital component of fair and accessible justice systems and that it is necessary for the protection of rights.<sup>60</sup> For many individuals, having access to legal representation can make the difference between maintaining or losing ownership of one's home, having enough food to eat, keeping one's family together, or obtaining protection from threats to bodily harm or even death<sup>61</sup> In many contexts, the lack of effective assistance of counsel can lead to life-altering consequences and denials of our most basic human rights.<sup>62</sup>

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<sup>53</sup> Lord Denning, *What Next in the Law*, (London: Butterworths, 1982) Reprinted 2004, p. 81

<sup>54</sup> Simon Rice *p4*

<sup>55</sup> *Ibid*

<sup>56</sup> Knaul, Gabriela. Report of the Special Rapporteur on the Independence of Judges and Lawyers. UN Human Rights Council, UN Doc. A/HRC/23/43, 15 March 2013.

<sup>57</sup> Clarence J. Dias, *Research on Legal Services and Poverty: Its Relevance to the Design of Legal Services Programs in Developing Countries*, 1975 WASH. U. L. Q. 147 (1975).

<sup>58</sup> *Ibid*

<sup>59</sup> Legal Aid And Access To Legal Representation: Redefining The Right To A Fair Trial

<sup>60</sup> Widening Access to Justice: Quality of Legal Aid and New UN Principles and Guidelines on Access to Legal Aid

<sup>61</sup> Howard L. *et al*, *A Basic Human Right: Meaningful Access To Legal Representation* 2015

<sup>62</sup> Zachary H. Zarnow, *Obligation Ignored: Why International Law Requires the United States To Provide Adequate Civil Legal Aid, What The United States Is Doing Instead, And How Legal Empowerment Can Help*, 20 AM. U. J. GENDER SOC. POL'Y & L. 273, 290 (discussing the relationship between internationally recognized basic human rights and the rights at stake in litigation)

According to *Dr. Mallikarjun* Legal aid to the poor and weak is necessary for the preservation of rule of law which is necessary for the existence of the orderly society.<sup>63</sup> It strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor.<sup>64</sup> Affirmatively, Justice Krishna Iyer regards legal aid as a catalyst which would enable the aggrieved masses to re-assert state responsibility.<sup>65</sup>

In 1919, Reginald Heber Smith in his book, *Justice and the Poor*, asserted that barriers to access to justice harms the poor and allows their oppressors to wield the legal system as a weapon against them and therefore challenged lawyers to provide free legal assistance to the poor.<sup>66</sup> Legal scholars and the international community, agree that a fair and impartial judicial system requires a right to counsel.<sup>67</sup> This research however considers legal aid as “legal advice, assistance and/or representation at little or no cost to the person designated as entitled to it.”<sup>68</sup> It encompasses services provided by lawyers and non-lawyers to individuals who are poor, marginalized, or otherwise in need of special legal protection to enable them to exercise their rights ranging from legal advice, representation in courts or proceedings under other State tribunals, assistance in drafting of documents and pleadings, mediation, assistance in navigating the rules and procedures of State administrative agencies, along with a range of other services. Chapman affirms that justice cannot be advanced through lawyers alone<sup>69</sup> but a host of other initiatives intended to assist the poor and needy in conflict with law<sup>70</sup>.

## The Promise of Law through Legal Aid in Criminal Matters

Generally, Criminal legal aid means the provision of government funded service for those accused of a crime and cannot afford to pay a solicitor.<sup>71</sup> The United Nations Principles and Guidelines on

Access to Legal Aid in Criminal Justice Systems define legal aid in terms of criminal matters<sup>72</sup> as including:

“(…) legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. Furthermore, “legal aid” is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes”.<sup>73</sup>

In criminal matters, the rights of suspects, accused and imprisoned persons, as well as witnesses and victims of crime are very crucial to determine the fair, humane and effectiveness of a country’s criminal justice system.<sup>74</sup> To enhance the equality of arms between the prosecution and the defence and the assumption of an equally empowered accused person that underpins the right to legal aid.<sup>75</sup>

It encompasses the continuum, including detection of the crime, statement-taking, investigation, prosecution and trial and post-trial procedures for accused persons, witnesses and victims of crime with a demand for legal aid. Several crimes fall within the provision of legal aid in the criminal justice system ranging from assault, drug possession, theft, burglary, fraud, drunk-driving, arson, having an offensive weapon, receiving stolen goods, threatening to kill, rape and other sexual offences, murder or manslaughter and even death penalty convictions.<sup>76</sup> It is therefore submitted that any crime which is capable of prosecution at any stage qualifies for the provision of legal aid to those who cannot afford the services of lawyers subject to their right of audience.<sup>77</sup>

## The Promise of Law through Legal Aid in Civil and Administrative Matters

According to Manning, civil legal aid refers to the provision of legal assistance in anything other than criminal matters for people who are poor, disenfranchised, or otherwise excluded in society<sup>78</sup> However, when posed with the issue of civil legal aid; the question

<sup>63</sup> Dr. G. Mallikarjun *Legal Aid In India And The Judicial Contribution* ( NALSAR Law Review 2013) Vol17: No1

<sup>64</sup> *Ibid*

<sup>65</sup> Shubham Jain, Free Legal Aid, LawyersClubIndia, <https://www.lawyersclubindia.com/articles/Free-Legal-Aid-5166.asp>

<sup>66</sup> John M.A. DiPippa, Reginald Heber Smith and Justice and the Poor in the 21st Century, 40 *Campbell L. Rev.* 73 ()

<sup>67</sup> Tarik N. Jallad, *A Civil Right to Counsel: International and National Trends* (UNC Ctr. on Poverty, Working Research Paper August 2009) (noting that several democracies are moving towards providing a right to counsel).

<sup>68</sup> UNODC/UNDP *Global study on legal aid: Global report* (United Nations) 2009 available at <https://www.unodc.org>

<sup>69</sup> Chapman, Peter (2018) "The Legal Empowerment Movement and its Implications," *Fordham Law Review Online*: Vol. 87, Article 30. Available at: <https://ir.lawnet.fordham.edu/flro/vol87/iss1/30>

<sup>70</sup> *Ibid*

<sup>71</sup> Valery Shupilov, Legal Assistance in Criminal Cases and Some Important Questions of Extradition, 15 *Case W. Res. J. Int'l L.* 127

(1983) Available at: <https://scholarlycommons.law.case.edu/jil/vol15/iss1/8>

<sup>72</sup> UNODC/UNDP *Global study on legal aid, supra*

<sup>73</sup> UNODC *United Nations Principles and guidelines on Access to legal aid in criminal justice systems* (New York) 2013

<sup>74</sup> Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes Practical Guidance and Promising Practices 2019

<sup>75</sup> Handbook on improving access to legal aid in Africa(*Supra*)

<sup>76</sup> *Ibid*

<sup>77</sup> In Sierra Leone and some other Countries, lawyers do not have audience in all legal forums especially the Local Courts where proceedings are subject to customary law. See section 19 of the Local Courts Act, 2011

<sup>78</sup> *Ibid*

hinges on what rights should be protected through state-funded legal representation in the civil justice system?

Globally, people seek civil access to justice to resolve problems that threaten their homes, jobs, savings, land, custody of their children, or even their physical safety and lives<sup>79</sup> which demands a special requirement. From different jurisdictions, financial need remains the most common factor determining eligibility to legal aid in civil cases,<sup>80</sup> due to this requirement; some countries have made legislations for financial eligibility in civil legal aid. In civil cases, legal aid applicants are requested to produce evidence of eligibility,<sup>81</sup> in Countries where there are separate laws for provision of civil legal aid.<sup>82</sup>

Civil legal assistance helps low-income people navigate various civil matters.<sup>83</sup> Without the services of a lawyer, low-income people with civil legal problems may have no practical way of protecting their rights and advancing their interests. In United States and Australia, for instance, millions of people who are poor or low-income earners are unable to obtain legal representation when faced with crises such as eviction, foreclosure, domestic violence, and workplace discrimination, termination of subsistence income or medical assistance, and loss of child custody.<sup>84</sup>

## The Promise of Law in Informal Justice System

Informal justice systems are mechanisms of dispute resolution that are not part of state's formal judiciary.<sup>85</sup> The mechanisms strive to resolve problems without going to court through Alternative Dispute Resolutions "ADR" or community Mediations.<sup>86</sup> These services have been utilized successfully to provide legal aid in many regions and countries with an estimation of 80% conflicts resolved through actors like customary authorities, such as village chiefs, local elders and religious leaders, as well as community paralegals, NGO personnel and community-based volunteers.<sup>87</sup> These systems are the most accessible to the poor and disadvantaged groups and they are regarded to provide speedy, cheap and meaningful remedies to the poor and the disadvantaged especially in African societies including in Sierra Leone.<sup>88</sup>

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<sup>79</sup> David Udell The Civil Legal Aid movement: 15 Initiatives that are Increasing Access to Justice in the united states

<sup>80</sup> UNODC, GLOBAL REPORT, *supra*

<sup>81</sup> *Ibid*

<sup>82</sup> *Ibid*

<sup>83</sup> Alan Houseman & Linda E. Perle Securing Justice for All: A Brief History of Civil Legal Assistance 2018

<sup>84</sup> *Ibid*

<sup>85</sup> Joseph Ricken;The rule of law and informal justice systems: A POTENTIAL conflict in judicial development

<sup>86</sup> International legal

<sup>87</sup> *Ibid*

<sup>88</sup> UNODC Handbook on legal aid, *supra*

Globally, the most common legal problems resolved by informal justice mechanisms include marital or family disputes (67%), land and property disputes (58%), and informal proceedings to resolve minor criminal cases (28%).<sup>89</sup> In Sierra Leone for instance, legal aid providers or institutions, like Namati, Timap for Justice, Access to Justice Law Center, Legal Aid Board and AdvocAid among others, use paralegal models through Public education, Mediation, Organizing, Advocacy, and Fact-finding to fulfill the promise of law to those who would otherwise have excluded or neglected from the opportunities of law. These mechanisms are complemented in extreme situations by the assistance of lawyers who take on direct advocacy in court.<sup>90</sup>

## The Promise of Law in Sierra Leone

In 2012, the Sierra Leone parliament enacted the Legal Aid Act that established the Legal Aid Board with mandate to provide legal advice, legal representation, legal education and accreditation of Legal Aid Service Providers in Sierra Leone.<sup>91</sup> This Act is one which has been regarded by many as the most innovative legal aid laws in Africa to provide access to justice for all.<sup>92</sup> As the country's justice system is a two tier justice dispensation, the country employs a mixed model of legal aid. Currently, 85% of Sierra Leoneans fall under the jurisdiction of customary law, and traditional courts remain the primary avenue for redress of violations of their rights.<sup>93</sup> A traditional court is defined by the African Commission on Human and Peoples' Rights as "a body which, in a particular locality, is recognised as having the power to resolve disputes in accordance with local customs, cultural or ethnic values, religious norms or tradition."<sup>94</sup> In the formal justice system, both in the Western Area and the provinces, legal aid is provided by legal practitioners,<sup>95</sup> while legal aid in the provinces where there are limited court systems, is provided by accredited paralegals through their NGOs for cases that have not been taken to the local courts.<sup>96</sup>

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<sup>89</sup> *Ibid*

<sup>90</sup> Dale, Pamela. Delivering Justice to Sierra Leone's Poor: An Analysis of the Work of Timap for Justice. Washington, DC: World Bank (Justice for the Poor Program), 2009.

<sup>91</sup> Section 19 legal aid act

<sup>92</sup> SONKITA CONTEH & LOTTA TEALE New Legal Aid Law in Sierra Leone Embraces the Role of Paralegals MAY 10, 2012

<sup>93</sup> Kane, M. et al. (2004). *Supra*

<sup>94</sup> Principles and Guidelines on the Right to a Fair Trial and Legal Assistance

<sup>95</sup> Legal practitioner" means a person who has been admitted and enrolled to practice law as a barrister and solicitor under the Legal Practitioners Act, 2000

<sup>96</sup> An accredited paralegal means a person employed by the Board, a government department, an accredited civil society organization or a non-governmental organization and who has completed a training course in the relevant field of study at the Judicial and Legal Training Institute or an educational institution approved by the Board

# Models of Fulfilling the Promise of Law in Sierra Leone

## Paralegal Model

Generally, it has been emphasized in several regional and international legal aid principles that paralegals play an important role in the administration of cost-effective and affordable access to justice.<sup>97</sup> A national recognition of paralegals in Sierra Leone came in 2012 with the enactment of the Legal Aid Act. The law enshrines the role of paralegals rather than only fully qualified lawyers. It endorses university law clinics, civil society organisations and non-governmental organisations, alongside legal practitioners, as providers of legal aid services.<sup>98</sup> However, Timap for Justice,<sup>99</sup> a Sierra Leonean NGO, is credited to have developed a creative, flexible model to advance justice; one that combines education, mediation, organising, and advocacy to respond to the particularities of Sierra Leone's socio-legal context as early as 2003.<sup>100</sup> Instead of mainly using lawyers, Timap's frontline was made up of community-based paralegals to address a wide range of justice problems like breaches of rights.<sup>101</sup> This model uses the formal and the customary justice systems when possible and when necessary depending on the needs of a given case.<sup>102</sup>

Timap's paralegals, worked in 19 offices in the Eastern, Northern and Southern Provinces as well as in the Western Area, to straddle the dualist legal system, engaging both customary and formal institutions.<sup>103</sup> Timap, the Government of Sierra Leone, the Open Society Justice Initiative, NAMATI, and other partners are expanding system of community-based paralegals to improve access to justice in Sierra Leone.<sup>104</sup>

Currently, the role of accredited paralegals bridge a gap between the formal law, government institutions and customary justice mechanisms, by virtue of their familiarity with local communities, informal systems and local power dynamics.<sup>105</sup> Since 2016, 97,838 people have benefited from ADR services provided by paralegals. While the statistics remain scattered, in 2018, it was recorded that 40,953 people and school going children benefitted from legal aid education in Sierra Leone while 214,476 people free legal advice

<sup>97</sup> GSLA

<sup>98</sup> *Ibid*

<sup>99</sup> Timap for Justice was co-founded by the Open Society Justice Initiative (OSJI) and the National Forum for Human Rights (NFHR), a coalition of Sierra Leonean NGOs

<sup>100</sup> *Ibid*

<sup>101</sup> (e.g. a father refuses to pay maintenance, or a widow is wrongfully denied inheritance) as well as justice issues between people and their authorities (e.g. corruption, abuse of authority, failures in service delivery).

<sup>102</sup> Maru, *Between Law And Society*, 427

<sup>103</sup> *Ibid*

<sup>104</sup> Promise of legal aid, *Supra*

and representation in civil and criminal matters.<sup>106</sup> It can be argued that with the efforts made so far, people are able to have their rights guaranteed through legal aid services.

## Public-Private Model

The current legal aid law embodies a mixed model of public-private partnership for the provision of legal aid. Section 30 of the Legal aid Act 2012 grants mandate to Legal Aid Board to accredit legal practitioners, civil society organizations, university law clinics, paralegals; and non-governmental organisations;<sup>107</sup> for the provision of legal aid services in Sierra Leone. This has led to the contribution of several NGOs to provide legal aid in the formal justice system.

In criminal charges, Section 17 (2) (b) of the Constitution of Sierra Leone provides that any person who:

*"Is arrested or detained shall be informed immediately at the time of his arrest of his right of access to a legal practitioner or any person of his choice, and shall be permitted at his own expense to instruct without delay a legal practitioner of his own choice and to communicate with him confidentially."*<sup>108</sup>

The above provision does not make access to justice incumbent on the state rather implicitly at the expense of the defendant. The provision affirms that an arrested or detained person is entitled to consult a legal practitioner 'at his own expense.' It could be argued that this phrasing clearly shifts the financial burden to the accused, meaning that access to justice is contingent on one's ability to pay rather than being a right guaranteed by the state.

On the other hand, Section 23(5) (c) of the 1991 Constitution of Sierra Leone further provides that the accused shall be permitted to defend himself in person or by a legal practitioner of his own choice. This section also, remains silent on whether the state has any duty to provide such representation when the accused cannot afford it. This silence, despite its procedural safeguards, fails to create a substantive right to state-funded legal assistance. However, section 28(5) provides that in the event that any person's right had been deprived, parliament shall make provision:

'(a) for the rendering of financial assistance to any indigent citizen of Sierra Leone where his right under chapter 3 has been infringed, or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim; and

(b) for ensuring that allegations of infringements of such rights are substantial and the requirement or need for financial or legal aid is real.'<sup>109</sup>

Section 28(5) of the Constitution appears to offer some recourse, stating that Parliament *shall make provision* for financial assistance in cases where a citizen's rights have been infringed. However, the clause is framed in discretionary terms, and is subject to conditions such as the need to prove that the infringement is "substantial" and the financial need is "real." These qualifying thresholds introduce

<sup>106</sup> UN High Commissioner for Refugees (UNHCR), *Sierra Leone: UNHCR Submission for the Universal Periodic Review - Sierra Leone - UPR 38th Session (2021)*, October 2020, available at: <https://www.refworld.org/docid/607608c74>.

<sup>107</sup> Section 30(1) Legal Aid Act. 2012

<sup>108</sup> Section 17 of the Constitution of Sierra Leone 1991

<sup>109</sup> Section 28 of the Constitution of Sierra Leone 1991

ambiguity and limit accessibility, especially for vulnerable groups lacking legal literacy or resources.

## Sierra Leone's Regional and International Obligations to Fulfill the Promise of Law through Legal Aid Services

As a member of the United Nations, Sierra Leone has committed to 'promote the rule of law at the national and international levels, and to ensure equal access to justice for all,'<sup>110</sup> as in line with Sustainable Development Goal 16. Despite being a dualist state, Sierra Leone ratifies and domesticates international treaties before they acquire the force of law. However, once ratified and codified, such instruments are binding upon the state under the principle of *pacta sunt servanda*, which mandates that every treaty in force must be performed in good faith by its parties.<sup>111</sup>

Sierra Leone has ratified a number of international and regional human rights instruments that impose a clear obligation to provide legal aid, particularly to vulnerable groups. Pursuant to Article 11(1) of the *Universal Declaration of Human Rights (Universal Declaration)*, every person charged with a criminal offence is entitled to all guarantees necessary for their defence, including access to legal representation.<sup>112</sup>

Similarly, the *International Covenant on Civil and Political Rights (ICCPR)*, to which Sierra Leone is a state party, reinforces this obligation. Article 14(3) (b) affirms the right of an accused person to defend themselves in person or through legal counsel of their choice, underscoring the need for effective legal assistance in criminal matters.<sup>113</sup>

In the case of children, the *International Convention on the Rights of the Child (ICRC)*, ratified and domesticated through the Child Rights Act of 2007, provides special protections. Article 40(2) of the CRC requires states to ensure that children alleged to have infringed the penal law receive appropriate legal assistance, consistent with their age, dignity, and best interests. This obligation led to Sierra Leone setting a bench in respect of criminal liability of children under the age of 14 as incapable of committing crime pursuant to section 70 of the Child Rights Act of 2007.

Women are also guaranteed legal protections through the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, which Sierra Leone has ratified. The Convention obliges state parties to take all appropriate measures to ensure that women have access to justice, including the provision of legal aid, particularly in cases involving gender-based violence and discrimination.

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<sup>110</sup> Maru, 2006, *supra*

<sup>111</sup> Article 26 of the Vienna Convention on the law of treaties 1969

<sup>112</sup> The Universal Declaration of Human Rights, General Assembly Resolution 217 A (III), 10 December 1948

<sup>113</sup> United Nations, *International Covenant on Civil and Political Rights*, 16 December 1966, 999 U.N.T.S. 171 (entered into force 23 March 1976).

At the regional level, Sierra Leone is also bound by the *African Charter on Human and Peoples' Rights (ACHRPR)*, which under Article 7(1)(c) guarantees the right to a fair hearing, including access to legal counsel. Additionally, the *African Charter on the Rights and Welfare of the Child (ACRWC)* reaffirms children's rights to legal assistance. Specifically, Article 17(2)(c) obliges states to ensure that minors are "afforded legal and other appropriate assistance in the preparation and presentation of their defence," which clearly implies a duty to provide legal representation in criminal proceedings.

Furthermore, the *Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol)*, in Article 8(a) and (b), requires state parties to take effective measures to provide women with access to judicial and legal services, thereby reinforcing the obligation to offer legal aid as a means to achieve gender justice.

Taken together, these international and regional legal instruments impose a clear and compelling obligation on Sierra Leone to provide legal aid to all its citizens, particularly the poor, women, children, and other vulnerable groups. It argued that fulfilling these obligations is essential not only for compliance with international law but also for realizing the promise of justice and the rule of law within the country.

## Challenges of Legal Aid Providers in Advancing the Rights of Women in Sierra Leone

While government and several institutions, venture into providing legal aid to some extent, it has been noted by several writers that legal aid services are met by several challenges at institutional and individual levels.

One of such challenges is lack of proper funding. Institutions providing legal aid need funding to continue their operations efficiently and effectively. The poor funding unfortunately makes it impossible to protect women when they are in need.<sup>114</sup>

Furthermore, non-compliance with constitutional mandates is another challenge of legal aid. Even though the some national constitutions make provisions for the protection of law, there are instances in which suspects have gone days in detention with no access to lawyers.<sup>115</sup>

Also, Unenforceable laws, even where the law does place appropriate limits on the period of pretrial detention, or provides for release pending trial, evidence from a range of countries indicates that such provisions are rarely observed or enforced. Often the law is unenforceable, because there are no effective enforcement mechanisms. In Sierra Leone, the law stipulates in Section 17 (3) that any person who is arrested or detained and who is not released shall be brought before a court of law

- a. within ten days from the date of arrest in cases of capital offences, offences carrying life imprisonment and economic and environmental offences; and<sup>116</sup>
- b. within seventy-two hours of his arrest in case of other offences<sup>117</sup>

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<sup>114</sup> UNODC/UNDP *Global study on legal aid, supra*

<sup>115</sup> *Making legal aid a reality, Supra*

<sup>116</sup> Section 17(3) of the Sierra Leone Constitution Act No. 6 of 1991

However, the noncompliance of such laws, due to lack of clear enforceable time limits, is a factor that challenges legal aid services in Sierra Leone.

Finally, at institutional levels, there is lack of transparency and accountability in relation to the management of funds allocated to legal aid institutions. This has made some legal aid institutions to close down operations in Africa including in Sierra Leone.<sup>118</sup>

## Findings and Conclusion

This article reveals that legal aid is indispensable to the realization of the promise of law in Sierra Leone, functioning both as a safeguard and an enabler of access to justice. The Legal Aid Act of 2012 represents a significant legislative milestone, acknowledging the role of legal assistance in both criminal and civil matters. However, the full implementation and effectiveness of the law remain constrained by various systemic and structural challenges.

The interplay between legal aid, human rights and the promise of law in Sierra Leone reflects a broader principle—that access to justice is not a privilege but a fundamental right. Legal aid actualizes this right by operationalizing fair trial standards, equality before the law, and enhancing public confidence in the justice system. It bridges the gap between legal theory and the lived realities of citizens, particularly for those who lack financial means or face structural barriers. In this regard, it is submitted that legal aid should not be viewed merely as a procedural formality, but as a core human rights obligation enshrined in national, regional, and international legal instruments. It is especially critical in criminal proceedings, where the prosecutorial powers of the state must be counterbalanced by the accused's right to a competent defense, thus ensuring the principle of equality of arms and adherence to due process.

In Sierra Leone's dual legal system, legal aid is the mechanism through which the "promise of law" becomes tangible, especially for women, children, and rural populations. These groups are disproportionately affected by poverty and lack meaningful access to formal legal services. Therefore, a human-rights-centered legal aid scheme is not optional but a constitutional, moral, and international obligation.

Over the years, the contribution of non-governmental organizations (NGOs) and community-based paralegals has been vital in expanding legal aid coverage, especially in underserved rural communities. These actors have successfully resolved thousands of cases through alternative dispute resolution (ADR), improved legal literacy, and offered basic legal support. However, their impact is limited by inadequate training, lack of regulatory oversight, and insufficient funding, which hampers the sustainability and scalability of their work.

Furthermore, the constitutional provisions in Sections 17(2)(b), 23(5), and 28(5) of the 1991 Constitution of Sierra Leone provide only a limited and ambiguous obligation on the state to deliver legal aid. This places the burden on the accused and undermines the principle of fair trial. In the same way, delays in legal

proceedings, prolonged pretrial detention, and the lack of effective enforcement mechanisms contribute to widespread violations of basic rights within both formal and customary justice systems.

The situation is particularly dire for vulnerable groups, including women and children, who encounter heightened barriers in accessing justice. These challenges are compounded by socio-cultural norms, economic hardship, and institutional bias. Despite Sierra Leone's ratification of critical international treaties such as the International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the African Charter on Human and Peoples' Rights, the domestication and enforcement of legal aid obligations for the actualization of the promise of law remain insufficient.

In conclusion, while legal aid in Sierra Leone has shown promise, its transformative potential remains under-realized. Legislative reforms, increased state funding, professional regulation, and strategic partnerships are essential to build a legal aid system that truly upholds the promise of law and guarantees human dignity for all, particularly the most marginalized.

## Recommendations

To bridge the justice gap and deliver on the promise of law through legal aid, the following multi-level recommendations are proposed:

### A. Government and Legislative Reform

1. Amend Sections 17(2) (b), 23(5), and 28(5) to explicitly place the responsibility of providing legal aid on the state, particularly for indigent and vulnerable persons.
2. Formally integrate certified paralegals into the justice delivery framework at the local court level as human rights assessors to promote due process and human rights protections.
3. Increase national budgetary allocations to the Legal Aid Board and create incentives for public-private partnerships to ensure financial sustainability.
4. Develop a standardized training curriculum for paralegals, in collaboration with the Judicial and Legal Training Institute, to ensure uniformity and quality in service delivery.
5. Establish a monitoring and evaluation framework under the Legal Aid Board to track performance, identify gaps, and promote accountability in the legal aid system.

### B. General Legal Council (GLC) and the Legal Profession

1. Enforce mandatory *pro bono* service requirements for legal practitioners, ensuring that every lawyer contributes to expanding access to justice annually.
2. Strengthen oversight on legal aid practitioners to ensure compliance with human rights standards and professional ethics, especially in remote or underserved areas.

### C. Civil Societies and Universities

1. Encourage all university law faculties to embed community-based legal aid placements in their curricula and expand university law clinics to serve rural populations.

<sup>117</sup> Section 17(3) of the Sierra Leone Constitution Act No. 6 of 1991

<sup>118</sup> T. Tyler, *Why People Obey the Law* (Princeton: Princeton University Press, 2006), and J. Tankebe, "Public Confidence in the Police: Testing the Effects of Public Experiences of Police Corruption in Ghana," (2010) 50 *British Journal of Criminology* 296–319.

- Support CSOs in creating paralegal training and certification programs, endorsed by the Legal Aid Board,

to build a sustainable cadre of justice workers.

## Abbreviations

ACHRPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ADR	Alternative Dispute Resolutions
AIDEF	Inter-American Association of Public Defenders
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
GJG	Global Justice Gap
GLC	General Legal Council
HDI	Human Development Index
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Convention on the Rights of the Child
MAPUTO PROTOCOL	Protocol to the African Charter on the Rights of Women in Africa
NGOs	Non-Governmental Organisations
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UPR	Universal Periodic Review

## Author Contributions

Umaru Afiz Akchievere Sesay is the sole author. The author read and approved the final manuscript.

## Conflicts of Interest

The author declares that there is no conflict of interest in relation to the research, authorship, and publication of this article.

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