

**Migration Review Tribunal
AUSTRALIA**

MRT RESEARCH RESPONSE

Research Response Number: SLE34340
Country: Sierra Leone
Date: 24 February 2009

Keywords: Sierra Leone – Customary Adoption

Questions

1. Is there any information currently available about customary adoption in Sierra Leone?

RESPONSE

1. Is there any information currently available about customary adoption in Sierra Leone?

According to the Special Court for Sierra Leone, “adoptions are governed by a dual system of laws and custom” in Sierra Leone:

389. In Sierra Leone, adoptions are governed by a dual system of laws and custom. The effects of adoption under customary law are different from those under the common law system. In addition, the Adoption Act does not recognize adoptions carried out under customary law. In effect, practices which have existed under customary law for a number of years do not have any effect in law. A further problem is the practice of fostering which involves a child becoming the ward of a person regarded as a guardian. The guardian or foster parent has custody of the child but in the absence of a law specifically providing for this process, the rights of guardians are tenuous.

390. The Commission recommends that the Government of Sierra Leone urgently review the Adoption laws to incorporate the practice of guardianship and fostering which exists in the common law and in practice (Special Court for Sierra Leone 2004, ‘Recommendations’, *The Sierra Leone Truth & Reconciliation Report*, 19 October, African Union website http://www.africa-union.org/Official_documents/reports/Recommendations.pdf – Accessed 23 January 2009 – Attachment 1).

According to the Sierra Leone Court Monitoring Programme (SLCMP), adoption in Sierra Leone “takes place under both general law and customary law.” The SLCMP continues:

Adoption takes place under both general law and customary law. However, the Adoption Act 1989 does not recognize adoptions being carried out under customary law which governs the majority of the people in Sierra Leone. Customary law is equally vague and unclear with regard to the fostering and guardianship of children. In other words, there are no defined guidelines regulating the relationship between the adopted child and the foster parents. The problem here is that when neither rights are allocated to the adopted child or responsibilities to the foster parents, there is the propensity for the rights of the adopted child to be grossly abused since there are no binding rules regulating the conduct of both the adopted child and those of the foster parents (Mannah, Millicent 2007, ‘Anomalies in National Legislations

Affecting Children in Sierra Leone', Sierra Leone Court Monitoring Programme website, 20 January

http://www.slcmp.org/drwebsite/articles/Anomalies_in_National_Legislations_Affecting_Children_in_Sierra_Leone_printer.shtml – Accessed 23 January 2009 – Attachment 2).

The Adoption Act 1989 is included as Attachment 3 ('The Adoption Act, 1989 (No. 9 of 1989), 29 December 1989' 1989, *Annual Review of Population Law*, Vol.16, No. 116, pp.531-535, source: Sierra Leone Gazette, Extraordinary, Supplement, Vol. 120, No. 70, 30 December 1989, pp. 45-55 – Attachment 3). *The Child Right Act 2007* is included as Attachment 4. Article 108 provides that "Subject to the Adoption Act, 1989, a person who has resided with and taken care of a child as a foster parent for not less than a continuous period of six months, may apply to adopt a child if he is at least thirty years of age" (*The Child Right Act 2007*, Sierra Leone Web website <http://www.sierra-leone.org/Laws/2007-7p.pdf> – Accessed 23 January 2009 – Attachment 4).

A 2003 article in *World View Magazine* reports that "Formal adoption is not a custom in Sierra Leone, where extended families automatically assume parenting responsibilities." According to UNICEF, "Most of the orphans [in Sierra Leone] are cared for by relatives and extended family" (UNICEF (undated), *Sierra Leone – Fact Sheet*, Development Assistance Coordination Office website http://www.daco-sl.org/encyclopedia/5_part/5_3/icef_sl_facts.pdf – Accessed 23 January 2009 – Attachment 5; and Arnold, David 2003, 'Farewell, Freetown', *World View Magazine*, Vol. 16, No. 1, Winter <http://www.worldviewmagazine.com/issues/article.cfm?id=109&issue=25> – Accessed 23 January 2009 – Attachment 6).

A 1975 report on family law in Sierra Leone supported by the Afrika-Studiecentrum, University of Leiden reports that "People who foster or informally adopt such children have no legal protection from claims made by any relatives who may establish a blood tie. After all, under customary law rights over children are controlled by the entire family, not only by the parents." The report continues:

Under customary law, rights over children are held by families, not only by the individual parents. Like all other decisions of importance, decisions affecting children are usually taken in consultation with the other members of the family.

It is common practice for children to live for varying periods of time with relatives other than their parents. Many groups feel that it is desirable for a child to be reared by a relative who will provide strict discipline, as parents are likely to spoil him. The 'ward system', where the child is handed over to non-relatives for training, has been practiced in Sierra Leone for a very long time. Formerly, it would have been impossible for a child to be left without relatives who would take care of him if his parents died. Today, however, it is not uncommon for the relatives of orphaned children to be unable or unwilling to assume responsibility for their care. Nevertheless, there has never been any formal provision for adoption, either under customary law or statutory law. The absence of any provisions for legal adoption is a cause for concern among those couples who wish to provide a permanent home for such children.

...People who foster or informally adopt such children have no legal protection from claims made by any relatives who may establish a blood tie. After all, under customary law rights over children are controlled by the entire family, not only by the parents (Harrell-Bond, Barbara E. & Rijnsdorp, Ulrica 1975, *Family Law in Sierra Leone – A Research Report*, Leiden University website, pp.49-50 & 52 <https://openaccess.leidenuniv.nl/bitstream/1887/554/1/01PUB0000001807.pdf> – Accessed 13 February 2009 – Attachment 7).

Ida Fisk, Lecturer in Law at the University of Sierra Leone, in the Sierra Leone section of *The International Survey of Family Law 1995* reports that “Parents who fostered or informally adopted such children had no legal protection from claims by the natural parents or blood relatives.” Fisk continues:

Some parents or a single person may decide to adopt some of these orphaned, abandoned and often traumatized children. The stark realities of economic survival, the destruction of numerous families during the war and the financial hardship suffered by lower income groups with large families led to the need to find suitable home for unwanted children. Parents who fostered or informally adopted such children had no legal protection from claims by the natural parents or blood relatives (Lisk, Ida E.P. 1997, ‘Sierra Leone – Children in Especially Difficult Circumstances’, *The International Survey of Family Law 1995*, International Society of Family Law, The Netherlands, p.471 – Attachment 8).

Fisk, in a 1992 *The Journal of African Law* article provides additional information on informal adoptions in Sierra Leone:

Informal adoptions existed in Sierra Leone in a variety of situations but for the past decade there has been a growing realization that these arrangements needed a legal stamp in order to provide proper security for the child and for the adopters who often feared that the natural parent might claim possession of the child after a number of years of care by the adopters. The absence of any provisions for legal adoption was a cause of concern for couples who wished to provide a permanent home for children who were not their natural children.

...Since the system of law in Sierra Leone is pluralistic comprising the received English law (there general law), Mohammedan law and customary law, there was a position where under the general law there was no law on adoption while under customary law some kinds of adoption were recognised. However it is doubtful whether this was equivalent to the Western concept of adoption, which involves the “complete severance of legal relationship between parent and child and the establishment of a new one between the child and his adoptive parents”. The purpose of adoption under customary law was not to secure a permanent home for the child but was more as a semi-permanent transfer of legal rights and obligations. The children remained the children of their natural parents and there was no right of succession between the child and the adoptive parent. Only partial transfer of rights was involved and the legal relationship was more in consonance with the custodianship order granted to prospective adopters by some courts in England. In Sierra Leone it is common practice under the “Ward” system for young children to be given to relatives or non-relatives by their parents for education reasons. Often this relationship is equivalent to guardianship or fostering. ...Secondly, a father or mother might wish to adopt his or her own illegitimate child as a means of removing the social and legal disadvantages of illegitimacy. ...Thirdly a barren couple might wish to adopt a child or children of their own. ...Fourthly, many orphan children and other abandoned children came under the care of a children’s home or other philanthropic organisations. ...People who fostered or informally adopted such children had no legal protection from claims by the natural parents or blood relatives. Fifthly, a child might be given to a non-Sierra Leonean couple. ...Finally, there were also cases of step-father

wishing to adopt a child of their wife's previous marriage or their wife's illegitimate child in order to have a united family.

...Section 3 [*Adoption Act*] provides that the applicant or, in the case of a joint application, one of the applicants must be...(b) at least 21 and a relative of the juvenile..."Relative" is defined as a "grandparent, brother, sister, uncle or aunt, or son or daughter of an uncle or aunt, whether of the full blood or by affinity". It also includes anyone who would have been born in lawful marriage and not adopted.

...The rules relating to relatives are less strict, obviously as a concession to the extended family system. They take into consideration circumstances where a brother or sister or other member of the family may have been caring for a juvenile for a period of time whether due to death of his parents or because they placed him in his relative's care. It would be unfair to deprive relatives of the opportunity of adopting such a juvenile if they fulfil all the other requirements of the Act. A minimum age requirement of 21 is enough to ensure that the applicant is of an age to be able to make such an important decision (Lisk, Ida E. 1992, 'The Adoption Act of Sierra Leone', *Journal of African Law*, Vol. 36, No. 1, Spring, pp.28-31 – Attachment 9).

A Briefing Paper published on 25 April 2008 by Dr Lacey Andrews Gale, Researcher at the Feinstein International Center, Tufts University and a former Research Consultant with the International Rescue Committee (IRC) Guinea, Sierra Leone, provides information on child fostering in Sierra Leone:

Since the civil war ended in Sierra Leone, child fostering—whether informal or facilitated by humanitarian agencies and the government – has become the preferred solution for the estimated 800,000+ orphaned, abandoned, and vulnerable children.

...Informal child fostering was widespread before civil wars ripped apart the West African nations of Sierra Leone, Liberia, and Cote d'Ivoire.

...It is commonly said by Sierra Leoneans that "there are no orphans in Sierra Leone." As part of extended family or other types of networks many Sierra Leoneans foster children who became separated from their parents or whose parents died during the war. Fostering is also perceived as a way for families to help their children become educated, improve their chances for an advantageous marriage, learn a trade, and become 'civilized' by living in an urban or peri-urban environment. The fear that children may die as a result of witchcraft may also encourage parents to find alternative homes for their children. A fostering arrangement may also take place between an infertile woman and a female relative, where one or more children will be given to the woman to raise as her own. Indeed, it is often 'special' children who are fostered because they are bright, beautiful, and seen as having promise for future success (Andrews Gale, Lacey 2008, 'Beyond *men pikin*: improving understanding of post-conflict child fostering in Sierra Leone', Feinstein International Center Briefing Paper, 25 April, Child Rights Information Network website <http://www.crin.org/docs/Sierra%20Leone%20Fostering.pdf> – Accessed 23 January 2009 – Attachment 10).

According to Mr Pollar, UN Country Rapporteur, "very often in practice such issues as divorce and adoption were being decided by family and community members outside the State party's legal system". Mr Pollar continues:

44. Mr. POLLAR (Country Rapporteur) ...Noting that, although the Local Courts Act (1963) provided for judges for local courts, very often in practice such issues as divorce and adoption were being decided by family and community members outside the State party's legal system (Committee on the Rights of the Child 2008, *Summary of the First Party (Public) of the 1331st Meeting – Consideration of Reports of States Parties – Second Periodic Report of Sierra Leone*, 6 June, CRC/C/SR.1331, United Nations Human Rights Treaties website http://www.bayefsky.com/summary/sierraleone_crc_c_sr_1331_2008.pdf – Accessed 23 January 2009 – Attachment 11).

Reunite International, a UK charity specialising in international parental child abduction, provides the following information on customary law in Sierra Leone:

Firstly, there is statutory (general) law comprising the English common law and Equity. ...Secondly, there is the customary law of the various tribes in the country and finally, there is Islamic law, for which limited statutory provision is made. ...In general, Islamic law is considered to be part of customary law.

...Many non-governmental organisations that seek to improve the status of women maintain that the constitutional status of women is contradictory. For example, Act No.6 of 1991 grants the protection of the rights of women, and section 6(2) discourages gender discrimination. Under section 27 of the Constitution however, **discrimination is permitted under laws of adoption**, marriage, divorce, burial, property rights and other aspects of personal law. According to the NGO movement, the coexistence of the three separate legal structures do not operate in the interests of vulnerable groups, such as children, women, and rural Sierra Leoneans. The City Courts, which administer general law, are often inaccessible for a large proportion of the population.

...The practice of customary law is permitted under the Sierra Leone Constitution (1991), Chapter XII, section 170 (3). Customary law is practised in Local Courts, and it has not been written down or codified. The Local Courts were established by the Local Courts Act No. 20 of 1963 as amended. In accordance with Section 13 of this Act, Local Courts have jurisdiction to hear civil and criminal cases governed by customary law and the general law and such jurisdiction shall apply to all persons within the limits of the Court's jurisdiction.

The interpretation of customary law is carried out by a chairman and chief councillors. The Chairman should be independent from the paramount chiefs, who used to preside over local courts before reforms were introduced both prior to and after independence. Customary law officers are trained lawyers whose role is to review decisions and provide training, although these positions are not always filled. It is possible for customary law to deal with issues that are reserved by statute for the Magistrate Court, given the lack of access to formal courts and a preference to resolve problems within the community. There is a right of appeal from the local courts to the District Appeal Court, where a magistrate sits with two assessors who are chieftain councillors from the area of the Local Court. The same can take place at the High Court, when a decision of the District Appeal Court is being appealed. Since Islamic law is treated as part of customary law cases involving Muslims are also heard by the Local Courts (Reunite International 2005, 'Sierra Leone', 18 August <http://www.reunite.org/edit/files/Islamic%20Resource/Sierra%20Leone%20Text.pdf> – Accessed 23 January 2009 – Attachment 12).

The US Department of State provides the following information on customary law and traditional justice systems in Sierra Leone:

Local chieftaincy courts administer customary law with lay judges; appeals from these lower courts are heard by the superior courts.

...Traditional justice systems supplemented the central government judiciary, especially in rural areas. Paramount chiefs maintained their own police and courts to enforce uncoded local laws, which acted in parallel with the government's own civil police and court system. Chieftaincy police and courts exercised the authority to arrest, try, and incarcerate individuals.

...Traditional justice systems continued to supplement extensively the central government judiciary, especially in rural areas, in cases involving family law, inheritance, and land tenure. However, the customary law guiding these courts is not codified, causing decisions in similar cases to be inconsistent. Paramount chiefs acting as judges were notorious for accepting bribes and favoring wealthier defendants.

...Both the central government judiciary and customary law courts handled civil complaints; however, there was evidence that corruption influenced some cases. Customary law is not codified, and decisions in similar cases often were inconsistent. Administrative and judicial remedies were available for alleged wrongs, but enforcement was difficult, and there are a number of civil laws and customary laws that discriminate against women (US Department of State 2008, *Country Reports on Human Rights Practices 2007 – Sierra Leone*, 11 March, Section 1e – Attachment 13).

With reference to the Kono people, no information on customary adoption amongst the Kono was found in the sources consulted. The following information may be of interest on the Kono sourced from the 1977 *Historical Dictionary of Sierra Leone* by Cyril A. Foray and 'Manding-Speaking Peoples' by Donald R. Wright in the 1984 *Muslim Peoples*:

The Kono people of Sierra Leone, Ivory Coast, Guinea, and Liberia speak a language closely related to Manding. Some ethnolinguists consider them Fringe Manding group. Their own traditions claim that they were once a powerful people in Guinea and Mali – the same people as the Vai (Gallinas). During their migration from the interior of Guinea toward the Atlantic Coast, one group stopped and settled in 2,000 square miles of mountainous territory in what is today the Kono District in the Eastern Province of Sierra Leone. Smaller numbers of Konos can be found in Guinea and Liberia. There they became known as Vai or Gallinas. Until the establishment of British colonial rule, the Konos experienced considerable violence at the hands of the Mendes. They have a social system based on patrilineal descent. They are mostly subsistence farmers. They have been a very politically active group in Sierra Leone ever since 1955, when Tamba S. Mbriwa founded the Kono Progressive Movement to protect the alienation of Kono land to mining companies retrieving diamonds. The Kono population today exceeds 250,000 people (Olson, James Stuart 1996, 'Kono', *The Peoples of Africa: An Ethnohistorical Dictionary*, Greenwood Publishing Group, Westport, p.297, Google Books website

http://books.google.com/books?hl=en&id=VhuQlawC97sC&dq=%22peoples+of+africa%22+olson&printsec=frontcover&source=web&ots=zwc_CKJEmt&sig=I-ayj9c1Akfx7oU_mp8nBSUf6k&ei=gi2aSYmwHsnUkAW3hJiyCw&sa=X&oi=book_result&resnum=1&ct=result – Accessed 13 February 2009 – Attachment 14).

The social system of the Kono is “based on patrilineal descent.” Reunite International report that under Sierra Leonean “customary law, children are handed over to the husband’s family head upon his death because of the emphasis of patrilineal descent” (Olson, James Stuart 1996, ‘Kono’, *The Peoples of Africa: An Ethnohistorical Dictionary*, Greenwood Publishing Group, Westport, p.297, Google Books website

http://books.google.com/books?hl=en&id=VhuQlawC97sC&dq=%22peoples+of+afrika%22+olson&printsec=frontcover&source=web&ots=zwc_CKJEmt&sig=I-ayj9c1Akfx7oU_mp8nBSUf6k&ei=gi2aSYmwHsnUkAW3hJiyCw&sa=X&oi=book_result&resnum=1&ct=result – Accessed 13 February 2009 – Attachment 14; and Reunite International 2005, ‘Sierra Leone’, 18 August
<http://www.reunite.org/edit/files/Islamic%20Resource/Sierra%20Leone%20Text.pdf> – Accessed 23 January 2009 – Attachment 12).

List of Sources Consulted

Internet Sources:

Government Information & Reports

African Union <http://www.africa-union.org/>

Immigration and Refugee Board of Canada <http://www.irb-cisr.gc.ca/>

Sierra Leone Court Monitoring Programme <http://www.slcmp.org/>

UK Home Office <http://www.homeoffice.gov.uk/>

US Department of State <http://www.state.gov/>

United Nations (UN)

United Nations Human Rights Treaties <http://www.bayefsky.com/>

UN Refugee Agency – Refworld <http://www.unhcr.org/cgi-bin/texis/vtx/rsd>

Non-Government Organisations

Amnesty International <http://www.amnesty.org/>

Child Rights Information Network <http://www.crin.org/>

Development Assistance Coordination Office <http://www.daco-sl.org/>

Human Rights Watch <http://www.hrw.org/>

Reunite International <http://www.reunite.org/>

International News & Politics

allAfrica.com <http://allafrica.com/>

World Magazine <http://www.worldviewmagazine.com/>

University Sites

Leiden University <http://www.leiden.edu/>

Search Engines

Google <http://www.google.com.au/>

Google Books <http://books.google.com/>

Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

List of Attachments

1. Special Court for Sierra Leone 2004, 'Recommendations', *The Sierra Leone Truth & Reconciliation Report*, 19 October, African Union website http://www.africa-union.org/Official_documents/reports/Recommendations.pdf – Accessed 23 January 2009.
2. Mannah, Millicent 2007, 'Anomalies in National Legislations Affecting Children in Sierra Leone', Sierra Leone Court Monitoring Programme website, 20 January http://www.slcmp.org/drwebsite/articles/Anomalies_in_National_Legislations_Affecting_Children_in_Sierra_Leone_printer.shtml – Accessed 23 January 2009.
3. 'The Adoption Act, 1989 (No. 9 of 1989), 29 December 1989' 1989, *Annual Review of Population Law*, Vol.16, No. 116, pp.531-535, source: Sierra Leone Gazette, Extraordinary, Supplement, Vol. 120, No. 70, 30 December 1989, pp. 45-55. (MRT-RRT Library)
4. *The Child Right Act 2007*, Sierra Leone Web website <http://www.sierra-leone.org/Laws/2007-7p.pdf> – Accessed 23 January 2009.
5. UNICEF (undated), *Sierra Leone – Fact Sheet*, Development Assistance Coordination Office website http://www.daco-sl.org/encyclopedia/5_part/5_3/icef_sl_facts.pdf – Accessed 23 January 2009.
6. Arnold, David 2003, 'Farewell, Freetown', *World View Magazine*, Vol. 16, No. 1, Winter <http://www.worldviewmagazine.com/issues/article.cfm?id=109&issue=25> – Accessed 23 January 2009.
7. Harrell-Bond, Barbara E. & Rijnsdorp, Ulrica 1975, *Family Law in Sierra Leone – A Research Report*, Leiden University website <https://openaccess.leidenuniv.nl/bitstream/1887/554/1/01PUB0000001807.pdf> – Accessed 13 February 2009.
8. Lisk, Ida E.P. 1997, 'Sierra Leone – Children in Especially Difficult Circumstances', *The International Survey of Family Law 1995*, International Society of Family Law, The Netherlands, pp.457-475. (MRT-RRT Library)
9. Lisk, Ida E. 1992, 'The Adoption Act of Sierra Leone', *Journal of African Law*, Vol. 36, No. 1, Spring, pp.28-42. (MRT-RRT Library)
10. Andrews Gale, Lacey 2008, 'Beyond *men pikin*: improving understanding of post-conflict child fostering in Sierra Leone', Feinstein International Center Briefing Paper, 25 April, Child Rights Information Network website <http://www.crin.org/docs/Sierra%20Leone%20Fostering.pdf> – Accessed 23 January 2009.

11. Committee on the Rights of the Child 2008, *Summary of the First Party (Public) of the 1331st Meeting – Consideration of Reports of States Parties – Second Periodic Report of Sierra Leone*, 6 June, CRC/C/SR.1331, United Nations Human Rights Treaties website http://www.bayefsky.com/summary/sierraleone_crc_c_sr_1331_2008.pdf – Accessed 23 January 2009.
12. Reunite International 2005, 'Sierra Leone', 18 August <http://www.reunite.org/edit/files/Islamic%20Resource/Sierra%20Leone%20Text.pdf> – Accessed 23 January 2009.
13. US Department of State 2008, *Country Reports on Human Rights Practices 2007 – Sierra Leone*, 11 March.
14. Olson, James Stuart 1996, 'Kono', *The Peoples of Africa: An Ethnohistorical Dictionary*, Greenwood Publishing Group, Westport, p.297, Google Books website http://books.google.com/books?hl=en&id=VhuQlawC97sC&dq=%22peoples+of+afrika%22+olson&printsec=frontcover&source=web&ots=zwc_CKJEmt&sig=I-ayj9c1Akfxt7oU_mp8nBSUf6k&ei=gi2aSYmwHsnUkAW3hJiyCw&sa=X&oi=book_result&resnum=1&ct=result – Accessed 13 February 2009.