

The Rule of Law and The Judicial Straight Line; Fair Trial Rights in Sierra Leone

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Introduction

The right to life and the right to liberty stand shoulder to shoulder before an army of universal warriors defending these paired principles. Justice is the champion of these and all other human rights, recognized as clearly in its absence as in its presence. As C S Lewis asked, "How had I got this idea of just and unjust? A man does not call a line crooked unless he has some idea of a straight line. What was I comparing this universe with when I called it unjust?"¹ The judicial system in post conflict Sierra Leone, despite the many principled and courageous lawyers who labour for its reform, has the character, metaphorically, of Lewis' crooked line when superimposed on the template of fair trial norms in international law. The United Nations Special Court for Sierra Leone (SCSL) brought a model of functional justice to a system that had lost the memory of what a judicial straight line looked like and opened to the world's eyes, the purview of juridical decay that was implicated as a cause of the civil war. This paper will examine deviations from the straight line of procedural fairness, identifying human rights violations according to international instruments. A comprehensive review of the subject is outside the scope of this paper, which will traverse specific cases as illustrative of challenges to the rule of law, calling upon two analytical paradigms, transitional justice and states of exception, to clarify the issues laid bare by the recent jurisprudence of Sierra Leone.

Context and Theoretical Perspectives

Legal institutions are nested in a dynamic social and political context. Two reports, one looking backwards, the other looking forwards, offer insights into this context that are necessary to assess the role of law and legal institutions in enabling or hindering social transformation in Sierra Leone. The report of the Truth and Reconciliation Commission (TRC)² seeks to account for the civil war (1991-2002) by looking backwards to discover the path to anarchy through the degradation of institutions normally responsible for maintaining order. The Secretary General's report to the United Nations Security Council, 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies'³ seeks to locate the institutions of good governance on a unidirectional pathway to stability by looking forwards through a transitional democracy paradigm. The state of Sierra Leone presented in the TRC report comes into sharp focus when seen through the lens of Giorgio Agamben's paradigm of the state of exception which he defines as a state of perpetual, undeclared or fictional emergency in which 'the law survives its own

¹ C. S. Lewis, *Mere Christianity* (Collins, 1955) 38.

² 'Sierra Leone Truth and Reconciliation Commission Report' (Truth and Reconciliation Commission, 2004) <<http://www.sierra-leone.org/Other-Conflict/TRCVolume3A.pdf>>.

³ 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies' (United Nations, 2004). UN Doc S/2004/616 (23 August 2012)

effacement and acts as pure force in a state of exception.’⁴ The transformation envisaged in the UN report, foregrounds the protection of human rights for ‘The acid test of good government is the level of response to the human rights requirements of the citizens.’⁵ The indivisibility of legal institutions, human rights and peace are clearly articulated in the latter report’s definition of the rule of law:⁶

The rule of law is a concept at the very heart of the Organization’s mission. It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

The United Nations designation of Sierra Leone as a transitional democracy targeted for international assistance to move from the destruction of war via a raft of processes to the haven of functional democracy implies a dynamic and creative activism ‘to ensure accountability, serve justice and achieve reconciliation.’⁷ As the judiciary was found by the TRC to be pivotal in the decent into civil war, the reform of the juridical order over the decade since the war’s end is a critical yardstick for the recuperation of the nation. It is in its criminal trials that a nation articulates both explicitly and implicitly its capacity to deliver justice.

The Right to Fair Trial

Three cases arising out of the civil war and its aftermath reflect both the cluster of human rights issues concerning the citizen *vis-à-vis* the state, and the progress of the state in complying with its obligations under its own constitution and international treaties: *Mansaraj and Others v Sierra Leone* (2001) AHRLR 33 (HRC 2001), *S v Omrie Golly (sic) and Others* [2007] SLHC 32 and *S v Yusufu Kamara and Others* [2012] SLMC. These cases concerned, firstly, the execution of twelve soldiers accused of treason after a court martial, secondly, the post-war treason trial of an aspiring politician and thirdly, the arrest and charging of ten ex-combatants campaigning for pensions. All were marred by serious procedural unfairness and violations of fair trial rights. It is in criminal trials that we see the citizen standing before the power of the state, in hazard of being stripped of the right to liberty and, in two of the three cases, the right to life itself. For this very reason, the right to fair trial, encoded in Article 14 of the *International Covenant on Civil and Political Rights*⁸ and acceded to

⁴ Giorgio Agamben, ‘The State of Emergency’ (2002) <<http://www.generation-online.org/p/fpagambenschmitt.htm>>.

⁵ U. O. Umozurike, *The African Charter on Human and Peoples’ Rights* (M. Nijhoff Publishers, (1997) 7.

⁶ UNSC above n 4, 4 [6]

⁷ UNSC *ibid* 4, 4 [8].

⁸ Article 14 (partim)

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

by Sierra Leone in 1996, seeks to ensure minimum standards to provide equality of arms to those who stand in jeopardy of the power of the state.

Sierra Leone signed the *African Charter of Human and Peoples Rights* on 27 August 1981 at the height of the regime of President Siaka Stevens, which was characterized by the suspension of the constitution and the rule of law, and the deployment of the military against political opponents⁹. The limited provisions of the Charter providing for fair trial rights in Article 7 have been augmented by subsequent African Commission Resolutions¹⁰. In a failed attempt to avert the war, the referendum and new 1991 *Constitution of Sierra Leone*, enumerated legal rights in Chapter III: protection from arbitrary arrest or detention (Article 17), provision to secure protection of law (Article 23), including fair trial rights (23 (5), and the right to review by a higher tribunal for a convicted person Article 29 (17) but not in the case of court martial. Sierra Leone's and other African states' ambivalence towards the international human rights system has led inevitably to responses ranging from paying lip service, to naked hypocrisy to overt state violations.

Case Studies

The *Mansaraj Case* - 2001

The facts in *Mansaraj and Others v Sierra Leone* (2001) AHRLR 33 (HRC 2001)¹¹ are that following the 1997 coup d'état, eighteen former members of the armed forces of the Republic of Sierra Leone were charged with, *inter alia*, treason and failure to suppress a mutiny. They were convicted before a court martial in Freetown, and were sentenced to death on 12 October 1998. A right of appeal did originally exist under Part IV of the *Royal Sierra Leone Military Forces Ordinance* 1961, but was revoked in 1971 under Siaka Stevens regime. Twelve of the men were executed by firing squad seven days later despite protests by Amnesty International, and the

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3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - ((c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; and to have legal assistance assigned to him, in any case where the interests of justice so require...
 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

International Covenant on Civil and Political Rights opened for signature 16 December 1966
UNGA res 2200A (XXI)(entered into force 23 March 1976

⁹ TRC above n 3, 60 [87].

¹⁰ Including the 1992 'Resolution on the Right to Recourse and Fair Trial' acknowledging in its preamble the imperative nature of fair trial rights Preamble ACHPR /Res.4(XI)92: Resolution on the Right to Recourse and Fair Trial (1992).

¹¹ *Mansaraj and Others v Sierra Leone* (2001) AHRLR 33 (HRC 2001) .

United Nations Commission for Human Rights Special Rapporteur issuing a stay of execution request. The violations were held¹².

The government failed to provide any information to the Committee either during or after the deliberations and despite the Committee recommendation that the remaining six should be released or put to retrial, their sentences were commuted to life imprisonment¹³. A Freetown Non Government Organisation (NGO), The Forum of Conscience, also took the case to the African Commission alleging that the court marshal was flawed in law and a violation of human rights. The Commission deplored the government's failure to provide any information and found that the court marshal, in failing to meet fair trial standards, offended against the *African Charter of Human and Peoples' Rights*, declared:¹⁴

20. The right to life is the fulcrum of all other rights. It is the fountain through which other rights flow, and any violation of this right without due process amounts to arbitrary deprivation of life.

Of the three main theories Viljoen suggests that explain the (non-)compliance of African governments with their treaty obligations, *realist theories* claim that pragmatism dominates decision making as 'states ratify treaties and abide by their obligations when it is in their 'national interest' to do so.'¹⁵ With fourteen successful and failed *coups d'état* since independence in 1961 and the declaration of numerous states of emergency with the President ruling directly, arrogating extraordinary powers, the theories of sovereignty of Nazi jurist, Carl Schmitt, frame the canvas of chaos exhibited in the final decade of the 20th century in Sierra Leone. Schmitt, invoking 'Hobbes's dictum that it is authority and not truth that makes the law'¹⁶ argued that legal norms could not apply to chaos and that dictatorship is more effective than the slow processes of parliamentary decision-making. 'Schmitt's famous definition of sovereignty [is that]...the sovereign is he who decides on the state of exception.'¹⁷ According to the Transitional Democracy framework, the second case, coming six years later and four years after the end of the war, should demonstrate a higher degree of provision of the core guarantees of procedural fairness in all stages of a criminal trial.

The Golley Case - 2007

The facts in *S v Omrie Golly (sic) and Others* [2007] SLHC 32 must be gleaned from secondary sources because of the failure of the State to instaurate the publication of law reports, suspended by Siaka Stevens, a failing that drew the criticism of the TRC:¹⁸

12 6.2. The Committee reiterates its conclusion that the state committed a grave breach of its obligations under the Optional Protocol by putting 12 of the authors to death before the Committee had concluded its consideration of the communication. Ibid.

13 'UNHCR CDR Background Paper on Refugees and Asylum Seekers from Sierra Leone' (1998) <<http://www.unhcr.org/refworld/docid/3ae6a6418.html>>

14 *Forum of Conscience v Sierra Leone* 223/98.

15 Frans Viljoen, *International human rights law in Africa* (Oxford University Press, 2007) 33.

16 Lars Vinx, 'Carl Schmitt' *The Stanford Encyclopedia of Philosophy* <<http://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=schmitt>>

17 Ibid.

18 TRC above n 9, 62 [92].

The reporting of judgements of the courts of Sierra Leone was abruptly halted without proper explanation in 1973. One direct consequence of this decision was the upsurge in inconsistencies in subsequent judgements. These inconsistencies have left many decorated lawyers, not to mention the general population, utterly confused as to what really constitutes the laws of Sierra Leone. From the time of Stevens to the present day, the country has been denied an efficient system of recording and reporting the judgements of the courts.

Omrie Golley, a British born, Oxford educated lawyer and former spokesman for the Revolutionary United Front, was arrested *en route* to the airport leaving Sierra Leone on January 12 after coming to register his political party prior to the elections the following year.¹⁹ The arbitrary arrest, on the orders of President Ahmad Tejan Kabbah was made after a tip-off to police that he was allegedly recruiting people to destabilize the state.²⁰ Golley, with Mohamed Bah and David Kai Tombie, was charged with treason, a capital offence which bears the death penalty. Upon preliminary investigations in the Magistrates Court, the matter was committed to High Court No. 1 before Justice Samuel Ademus. Charles Margai, Counsel for Golley, filed a notice of motion (*ex parte*) to the Court of Appeal on 24 February, regarding the trial judge who, at the age of 74 and having retired in 1998, was appointed as a contract judge by the President with no security of tenure, but on 6 April 2006, the Court ruled that the submission had no merit and that the proceedings should commence²¹.

The fair trial issue herein is the independence of the judiciary, which is mandated by the *Constitution of Sierra Leone* (Act No. 6 of 1991), Chapter IV 120 (3) 'the judiciary shall be subject to only this Constitution or any other law and shall not be subject to the control or direction of any other person or authority.' The ICCPR Article 14 (1) states in part that 'In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.'²² If the judiciary is not independent, it is very likely that the defendant would not receive a fair trial and in capital cases, this ushers in the most serious of human rights violations by virtue of its irreversibility. The limited fair trial rights of the African Charter have been augmented by the African Commission's adoption of the 'Resolution on the Respect For and Strengthening of the Independence of the Judiciary' calling upon African countries 'to incorporate in their legal systems, universal principles establishing the independence of the judiciary, especially with regard to security of tenure.'²³ It is this very issue of security of tenure that leaves

¹⁹ James Oury, 'Fears grow for Briton facing treason charge in Sierra Leone' (2006) (187) *Legalbrief Today* <<http://www.legalbrief.co.za/article.php?story=20060628153559881>>

²⁰ Tom E Tommy, 'Police Breaks Silence over Golley Arrest in Sierra Leone', *Awareness Times* (Freetown), 2006 <<http://news.sl/drwebsite/exec/view.cgi?archive=3&num=1364&printer=1>>

²¹ *S v Golley and Others* [2004] SLCA 1 [1]

²² *International Covenant on Civil and Political Rights* opened for signature 16 December 1966 UNGA res 2200A (XXI)(entered into force 23 March 1976

²³ 'Resolution on the Respect and the Strengthening on the Independence of the Judiciary' (African Commission for Human and Peoples' Rights, 1996) <<http://www.achpr.org/sessions/19th/resolutions/21/>> 1.

the contract judge appointed under section 136 (4)²⁴ exposed to influence as his or her tenure may be revoked by the President. Not only has the impartiality and independence of the judiciary been compromised by this practice, but since it has been the subject of public discussion, the appearance of judicial integrity is tarnished in the eyes of the public.

Looking backwards, the Truth and Reconciliation Commission addressing this issue provides the context for the extent of the national anxiety and heightened awareness of the lack of independence of the judiciary, which led to extra-judicial means of dispute settlement as the citizens lost faith in the legal profession.²⁵

30. Perhaps the most flagrant breach of the separation of powers under President Stevens was reserved for the executive's control of the judiciary. Section 113 of the One-Party constitution stipulated that the President would appoint the Chief Justice ... The President also had the right to suspend the Chief Justice or, acting in accordance with the advice of the First Vice-President, any other judge.

31. Judges abandoned their independence to preserve their jobs, as they faced the possibility of arbitrary removal or suspension if they incurred the displeasure of the executive. In its most abusive application the provision was cited to depose two successive Chief Justices of the country.

Looking forwards, the transitional justice framework acknowledges the importance of criminal trials as a barometer of the stability or otherwise of the judiciary, but also concedes the extent to which the pure principles of law are enmeshed in a complex local context:²⁶

Criminal trials can play an important role in transitional contexts...Yet achieving and balancing the various objectives of criminal justice is less straightforward and there are a host of constraints in transitional contexts that limit the reach of criminal justice, whether related to resources, caseload or the balance of political power.

So frequently used was the provision for the President to appoint contract judges that four of the Coram to decide on the issue of tenure of the contract trial judge in *Golley* were themselves contract judges. Counsel for the defence filed a notice of motion on 23 April 2006 that these four recuse themselves from sitting on the matter as they clearly had an interest in the decision. Sydney Warne JSC (presiding) on 2 May adjourned the matter *sine die* to give the learned Chief Justice an opportunity to appoint a panel consistent with the request of Mr. Margai. As it transpired, the panel to assess the motion was not assembled for eleven months, violating the fair trial requirement against delay, during which time the defendant, having been refused bail, was held in Pademba Road maximum security prison, compromising the presumption of innocence. Golley was suffering from malaria and typhoid, which fact was attested to in his medical record, which was read out in court despite his objection, violating his ICCPR Article 17 right to privacy.²⁷ Conditions at the notorious prison are so extreme as to violate Article 7 of the ICCPR

²⁴ *The Constitution of Sierra Leone* Act No. 6 of 1991 s 136

²⁵ TRC above n 9, 61 [30, 31].

²⁶ UNSC report above n 4, 14 [39].

²⁷ Allieu Vandi Koroma, *Justice Delayed is Justice Turned Sour: The Treason Trial of Omrie Golley et al* Centre for Accountability and Rule of Law <<http://www.carl-sl.org/home/articles/169-justice-delayed-is-justice-turned-sour-the-treason-trial-of-omrie-golley-et-al>>²⁷.

regarding cruel, inhuman or degrading treatment. The many deaths in custody at the prison violate the ICCPR Article 1 right to life. The *Homo Sacer* theory of bare life of Giorgio Agamben²⁸ and his advancement of Carl Schmitt's state of exception²⁹ as a lens through which to view the threat to norms regarding individual liberties in contemporary anti-terrorist legislation is insightful as a way of testing human rights by seeing how it looks in the context of extreme settings. Agamben uses the extreme setting of the concentration camp or refugee camp but his theory of bare life stripped of all its rights and being exposed to arbitrary sovereign action epitomizes the situation in Pademba Road Prison.

Most informed and articulate in the public discussion of *Golley* was the series of commentaries published by the Centre for Accountability and the Rule of Law in Freetown which concluded:³⁰

The right to fair trial is very much on trial in this case. It may be compromised if the panel retains a contract judge in a trial of this nature. In criminal trials where the defendant is in detention pending the decision, justice demands that the case be dealt with expeditiously. If the judiciary allows trials to stagnate at any stage due to neglect, [causing] proceedings to take an unreasonable time to complete, the cause of justice would have been defeated.

Characterised at every stage by lack of procedural fairness, the case ended controversially when, shortly after the election loss by President Ahmad Tejan Kabbah in 2007 to Ernest Bai Koroma, the newly appointed Minister for Justice "sprung" Golley and his co-accused from prison in a political decision, reportedly because there was no evidence and therefore no case to answer.³¹ Such a decision contravenes the African Commission's principle:³²

(f) There shall not be any inappropriate or unwarranted interference with the judicial process nor shall decisions by judicial bodies be subject to revision except through judicial review, or the mitigation or commutation of sentence by competent authorities, in accordance with the law.

Releasing Golley and his co-defendants was claimed (apparently without a hint of irony) to be in line with the President's vision for the nation, articulated in his maiden speech:³³

33. Modern Democracy is underpinned by adherence to and enforcement of the rule of law. This is why judicial reform is critical to my government's efforts to ensure the independence and integrity of the Judiciary...

²⁸ Giorgio Agamben, *Homo Sacer : Sovereign Power and Bare Life*, Meridian (Stanford University Press, 1998)

²⁹ Giorgio Agamben, *State of Exception* (University of Chicago Press, 2005)

³⁰ Koroma, above n 25.

³¹ 'Subverting the Rule of Law in Sierra Leone. Open the Floodgates for Lawlessness?', (Freetown), 2008 <<http://www.sierraherald.com/apa-golley.htm>>.

³² ACHPR 'Principles and Guidelines on the Right to a Fair Trial and Legal Aid in Africa' (African Commission on Human and Peoples' Rights, 2003) <<http://www.achpr.org/instruments/fair-trial/>>10, 1 [f].

³³ *Sierra Herald* above n 39

The *Ex-combatants* Case - 2012

With those words still echoing, I turn to the third case, which took place six years after the beginning of *Golley, S v Yusufu Kamara and Others* [2012] SLMC. The facts of the case are that the accused were arrested after an affray outside the Ministry of Defence, during which the Minister, Rtd. Maj. Alfred Paolo Conteh, was allegedly assaulted by the accused after failing to provide them with redress for their claims to pensions promised to them on discharge from the Republic of Sierra Leone Armed Forces. In June 2011 the Sierra Leone Human Rights Commission (HRC) conducted a public hearing at which it was revealed that the ex-combatants de-mobilised as mentally unfit for duty had been discriminated against, in violation of ICCPR Article 26, and denied the pensions awarded to those de-mobilised combatants who had been wounded in action. The HRC found in favour of the ex-combatants and ordered the government to pay their full pension entitlements. Over a year later, they were still not receiving their pensions despite lobbying and public protests. They were charged with conspiracy to commit a crime, riotous conduct, assault, throwing missiles, and malicious damage, and without the assistance of any legal counsel, denied bail by Magistrate Komba Kamanda on the grounds of threat to national security, and remanded in custody to Pademba Road Prison. A number of human rights and fair trial guarantees were subverted during the proceedings, which unfolded over the period between 2 August 2012 and 5 September 2012. ICCPR Article 9 on the right to liberty and security of the person and freedom from arbitrary arrest includes in 9 (3) 'It shall not be the general rule that persons awaiting trial shall be detained in custody'. Section 17 of the 1991 *Constitution of Sierra Leone* states that a person should not be deprived of his personal liberty, while Section 18 guarantees freedom of movement. Section 79 of the *Criminal Procedure Act* 1965 ensures that bail should only be denied in capital offences and where there is a risk of flight or public danger and yet, as the Sierra Leone Court Monitoring Program asserts,³⁴

It is common practice in criminal matters before Sierra Leone courts that the accused person will be remanded to Pademba Road Prison as a matter of course as he or she awaits arraignment and trial. Pademba Road Prison, built as a maximum-security prison for those who have been convicted of crimes, should not be a warehouse for awaiting-trial persons. [The] common practice in Sierra Leone's courts [is] to use discretionary refusal of bail as a means of punishing accused persons even before any evidence has been presented against them in court.

The accused in this case were held in Pademba Road prison for thirty five days, violating ICCPR Article 10.2 (a) 'Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons'. The routine denial of bail violating the ICCPR Article 14 (2) presumption of innocence, has caused such concern that a review initiated in 2007 led to the launch of the 'Bail Policy' by Chief Justice Umu Hawa Tejan-Jalloh in October 2009 which emphasizes that bail is

³⁴ Ibrahim Tommy, 'Guilty until Proven Innocent ... or Given Pardon: Observations of the Proceedings in the State v Ten Ex-Servicemen' (2012) (62) *The Monitor* <<http://www.carlsl.org/home/news-and-notice/588-the-monitorial-a-synopsis-of-the-62nd-edition-of-the-monitor>>, 1.

not a privilege and should not be withheld as has become the practice, as a pre-trial punishment.³⁵

Seen as a transitional justice mechanism, the Bail Policy review is an indicator of progress towards the desired goals of juridical reform, and yet, the ex-combatants case three years after the review, illustrates the twin failures of not impacting on magistrates' entrenched presumption against bail and the legislature's failure to enact the recommendations of the review in an enforceable form. This illustrates the power of social context in that the quintessentially authoritarian nature of Sierra Leonean society and the only partial separation of powers militate against a 'liberal' approach to bail policy. Agamben's state of exception paradigm is more illuminating than transitional justice, especially considering the political implications of the case. The TRC noted that 'Many ex-combatants testified that the conditions that caused them to join the conflict persist in the country and, if given the opportunity, they would fight again.'³⁶ The spokesman for the ex-combatants, Blamor Jessie Jackson, declared as a presidential candidate in the November 2012 elections. The coercion of the judiciary by the Minister is suggested by the way the case was resolved on 5 September when the charges against the ex-combatants were dismissed and all were released prompting the Centre for Accountability and the Rule of Law to observe:³⁷

The magistrate... warn[ed] the accused that if the Minister had testified against them, they would have been convicted, but that the Minister saved them from such punishment. It is professionally questionable for a magistrate, who should be an independent judicial arbiter, to make such a statement when no trial has taken place and not a single piece of evidence was introduced by the prosecution to prove the accused's guilt on any of the charges. When people's fundamental rights are at stake, the justice system cannot be held at the mercy of a government official, or of the state as it tries to gather evidence that probably never existed.

Conclusion

Three cases spanning twelve years targeted by the United Nations Transitional Democracy plan for juridical reform and the unwavering 'straight line' enforcement of the rule of law in Sierra Leone reveal persistent weaknesses in the actualization of human rights. In his fiftieth anniversary of independence address to the nation in 2011, President Ernest Bai Koroma claimed tendentiously, 'Everywhere in the world, our country is being praised for its human rights record,' acknowledging the linkage between state's reputations globally and their human rights record. Despite this posturing, it is still the heavy hand of a sovereign power unrestrained by notions of accountability to the citizens of Sierra Leone, that prevail in other common law countries, that impedes juridical reform. The ultimate seduction of power lies in being he who decides the state of exception, he who decides when to play by the rules and when to use the rules to silence dissent; the state of exception is inimical

³⁵ Allieu Vandi Koroma, 'The Bail Policy: Adopting a Liberal Approach to Complement the Criminal Procedure Act' (2009) *The Monitor* <<http://www.carl-sl.org/home/articles/365-the-bail-policy-adopting-a-liberal-approach-to-complement-the-criminal-procedure-act>>.

³⁶ TRC above n 4, 81 [173].

³⁷ Tommy, above n , 4. (my emphasis)

to the rule of law. It is clearly Giorgio Agamben's paradigm of the state of emergency of the civil war period becoming, by accretion, the rule, transforming a provisional and exceptional measure into a technique of government that haunts the nation, rather than observable indicators of the utopian vision of transitional democracy gaining any lasting traction in the mansions of justice or the halls of power in Sierra Leone.

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