

Women, Debt & Detention:

An Exploratory Report on Fraudulent Conversion
and the Criminalisation of Debt in Sierra Leone



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AdvocAid
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This report was researched and authored by Alison Thompson¹ and Sabrina Mahtani² on behalf of AdvocAid, Sierra Leone.

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AdvocAid supports access to justice and strengthened rights for girls, women and their children in conflict with the law in Sierra Leone. For more information about the organisation and its work, please visit: <http://www.advocaidsl.com>



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Executive Summary

In prisons across Sierra Leone, women are being detained for owing debts.

These issues have been treated criminally based on the charge of fraudulent conversion, and other similar crimes, such as obtaining money under false pretense, as contained within the country's Larceny Act of 1916. The charge of fraudulent conversion alone represents an estimated 10% of all charges issued by the Sierra Leone Police. While such charges are designed to penalize the intent to defraud, the reality is one where corruption, limited financial and human resource capacity, lack of knowledge about legal rights and outdated laws, all contribute to the fact that straightforward disputes over debt too often result in the detention of women in Sierra Leone.

This is particularly evident for women engaged in petty trading activities, a key economic activity for women across the country and a critical source of income for many households. Such trading activities create increased vulnerability to charges of fraudulent conversion given the formal and informal borrowing that such traders are conducting on a daily basis to run and grow their business. Furthermore, borrowing from microfinance institutions (MFIs) has also been connected with charges of fraudulent conversion, with legal professionals and detained women describing how certain MFIs are now referring debt default cases to the police for pursuit through the courts. The poverty and marginalization that women face in Sierra Leone is being compounded through the dysfunctional use of a criminal charge for a civil matter that is more appropriately resolved outside of the court system.

The treatment of debt cases as criminal matters is not only placing additional pressure on a court and prison system that are already struggling to deliver justice with a lack of resources and capacity. The criminalization of debt is placing women and their families in even more precarious positions, disrupting family relationships, entrenching and deepening poverty, contributing to poor health and inflicting stigma.

This research report looks at underlying issues in the justice system to better understand the criminalization of debt in Sierra Leone, its specific impacts on women and what can be done to stop such practices. The report ends with a number of recommendations aimed at ending the criminalization of debt in Sierra Leone and ensuring that all women are able to contribute to their communities with the full protection of the law. AdvocAid is committed to working with key partners and stakeholders to advance these recommendations, support women's empowerment and build a more equitable society in Sierra Leone.

Recommendations:

- **Prohibit Imprisonment for Fraudulent Conversion and Related Cases**
 - Sierra Leone's Government should consider enacting legislation that strictly prohibits imprisonment for fraudulent conversion and other crimes so closely related to the inability to fulfill a contractual obligation, in conformity with Article 11 of the International Covenant on Civil and Political Rights and the African Commission's Ouagadougou Declaration.

- As an immediate step, the Department of Public Prosecutions should take action and place a moratorium on the issuance of any new charges of fraudulent conversion without formalised approval by a senior member of the Department.
- **Ensure Comprehensive Training and Strengthened Accountability for the Police**
 - The comprehensive training of police officers is a priority so as to ensure that they have the knowledge and skills to issue charges in line with the law. Such trainings should include specific information and guidelines on how to differentiate between civil claims and criminal offences, when and how to use alternative dispute resolution mechanisms and the minimum standards for charging.
- **Reform the Bail System**
 - Ensure that bail conditions for minor offences, such as fraudulent conversion, are accessible to the majority of the population, including women, and that opportunities for corruption in the bail process are minimized.
- **Implement Alternative Dispute Resolution Mechanisms for Minor Offences**
 - The use of Alternative Dispute Resolution (ADR) mechanisms, including through community organizations and associations, holds enormous potential for diverting minor disputes, such as a dispute over a debt, away from the court system. ADR could also result in the increased use of non custodial sentences, for example.
- **Support the Role of Paralegals in Strengthening Access to Justice**
 - The role of Paralegals in providing legal information and advice to complainants and defendants in various disputes and offering an alternative mechanism for dispute resolution outside of the court system can be usefully expanded to ensure greater access to justice for all Sierra Leoneans.
- **Ensure Micro-Finance is a Tool for Empowerment**
 - As a starting point, MFIs must move away from current practices, whether they represent official policy or simply the practice of certain employees, that involve the police in trying to force repayment of loans by clients who have defaulted. All MFIs must adhere to the principles and best practices established by the SMART Campaign and look for opportunities to embed trainings and supports so as to ensure that microfinance truly empowers the women they work with.

1. AdvocAid and Background to the Report

AdvocAid, a registered civil society organisation in Sierra Leone, works with one of the most marginalised populations in the country: women and their children in conflict with the law. Established in 2006, AdvocAid supports access to justice and strengthened rights for girls, women and their children in conflict with the law in Sierra Leone, both in the capital city and in the provinces. The organisation's work includes the provision of legal representation for the female accused, access to legal advice upon arrest, paralegal support, and the provision of legal education workshops to women in prison and other women at risk of conflict with the law. AdvocAid also works to provide an increased sense of dignity and independence to women in prison through programmes such as literacy and numeracy classes, the establishment of prison libraries and the provision of medical treatment. AdvocAid implements a post-prison support programme that facilitates the reintegration of released women as active members of their community, through access to counseling, peer-support, skills training and continuing education. Lastly, as part of its overall aim of ensuring that women's access to justice is strengthened, the organisation conducts research and advocacy projects on issues that directly impact women's rights in Sierra Leone.

Over the past 6 years, through its work in the prisons and in the broader community, AdvocAid has noted a disturbing trend: many women who are in conflict with the law, be it through contact with the police, through arrest and detention, or through actual conviction of a crime, are in conflict with the law because of issues of debt. These matters are often considered to represent crimes of 'Fraudulent Conversion', 'Obtaining Money Under False Pretense', or 'Conspiracy to Defraud' and they are enforced through the country's criminal justice system. The impact on women detained under such charges as well as the impact of their detention on their children and their communities is staggering, with the economic impacts on a household often lasting for years after their release. The stigma faced by a woman released from prison, whether found guilty or not, can be even more long term. AdvocAid feels strongly that this 'criminalisation of debt' is an issue that needs to be further understood and highlighted given its relationship to both the protection of women's rights in the criminal justice system and to strengthening access to justice for all citizens as well as its impact on the empowerment of women as economic actors actively contributing to the development of Sierra Leone.

2. Introduction

As Sierra Leonean society continues to rebuild and heal following a decade of conflict and many more previous decades of corruption, exclusion and dictatorship, women in Sierra Leone are increasingly recognized as active citizens and key economic actors. Women in Sierra Leone take on the roles of mothers, community leaders and care-givers as well as critical economic actors and income earners within their families and communities. Yet in taking on such roles, Sierra Leonean women are also at risk of coming into increasing conflict with the law, often finding themselves labelled differently - as criminals.

For many women in Sierra Leone who find themselves in conflict with the law, and eventually behind bars, their crimes often relate to the marginalization that is so closely linked to the same

crucial roles that they play within their families and communities. Likewise, many of their crimes represent the pervasive reality of poverty that defines life in Sierra Leone. The focus of this report will be on one such crime, linked to both poverty as well as women's economic roles in communities across the country. Under Sierra Leone's legal system the crime of 'Fraudulent Conversion' is statutory, created by section 20(1)(iv)(b) of the Larceny Act of 1916. Simply put, this crime relates to a person's inability to repay debts.

Despite the fact that crimes of fraudulent conversion are non-violent and easily mediated outside of the court system, they represent one of the most commonly charged offences by police. In 2009, fraudulent conversion charges alone represented 10% of all charges issued by police, not counting other related charges, such as 'Obtaining Money Under False Pretenses'.³

Further, there is a growing recognition that women are disproportionately charged with and impacted by such offences, as compared to men.⁴ In Sierra Leone many women work as informal petty traders in markets across the country, trading, purchasing bulk quantities, selling and both informally borrowing and lending money on a regular basis. Petty trading is often the only economic activity open to most women, given the high female illiteracy rates. As such, they are particularly vulnerable to disputes over money and one of the only recourses for a complainant in such a dispute is to take the matter to the police. Once the police are involved and a woman is charged and detained, extreme delays in the justice system mean that regardless of whether she is found to be innocent, the case is thrown out or she is convicted, many women end up spending months in sub-standard detention and prison facilities. The burden on the justice system, the loss of economic activity and income and, the often further difficulty that a defendant has to repay debts, all make this an inefficient and counter-productive practice. Almost a decade ago the African Commission on Human and Peoples' Rights endorsed the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reform in Africa. One of its key recommendations for reducing the prison population is "*Decriminalisation of some offences such as ... failure to pay debts ...*"⁵

However, beyond efficiencies, the impact of treating charges of a largely civil nature as a criminal matter also makes it a violation of basic human rights. As it is clearly set out in Article 11 of the International Covenant on Civil and Political Rights (ICCPR), "*No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.*"⁶

Finally, the criminalization of what is often effectively 'debt' has enormous impacts on the well-being of women and their children in Sierra Leone. The United Nations Rules for the Treatment of Women Prisoners (Bangkok Rules) provides that non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate,

³ Interview with Sierra Leone Police (SLP) Corporate Services staff member, 2010.

⁴ This figure is based on information obtained during prison monitoring as well as interviews with legal professionals, police and prison officials.

⁵ African Commission on Human and Peoples' Rights endorsed the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reform in Africa 2003 available at <http://www.achpr.org/instruments/ouagadougou-planofaction/>

⁶ <http://www2.ohchr.org/english/law/ccpr.htm> - Sierra Leone ratified the ICCPR on 23 November 1996.

with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger.⁷

This exploratory research report aims to shed light on why this phenomenon is happening, the impact it is having on women and some potential actions that can be taken to begin to address this situation. The report begins by providing some background information on Sierra Leone's legal and prison systems as well as the position of women in the country, including their particular vulnerability to charges of fraudulent conversion. Subsequent sections outline the role of the police and courts with respect to the ongoing prosecution of cases of fraudulent conversion as well as the impact such charges have on women specifically, particularly given their role as market traders. The report ends by outlining some possible areas of reform and action that could support a more just and effective legal system.

This report is based on primary qualitative research carried out in Sierra Leone in March and April 2010. Additional interviews were conducted in January 2011 and April 2012. Key informant interviews were conducted with representatives from the legal profession, including lawyers and Magistrates, the Sierra Leone Police, prison officials, microfinance organization staff members, female prisoners and female market traders. Handwritten notes were taken and subsequently transcribed and snowball sampling was used to identify a wide range of stakeholders. Some statistics were collected from the Sierra Leone Police (SLP) Corporate Services department as well as Prison Log Books, maintained by the prison administration. The broader findings and recommendations included in this document are based on findings from the interviews and are also informed by AdvocAid's 6 years of operations in the justice system in Sierra Leone.

3. Sierra Leone's Legal System in a Post-Conflict Context

The Sierra Leonean legal system has been described as 'bifurcated' in that there is a formal legal system based on the former British colonial administration that exists in parallel with a customary legal system, based on traditional approaches to justice and delivered through local courts.⁸ While the customary system is more prevalent in rural areas, the formal justice system is most evident in larger urban centres, namely Freetown. These two systems, while reflecting different concepts and modes of justice, are both heavily influenced by patrimonial systems of governance, reflecting the ripple effect of decades of indirect rule of the colonial state.⁹ As emphasised in the country's Truth and Reconciliation Commission reports, the frustrations experienced by citizens prior to the war over a lack of access to justice and the corruption experienced at the hands of security and justice sectors, played critical roles in the unrest, violence and conflict that affected Sierra Leone throughout the 1990s and into the early 21st Century.

⁷ Bangkok Rules available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/C.3/65/L.5>. See in particular Rule 64.

⁸ Maru, 2006.

⁹ Maru, 2006.

Sierra Leone's formal legal system was inherited during colonial times and is, accordingly, based on 19th Century English law. This legal framework reflects Britain at a time of industrial revolution, a framework that was then transplanted to countries across Asia and Africa that became British colonies and protectorates. As such, Sierra Leone's criminal code is composed of various English law imports, such as the Larceny Act, adopted in Sierra Leone in 1916. In line with changing social and economic realities, the English legal system has since reformed or repealed many of the laws developed in this era. In Sierra Leone, such laws largely still remain.

Not only is Sierra Leone struggling with issues of legal reform but it is also struggling to address the legacy of conflict, corruption and neglect and the impact this has had on public institutions. Sierra Leone's courts and prisons were chronically underfunded and mismanaged prior to the country's conflict and these dysfunctions continue to the present day. While in the post-conflict period there have been and continue to be significant efforts underway to reform and support these systems, their afflictions are complex and difficult to address through time-limited donor interventions and the limited capacity of government. For many ordinary Sierra Leoneans, not much has changed in their experiences with the legal system since Independence, with minimal real impacts on the well-being of the country's population.

As stated in a report prepared by the United Nations Integrated Office in Sierra Leone (UNIOSIL) in Sierra Leone:

"the justice system, especially as it relates to incarceration of accused persons, has become a violator of the rights and fundamental freedoms of the accused, rather than the protector of those rights as contemplated by the Constitution and laws of the country. Critical areas of concern include the prolonged delays in trials, prolonged pretrial detentions, lack of legal representation, excessive bails, excessive fines, and excessive punishments."¹⁰

The following section looks more closely at these issues and the impact of prolonged delays in trials and pre-trial detention.

3.1 Case Backlogs and Delays

A significant issue that persists within the legal system in Sierra Leone is the excessive length of time that many detainees spend waiting for their case to progress through the court system. There is limited information available about the length of time that cases take to progress as relevant agencies, including the Director of Public Prosecutions, do not collect data or track case preparation and progression in a systematic way. However, several studies by external stakeholders point to massive delays, and the concomitant violation of detainees' rights.

According to various human rights organisations, pretrial and remand detainees spent an average of three to five years in pretrial detention before courts examined their cases or filed formal charges.¹¹ In 2007 UNIOSIL reported that some prisoners were detained for periods of up to 2 years without a court appearance and that many trials were subject to excessive

¹⁰ UNIOSIL, 2007.

¹¹ See for example, US Department of State, 2011.

adjournments. In a study conducted for the Justice Sector Development Programme (JSDP), a review of over 600 records in the Freetown courts revealed that it took on average 1,021 calendar days (2.8 years) for a case to move from initial case registration in the Magistrates courts to a conclusion in the High Court.¹² This study also found that 55% of remand prisoners in Makeni had cases that had been adjourned more than ten times.¹³ Prison Watch, a Sierra Leonean NGO, estimated that in 2010, of the 1,263 prisoners in Freetown's maximum-security prison, only 584 were convicted.¹⁴

Such extraordinarily long periods of time spent both on remand and waiting for cases to wind their way through the courts is in direct violation of detainees' legal rights, as set out in Article 9 of the ICCPR.¹⁵ Furthermore, such excessive delays are linked to both serious offences as well as more minor ones, including that of Fraudulent Conversion. In relation to minor offences, it is not uncommon for individuals to be detained for significantly longer periods than the relevant custodial sentence (assuming the individual is actually convicted). As noted in a Criminal Case Management Handbook developed in Sierra Leone by JSDP: "unsurprisingly, with a system so clogged up as this, some cases are never concluded, files go missing and accused and witnesses become untraceable as they change addresses during the duration of the case. All too often, those remanded in custody are kept in prison for years sometimes for relatively minor offences only to be acquitted and discharged later. This situation has not only led to a breach of human rights, but has deprived accused persons and victims of a sense of justice having been done."¹⁶

The extended delays in the courts reflect several issues, including:

- excessive case back-logs;
- delays during the pre-committal phase, often related to incorrect charging or weak investigation;
- lengthy indictment preparation, with delays related to the limited capacity of the Office of the Director of Public Prosecutions (DPP) and limited infrastructure; and
- delays during the trial itself, namely related to witness unavailability or non-attendance and a lack of jurors.

Beyond capacity limitations in terms of personnel and financial resources, the courts are also characterized by what has been described as an 'adjournment culture', one in which magistrates are considered to adjourn hearings with unnecessary frequency.¹⁷ A recent Amnesty International Report stated "*Magistrates were overworked and under-trained. Constant adjournments, missing case files, lack of transport for prisoners to and from court, and a shortage of Magistrates created lengthy delays.*"¹⁸

The riots that occurred in Bo prison in 2009 were in protest against what prisoners saw as excessively lengthy pre-trial detention, with constant adjournments and delays in hearings, and a systemic lack of access to justice. This sense of frustration is palpable throughout the corridors and the cells of the country's prison system.

¹² Markwick, 2009.

¹³ Markwick, 2009.

¹⁴ US Department of State, 2011.

¹⁵ Please see: <http://www2.ohchr.org/english/law/ccpr.htm#art9>

¹⁶ JSDP, 2006.

¹⁷ Marwick, 2009.

¹⁸ Amnesty International, 2012.

3.2 Prison Infrastructure and Overcrowding

Not only do detainees in Sierra Leone's prisons often spend considerable amounts of time on remand, waiting for trials to complete, they also spend this time in detention in what various human rights observers have consistently noted as conditions below minimum international standards. Such conditions are characterized by overcrowding, lack of access to food, poor water and sanitation systems and insufficient medical attention.¹⁹ Overall, Sierra Leone's overcrowded and under-resourced prisons impact on the ability of the State to uphold the basic rights of detainees and ensure minimal levels of prisoner well-being.

The lengthy periods spent by many detainees on remand whilst awaiting court appearances and trials has major repercussions on levels of over-crowding in the country's decaying prisons. The Sierra Leone Prison Service makes many worthwhile efforts to meet the overwhelming needs of prisoners. However with extremely limited resources and capacity, the need for investment and reform remains extensive. Much of the country's prison infrastructure was built under colonial rule, with the maximum-security prison, Pademba Road prison, having been constructed in 1914. It was designed to house 324 prisoners. It had a population of 1,263 inmates in October 2010, according to Prison Watch Sierra Leone. This figure continues to increase with a total population of 1,325 in June 2012, according to the Sierra Leone Prison Service²⁰. With prisons at an estimated 300% over capacity, access to basic services and sanitation inside the prisons is extremely limited.

This extreme overcrowding means that prison cells, measuring six feet by nine feet, at times house up to nine prisoners. There are no proper toilets inside the older prison facilities, ventilation and lighting in cells remains inadequate and prisoners often sleep on the floor without mosquito nets or screens on the windows. With regards to medical services, there is a single prison doctor for a prison population of over 1,300 in Freetown and even when inmates are able to see a medical professional there is rarely any required medication available.

According to Prison Watch's recent assessment of prisons, beatings, solitary confinement, reduction in or total denial of food rations, and forcing prisoners to sleep on a wet floor were routine disciplinary measures.²¹ Also noted by Prison Watch, prisoners reported being beaten by gangs of other prisoners at the incitement or direction of prison officials as a means of inflicting punishment while protecting prison staff from blame.²²

Prisons in Sierra Leone were rarely built with separate facilities for women and where women are detained, their quarters are often makeshift and cramped. Furthermore, women prisoners detained for serious offences are often housed together with women detained for minor offences. In many prisons men and women may be held in separate cells in the same block, thus often sharing facilities. In some facilities, women have less access to places of worship, or to skills training and rehabilitation programs for example, which are often run exclusively for male prisoners. Female detainees who are pregnant or lactating also face significant difficulties in

¹⁹ US Department of State, 2011.

²⁰ Interview with Sierra Leone Prison Service Official, 2012.

²¹ Prison Watch, 2010.

²² Prison Watch, 2010.

accessing basic medical support, adequate nutrition and clean water.²³ Conditions for female detainees are still well below the standards provided in the Bangkok Rules.²⁴ There have, however, been some promising recent developments with regards to the conditions of women held in detention, with the construction of a new facility for convicted female prisoners in Kenema and the recent move of female detainees in Freetown to the former-Special Court detention facilities.

3.3 The Lack of Legal Representation and Access to Bail

Access to justice remains a critical issue for the majority of Sierra Leoneans. Many involved with the justice system encounter significant barriers, including securing legal representation and accessing bail. Access to legal representation is a particularly critical issue in a country with elevated levels of illiteracy and poverty and a court system that is so back-logged it can take years for a case to move forward. Having access to a lawyer can help the accused understand the charges against them, ensure timely case progression, locate lost or missing case files, ensure due process and trial rights are respected, and argue the accused's case on their behalf. Importantly, with charges such as fraudulent conversion, lawyers can also play a role in pursuing alternative dispute resolution measures and mediation between the parties, potentially avoiding court and prison-time altogether.

As noted in a UNIOSIL report on the prison system more than 90% of the sentenced inmates interviewed stated that they did not have any legal representation during their trials and only 10% of the remand inmates interviewed had legal representation during their trial.²⁵ In 2010, another report estimated that only 5 - 10% of prisoners had legal representation, primarily due to financial constraints.²⁶ Furthermore, AdvocAid's research in the prisons confirms that not only do an overwhelming majority of detainees not have access to legal representation, many inmates do not understand the nature of the charges against them.

For many women who find themselves caught up in the legal system, they lack an understanding of basic legal concepts and the legal rights to which they are entitled. The overwhelming majority of women charged with fraudulent conversion are illiterate and do not have access to a lawyer, often not understanding the difference between pleading 'guilty' or 'not guilty'.²⁷ When women accused of fraudulent conversion are asked in court whether they took the money or property ("Yu tek di moni?"), they will often admit to this as they did indeed receive the money or property which was lent to them.²⁸ However, they do not understand, or it is not made clear, that what is being asked is whether they intended to take the money loaned to them and not return it. This is clearly illustrated in a case study from the UNIOSIL report:

²³ For more information of the situation of women and children in prison in Sierra Leone, please see Prison Watch Sierra Leone, 2008, Mahtani and Thompson, 2008, and Robertson, 2008.

²⁴ Please see: <http://www.un.org/Docs/journal/asp/ws.asp?m=A/C.3/65/L.5>

²⁵ UNIOSIL, 2007.

²⁶ US Department of State, 2011.

²⁷ Interview with AdvocAid staff member, 2010.

²⁸ Interview with AdvocAid staff member, 2010.

“Ibrahim Bangura, a business man, received a loan of Le 3 million from his in-law, and when the matter was taken to the Makeni Police, following delay in payment, the Police charged him with fraudulent conversion. Upon his first appearance, he was asked if he owed the complainant the money, and when he answered in the affirmative, it was deemed to be a plea of guilty to the charge of fraudulent conversion. He was immediately sentenced to 7 years imprisonment with no alternative fine.”²⁹

In Sierra Leone, legal representation is both expensive and in limited supply. With the formal legal system concentrated in Freetown, there are few lawyers or magistrates permanently based outside of the capital. Of the 10 magistrates working in 2010, five are based in Freetown and the other five rotate between 12 different provincial magistrate courts. Of the 12 High Court judges, 10 sit in Freetown. Of the 500 lawyers in the country³⁰, just seven lawyers work in the rural areas, where 80% of the population live.³¹ Some major provinces do not have any resident lawyers, such as Kono. While some Freetown-based lawyers will take on cases in the provinces and travel back and forth for hearings, the arrangement is often a difficult one to maintain given unpredictable and demanding court schedules.

Access to a lawyer is, however, important on several fronts, including with regards to accessing bail. While the Criminal Procedure Act 1965 makes provision for bail, in practice there is seemingly little clarity regarding grounds for its application. Sierra Leone’s bail regime has been described as ‘too rigorous’ and as ‘inconsistent and excessive’.³² The practice of releasing the accused person upon their own recognizance is seldom used and while bail is routinely granted, the conditions are incredibly difficult to meet for the majority of the accused given the high rates of poverty in the country. UNIOSIL found that 80% of inmates interviewed could not fulfill their bail conditions.³³ Such bail conditions often require homeowners to stand as surety (requiring a person with a “house book” or property title). These conditions further marginalise women given their very limited property rights in the country. Furthermore, corruption in the courts remains common, with poorly paid clerks often requiring accused persons to pay money before bail papers are produced.³⁴ With limited access to bail and legal representation, many accused remain in prison for excessively long periods, longer than what they would be required to serve if convicted of the charges.³⁵

In a positive step forward in addressing access to justice, a Pilot National Legal Aid scheme was initiated between 2010 – 2011 in Freetown, supported by the Justice Sector Development Programme (JSDP).³⁶ Alongside this pilot, a few non-profit organisations around the country provide access to free legal advice and representation for detainees.³⁷ Whilst these efforts have often been successful in providing access to legal aid services for impoverished detainees, they are reaching a very small percentage of those in detention and the need for legal services in the

²⁹ UNIOSIL, 2007.

³⁰ Interview with member of Sierra Leone Bar Association, 2011.

³¹ OSJI, 2010.

³² UNIOSIL, 2007 and US Department of State, 2011.

³³ UNIOSIL, 2007.

³⁴ Interviews with Sierra Leonean legal professionals, 2010, AdvocAid paralegals, 2012

³⁵ UNIOSIL, 2007.

³⁶ JSDP is an initiative of the Government of Sierra Leone, funded by the UK Government.

³⁷ Organisations currently providing legal aid services for people with cases in the criminal justice system in Sierra Leone include Timap for Justice, and AdvocAid.

country, particularly the provinces, remains extensive. In the absence of a more comprehensive legal aid scheme, detainees are especially dependent on the role of the police and the courts in ensuring accurate charges are laid and due process is observed.

3.4 The Gendered Impact of the Law

As one writer put it, many women in Sierra Leone “... have the double burden of being women and being poor.”³⁸ The Truth and Reconciliation Commission also noted that:

“women’s lack of economic empowerment contributes to their vulnerability and to the “feminisation” of poverty.”³⁹

Women in Sierra Leone today are often considered to be, and treated as, secondary citizens. They are faced with limited access to land, capital and other critical resources linked to livelihoods, often leaving them dependent on male family members and husbands for survival and well-being.

The impacts of such gender disparities are evident in the country’s economic realm as well as in its legal system. Following the conflict that ended in 2002, various measures have been implemented in an attempt to strengthen the justice system in the country. These include initiatives such as community policing, the training of magistrates and local authorities, the amendment of the Local Courts Act, the setting up of the Family Support Unit (FSU) and the Justice Sector Development Programme.⁴⁰ The ‘Gender Acts’ represent a key area of much-needed legal reform with respect to improving the protection of women’s rights. The ‘Gender Acts’ were introduced in 2007 to address issues of domestic violence and women’s inheritance rights, for example.⁴¹

However, much remains to be done. In particular, many areas of the law may not specifically target women but given the country’s antiquated laws inherited from British colonial powers, and women’s marginalization within Sierra Leonean society, the application of these laws often have specific and particular negative impacts on women’s rights and well-being. Even a basic legal procedure such as a bail application requires detainees to present a surety to the courts. As outlined above, sureties must often be property owners and given the historic inability of women to own property in Sierra Leone, women prisoners are effectively dependent on wealthy male relatives or associates to step forward as sureties. Furthermore, many women are in conflict with the law due to issues relating to family disputes, domestic violence or poverty, complicating any attempts at securing a surety. More often than not, the reality is that women prisoners are unable to meet such bail requirements and thus remain in detention.

Women in Sierra Leone are also affected by existing laws in a different way than men given their different socio-economic roles and status. Indeed women are routinely charged, tried and convicted for crimes related to their status as wives, as mothers and caregivers as well as

³⁸ Solomon, 2005.

³⁹ TRC Report, 2005.

⁴⁰ Sheriff, 2006.

⁴¹ For more information on the ‘Gender Acts’ please see, for example: <http://www.carl-sl.org/home/reports/298-sierra-leone-parliament-passes-the-gender-bills-into-law>.

income-earners engaged in economic activities vulnerable to police extortion.⁴² As caregivers, women are often targeted as responsible for the illness or death of children in their care, even in the face of limited or no evidence that would demonstrate their guilt. In the absence of basic medical services or autopsies and limited criminal investigation capacities, the sudden death of a baby or child often throws suspicion onto the caregiver in an attempt by a family or community to explain such phenomena and accord responsibility.⁴³ Further, as wives, women can be arrested for the actions of their husband: in certain instances women are imprisoned in place of their husband if he cannot be found while at other times women are imprisoned together with their husband, despite no evidence to indicate involvement of the wife in the given crime.⁴⁴

In terms of their economic role, many rural and low-income women in Sierra Leone earn income through petty trading. Such trading activities exist largely in the informal economy, with most deals based on verbal agreements between parties. They often centre around the purchase and sale of perishable foodstuffs at local markets, where female traders handle dozens of undocumented cash transactions every day. While such economic activities represent critical sources of income for many women and their families, they are also subject to a host of problems: informal taxation in the markets, insecurity with goods and cash, disputes with other traders over territory and transactions, as well as problems with suppliers and buyers as transactions are rarely recorded. The majority of such traders have very limited literacy and numeracy skills, with disputes, often related to payments and debts, common place. Opportunities for corruption and exploitation at the hands of police as well as other vendors are also an every day occurrence in many markets. In interviews with market women, they felt they had little or no recourse against police who demand 'taxes' or other payments under threat of arrest, for example.⁴⁵

In the different ways highlighted above, when women come into conflict with the law, it often reflects the lack of power they have in their communities, and their marginalized position vis-à-vis the law. The charge of fraudulent conversion is a prime example of how women's economic role, and the related weaknesses in Sierra Leone's justice system, places them at particular risk for contact with the police, courts and prison system.

⁴² AdvocAid's legal aid services regularly support women charged with crimes related to their position as wives, mothers, caregivers and traders.

⁴³ Interview with AdvocAid staff member, 2010.

⁴⁴ Interview with AdvocAid Staff member, 2010.

⁴⁵ Interviews with female market traders, 2010.

4.0 Debt as a Crime

Sierra Leone's criminal code, the Larceny Act, was established in 1916 and the country's Criminal Procedure Act was adopted in 1965. Both Acts are largely based on British equivalents and have been the subject of minimal reform in Sierra Leone since their initial adoption. This lack of reform exists despite fundamental differences with the British context from the outset as well as subsequent and significant changes to Sierra Leonean society and its economy over the past century.

The crime of 'fraudulent conversion' is statutory and is created by section 20(1)(iv)(b) of the Larceny Act 1916. The Act defines the crime as follows:

"Every person who having either solely or jointly with any other person received any property for or on account of any other person; fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property or any part thereof or any proceeds thereof; shall be guilty of a misdemeanor and on conviction thereof liable to penal servitude for any term not exceeding seven years."

The crimes of 'conspiracy to defraud' and 'obtaining money under false pretence' are also closely related to the crime of fraudulent conversion.

In England and Wales, the Larceny Act was reformed in 1968 and 1978 and is now constituted under the Theft Act, which was reformed again in 2006. This Theft Act remains broad enough to address charges of fraudulent conversion when they do occur but excludes any specific charge relating to this crime given its rarity and specificity.⁴⁶

In Sierra Leone, fraudulent conversion relates to the use of property for purposes other than that for which it was given and/or intended. As noted by a senior member of the Sierra Leone Police (SLP), aspects of fraudulent conversion border on debt and there is a slim and nuanced distinction between criminal and civil aspects with this offence. Reflecting this ambiguity, fraudulent conversion charges in Sierra Leone are often applied to situations where the debtor is unable to repay a sum of money they had initially agreed to repay the complainant. The specific intent of the complainant to defraud is not always evident and several legal professionals noted that fraudulent conversion in Sierra Leone has evolved far beyond the definition contained in the Larceny Act.⁴⁷ In 2007, UNIOSIL reported that:

*"complaints arising out of contractual obligations, such as debt, which are civil in nature, are routinely converted into criminal offences and the debtor charged, detained, tried and convicted without legal representation."*⁴⁸

In the current legal system, fraudulent conversion is regularly charged and heard in the Magistrates' courts. According to Sierra Leone Police records, fraudulent conversion comprised approximately 10% of all charges laid by police in 2009.⁴⁹ The related charges of Obtaining

⁴⁶ Interview with JSDP staff member, 2010.

⁴⁷ Interviews with legal professionals, 2010.

⁴⁸ UNIOSIL 2007.

⁴⁹ Interview with SLP Corporate Services staff member, 2010.

Money Under False Pretences and Conspiracy to Defraud, each based on the inability of a debtor to repay the creditor, represent hundreds of additional charges laid by police, however these numbers are not officially tracked by the SLP.

4.1 Fraudulent Conversion in the Courts and Prisons

The high number of fraudulent conversion charges issued by the SLP and pursued in the criminal justice system reflects the ambiguity and discretion involved in such a charge. Such cases often lack clear criminal intent to defraud on the part of the defendant and are thus difficult to investigate for the police and difficult to prove in the courts. Yet, as evidenced by the sizable prison population charged with fraudulent conversion or related crimes, it continues to be heard and successfully prosecuted in Sierra Leone's courts.⁵⁰

Women tend to be disproportionately affected by charges of fraudulent conversion, as noted by several legal professionals interviewed for this report.⁵¹ This over-representation reflects women's poverty and marginalization in Sierra Leone as well as their economic role in petty trading activities. As one Court Registrar put it, most of the cases that come through the courts that involve women are linked to charges of fraudulent conversion or obtaining money under false pretences.⁵² Fraudulent Conversion and associated offences remained the largest number of offences behind the imprisonment of women, in 2009 and 2010 according to Sierra Leone Prison Service statistics.⁵³

Despite its treatment as a routine criminal matter, many within the legal profession and prison system in Sierra Leone consider fraudulent conversion as a civil matter of debt. In interviews with magistrates, lawyers and prison staff, there was a clear recognition of the civil nature of fraudulent conversion cases.⁵⁴ One prison staff member, for example, remarked that the majority of fraudulent conversion cases she saw in the female section of Pademba Road Prison were straightforward cases of debt.⁵⁵ A legal practitioner noted that ordinary civil contracts involving defaults on payment are routinely criminally charged, a practice often allowed in the courts given that the charges of fraudulent conversion and obtaining money under false pretence are considered to be criminal acts under the law.⁵⁶ Even in interviews with magistrates, they recognized that many of the cases of fraudulent conversion that appeared in their courts were matters of debt that could be handled through mediation and alternative dispute resolution mechanisms.⁵⁷

⁵⁰ Interview with AdvocAid staff member, 2010.

⁵¹ Interviews with legal professionals, 2010.

⁵² Interview with Registrar, 2012.

⁵³ Statistics supplied by the Sierra Leone Prison Service for 2009 and 2010.

⁵⁴ Interviews with legal professionals, 2010 and 2012.

⁵⁵ Interview with Sierra Leone Prison staff member, 2010.

⁵⁶ Interview with legal professional, 2012.

⁵⁷ Interviews with Magistrates, 2012.

Fraudulent Conversion Case Study #1 – Saffa⁵⁸

Saffa is a young woman who was forced into a marriage with an older blind man by her Uncle. Her husband was already married so she had the lower status of a second wife. She has no effective business to sustain herself and her four children and her disabled husband cannot provide for them sufficiently.

Saffa began market trading with a woman, Rugiatu, but was unable to pay her the money owed or produce the goods leant, eight bags of pepper. Rugiatu gave Saffa time to continue trading to give the money back but she was unable to do so and Saffa was detained at Robganah Police Station pending investigation.

Saffa's Uncle managed to secure her police bail on the promise that the family would try to pay back the debt within a week. However, they failed to do so and Saffa was arrested again and detained. Her Uncle refused to stand as her surety as he stated that neither the family nor Saffa could pay back the money owed.

AdvocAid's Makeni paralegal met Saffa during a monitoring visit to a police station. The paralegal then met with Saffa's husband to try and find another surety given that his blindness precludes him from standing as a surety. The paralegal eventually convinced Saffa's Uncle to stand as a joint surety with another family member and she was released on bail. The family also paid back some of the debt and it was agreed that the rest would be paid back by Saffa in installments.

4.2 The Role of Complainants

The initial push to have ordinary disputes related to debt treated as criminal matters often originates from the complainants themselves. Complainants do not necessarily want the accused to actually be convicted, which would result in the payment of a fine or jail time, and the less likely possibility or further delayed repayment of the debt to the complainant. Rather, the initiation of criminal proceedings is often thought to create pressure on the accused, their families and guarantors to repay the debt in question. This was recognized by several lawyers and magistrates interviewed. The sense amongst many complainants is that the money is more easily recovered if the charge is pursued as a criminal matter, reflecting the additional pressure that police and the possibility of jail-time and additional fines can exert. As noted by a Sierra Leonean lawyer, often as hearings are going on, so are negotiations between the two parties regarding a repayment plan. Several magistrates interviewed for this report stated that they often allow for extra time before the start of hearings on charges of fraudulent conversion for this very purpose, recognizing that many parties are able to reach a settlement at this time.⁵⁹

⁵⁸ Pseudonyms are used to protect the former prisoner's identity as well as that of her children.

⁵⁹ Interviews with Magistrates, 2012.

The pursuit of debt through the criminal system by a complainant also reflects the lack of knowledge of civil court procedures in Sierra Leone and difficulty in access, especially for those living in the provinces. There is no “small claims court”, for example, where complainants can bring low value civil disputes without the need for a lawyer at low cost. Civil matters tend to require greater expense to be borne by the complainant, including the hiring of private counsel, than criminal matters, which are pursued through the courts by the State.

Yet, aside from the desire of complainants to pursue matters of debt criminally, the police and courts also play key roles in perpetuating this system.

4.3 The Role of the Police

As noted in the 2007 UNIOSIL report, complaints arising out of contractual obligations, such as debt, are routinely treated as criminal offences. The accused is charged under the wrong offence by the Police Prosecutors and they are detained, tried and convicted as a criminal.⁶⁰

Yet to understand why such a practice persists, it is important to understand the function the criminalisation of debt can play for police. This function reflects two key elements: the first relates to the police’s ability to appease the complainant if the matter in question is charged as a crime and the second relates to the benefit to police officers from opportunities for bribery and corruption, as officers often demand sums of money from complainants in return for charging a case as a crime under the Larceny Act 1916.⁶¹ A senior member of the SLP acknowledged the role of corruption in police charges of fraudulent conversion.⁶² Interviews suggested that many police officers welcome such debt cases as they take a cut of the amount owed if it is eventually paid back.

Police corruption in Sierra Leone is a reality, and has been consistently documented and reported on.⁶³ While the situation has improved significantly since the end of the country’s decade long conflict, police corruption is still perceived by many Sierra Leoneans as endemic.⁶⁴ Police salaries are low and patronage networks remain strong.⁶⁵ Police are thus at times influenced by complainants to arrest and criminally charge accused debtors, based on relationships and favours as well as the payment of bribes, for what would otherwise be considered a civil matter.

As several legal experts in Sierra Leone noted, concerns relating to the crime of fraudulent conversion often start at the police station when a complaint is brought forward. The police face many challenges, including a lack of resources, poor investigatory capacity and a lack of legal

⁶⁰ UNIOSIL, 2007.

⁶¹ Interview with SLP Senior Staff member, 2010.

⁶² Interview with SLP Senior Staff member, 2010.

⁶³ Sierra Leone was ranked 150th out of 179 countries in Transparency International’s Corruption Perceptions Index 2007 and the police are often described as the ‘most corrupt’ state institution. In 2011, the Anti Corruption Commission ran a corruption perception survey and the police were perceived to be the most corrupt officials in Sierra Leone. (Awoko Newspaper). For more information, please refer to Albrecht, 2010.

⁶⁴ Albrecht, 2010.

⁶⁵ For further information, please refer to the Institute for Security Studies, 2009.

knowledge.⁶⁶ Too often, this lack of capacity at the level of the police means that charges are laid with a limited review of evidence. Police and police prosecutors lack training with regard to the application of the law and there is often little or no agreed on and formally communicated basis for charging.⁶⁷ While each charge should be reviewed by senior police officers connected with the Department of Public Prosecutions (DPP), the reality is one where a lack of resources and enormous backlogs mean that only select files, often those with more serious charges, are reviewed before arriving in court. Indeed there remains a single Legal Officer per region in the country to review all cases before they arrive in the courts. This lack of oversight contributes to a situation where many cases entering Sierra Leone's Magistrates' courts are evidentially weak and incorrectly charged.⁶⁸

The Law Reform Commission has indicated that they consider the weak administration of justice as the underlying issue driving the inappropriate criminal charging of debt cases. In interviews with Law Reform Commission Officers, they noted that unless such systemic issues are rectified, a change in the written law will have little impact.⁶⁹ One Commissioner stated that there is a legal obligation on police officers to refer cases to the Law Officer's Department for advice as to whether there is sufficient evidence to charge before the accused is formally charged and the case committed to court.⁷⁰ However, given the limited capacity of the police, this obligation is often not followed.⁷¹

In addition, the investigative capacity of the police is extremely limited. Most cases of fraudulent conversion are charged without an extensive interview process of potential witnesses, and at times, no interviews are conducted. Many such cases are consequently heard in court without any witnesses being called, leaving Magistrates to rely on little evidence beyond the testimony of the complainant or the defendant.

A criminal case management handbook prepared by JSDP in 2006 stressed that police and State Counsel must ensure that investigations relate to allegations of actual criminal behaviour or activity. It referred to the many cases in the Court system that could be dealt with by way of a simple warning and that alternatives to prosecution should be more readily sought. It also noted the preponderance of cases of fraudulent conversion that were based on a debt owed and not repaid, without evidence of intent to defraud. Noting that such matters are purely contractual and should not be dealt with by use of the criminal justice system, the Handbook points to how the involvement of the police in such disputes makes inefficient use of police time and contributes to case backlog at the courts and overcrowding of the prisons system.⁷²

4.4 The Role of the Courts

While complainants and police play a critical role in understanding why charges of fraudulent conversion continue, it is also important to understand why such charges are allowed to be

⁶⁶ Interview with legal professional, 2010.

⁶⁷ Markwick, 2009, Institute for Security Studies, 2009.

⁶⁸ Interview with legal professional, 2010.

⁶⁹ Interviews with Law Reform Commission staff members, 2010.

⁷⁰ Interviews with Law Reform Commission staff members, 2010.

⁷¹ Interviews with Law Reform Commission staff members, 2010.

⁷² JSDP, 2006.

pursued through the courts. Underlying issues within the court system create an enabling environment for incorrect charges to be pursued, with challenges arising from the lack of resources, management and accountability. Some of these issues will be touched on briefly here from the perspective of how they shape the prosecution of fraudulent conversion cases.⁷³

It is important to note that despite its continued pursuit in the courts, fraudulent conversion is, in principle, a particularly difficult charge to prove. Within the court system, prosecuting lawyers or police prosecutors are obliged to prove, beyond a reasonable doubt, the fraudulent intent of the accused. It is this element of intent that is often difficult to prove: counsel must go beyond simply proving the non-fulfillment of a contractual obligation and demonstrate the defendant's intention of not fulfilling the obligation from the outset. The necessary evidence to substantiate such intent is often unclear and leaves ample room for discretion.

Related to the excessively long case timelines as well as the frequency of incorrect charging, as noted in previous sections of this report, is the limited degree of judicial case management that tends to exist in Sierra Leone's courts.⁷⁴ According to a review of the Public Prosecution Department in Sierra Leone, many magistrates lack the experience and confidence to take a more active, interventionist role in managing the cases they hear, including through their ability to discharge or substitute/reassign cases that are incorrectly charged.⁷⁵ Likewise, magistrates are in a position to advise complainants, when appropriate, to hire a lawyer and pursue the case as a civil matter. Yet such active approaches to courtroom management are seemingly uncommon amongst most of Sierra Leone's judiciary.⁷⁶

In interviews with magistrates, several noted that they recognise the frequency that debt cases appear before them as matters of fraudulent conversion. In such instances, magistrates noted that they will try to establish debt re-payment schedules between the parties, for example, and encourage agreement to be reached outside of the courts.⁷⁷ Several noted that while they see such cases clogging up the court system and that they consider them as often more appropriate for mediation, their hands are tied as they feel that since the charge of fraudulent conversion is considered a criminal matter in the country's laws, they have an obligation to hear the case and treat it as such.

A study by the Institute for Security Studies in 2009 noted that:

"One of the reasons for overcrowding in prisons, which itself is an infringement on the rights of prisoners, is the fact that the judiciary sometimes confuses civil matters with criminal matters. Civil matters are supposed to be handled with some degree of leniency and should attract less punishment. Alternatively, some other resolution can be arranged between the conflicting parties out of court. But trivial civil matters, like debt...are often adjudicated to be criminal in nature. This sometimes results in either a long remand for the accused, a prison sentence or an excessive fine."⁷⁸

⁷³ For further information on challenges within the court system, please see for example, Markwick 2009.

⁷⁴ Interview with JSDP staff member, 2010.

⁷⁵ Markwick, 2009.

⁷⁶ Markwick, 2009.

⁷⁷ Interviews with Magistrates, 2012.

⁷⁸ Institute for Security Studies, 2009.

Fraudulent Conversion Case Study #2 – Mariatu⁷⁹

Mariatu's case is an example of what can happen when the police, often at the behest of complainants, put direct pressure on debtors and their families to pay back debts quickly.

Mariatu was given money by the complainant to buy palm oil but she was unable to pay this money back from the proceeds of her palm oil sales. She was convicted in March 2011 for the offence of fraudulent conversion and sentenced to 10 months imprisonment with no fine option at Bo Magistrates Court.

However, the day before she was sentenced and under pressure from the police, her family paid the 500, 000 Leones owing to the complainant, unbeknownst to the Magistrate. The family later came and explained the situation to the Magistrate and he informed them that the matter had to be sent to Bo High Court in order to revoke the sentence as he did not have jurisdiction to overturn his own judgment. The family hired and paid a lawyer to help them. However, there were several delays in having the case transferred and heard by the High Courts owing to the State Counsel not being present to sign necessary documents as well as the lawyer being out of the country.

In the end, Mariatu served a sentence for a debt that had already been repaid.

Sentencing is a further area of seeming ambiguity with charges of fraudulent conversion. Sentencing guidelines are sometimes set by statute however there seemingly remains considerable room for maneuver, with sentencing practices varying widely with regards to the crime of fraudulent conversion. Human rights NGOs operating in Sierra Leone have regularly reported on the lack of clear and transparent sentencing guidelines within the Sierra Leone judicial system as well as significant disparities in sentencing practices and patterns between districts and magistrates.⁸⁰

A review of women prisoners convicted of fraudulent conversion in Pademba Road Prison in Freetown revealed significant variance between ostensibly similar cases. At the time of review, the sentences handed down to women convicted of fraudulent conversion and related charges, such as obtaining money under false pretences, ranged from 3 months to 4 years and 6 months.⁸¹ Most prison terms related to fraudulent conversion made allowances for an alternative fine in lieu of prison time, however this measure provided even more disparity in sentencing, with women being sentenced to similar amounts of time in prison but highly variable alternative fines. For example:

⁷⁹ Pseudonyms are used to protect the former prisoner's identity as well as that of her children.

⁸⁰ US Department of State, 2011.

⁸¹ AdvocAid Review of Fraudulent Conversion Sentences, Pademba Road Female Section: 2005-2009.

- one woman was sentenced to 1 year in prison or a fine of 1 million leones;
- another woman was sentenced to 4 months in prison or a fine of 2 million leones;
- other women were sentenced to a given amount of time with no option for a fine alternative.

While the variable fines can be partly attributed to the different amounts of money owed by the detainee, they vary so dramatically that it is difficult to decipher any sort of underlying pattern. Despite these variances, one magistrate interviewed maintained that magistrates adhere to sentencing guidelines with regards to cases of fraudulent conversion, as based on legislation, and have limited discretion in this area.⁸² Another magistrate interviewed noted that factors such as manner of offence, time frame of offence, magnitude of the injury of the complainant, occupation (considering if they have a means of making repayments), whether any effort to make payments has been made and so on are taken into consideration in sentencing for fraudulent conversion cases.⁸³ What is clear is that the end result, that is the sentences issued for crimes of fraudulent conversion, vary widely for even seemingly similar cases.

While the payment of a fine is often offered as an alternative to jail-time, the vast majority of women in prison are extremely poor, with no sustained means of earning a livelihood before entering prison or whilst in prison.⁸⁴ Most have little contact with family, let alone financial support from them on which to rely. In this context, women's ability to access and take advantage of the fine option is extremely limited and many have little choice but to serve their sentence, which can be months or even years on top of the period already spent on remand.⁸⁵ This is despite the fact that fine amounts are at times as small as 50,000 Leones (equivalent to approximately \$12 USD).

5.0 Fraudulent Conversion in Practice: Market Traders

Women in Sierra Leone represent important economic actors, with a key source of household income often stemming from women's work as petty traders in markets in urban and rural centers across the country. As noted earlier, however, the role of women as traders often places them in a position of vulnerability with regards to the law. Market women are constantly borrowing money, both formally and informally, to make purchases and manage stock. They are also managing informal cash transactions with other traders, with customers and with wholesalers on a daily basis. The opportunity for disputes between these different actors is rife, with one option for someone who is not repaid a debt being to seek recourse through the police. At times, police are involved by the complainant as a tactic to exert pressure on the debtor to repay the sum in dispute, as outlined in **Sections 4.2** and **4.3**. The involvement of police in such disputes over debt often goes beyond mere pressure and results in the criminal charge of fraudulent conversion being issued against the debtor.

In a series of interviews conducted during research for this report, when asked about problems encountered in their work as traders, several market women interviewed, cited debt collection

⁸² Interview with Magistrate, 2010.

⁸³ Interview with Magistrate, 2012

⁸⁴ Prison Watch, 2009.

⁸⁵ Interview with AdvocAid staff member, 2010.

as the major challenge they faced.⁸⁶ Further, many had experienced conflict with the law, be it through encounters with police or actual detention, over a dispute regarding debt. Thus, not only are market women often subject to charges of fraudulent conversion, it is also clear that they struggle with the collection of debts owed to them, often attempting to first resolve the matter directly with the debtor and agreeing on repayment schedules. However, when such dispute resolution is not successful, complainants look to other enforcement mechanisms, such as market associations and, at times, the police. One Market Women's Association Chairperson noted that debtors will sometimes hide from complainants out of fear, given their inability to repay amounts owed, often further aggravating the situation and leading to the involvement of the police.⁸⁷

Fraudulent Conversion Case Study #3 – Fatima⁸⁸

Fatima was a market trader, selling fish at a local day market. She owed 3 million leones (approximately \$300 USD at the time) to another trader but was struggling to repay the sum as her business was not profitable and eventually collapsed. The trader reported her to the police for the unpaid debt and Fatima was subsequently arrested and charged with fraudulent conversion.

Once arrested, Fatima was detained but did not have a lawyer at any stage of her detention or during court proceedings. She pleaded guilty to the charge of fraudulent conversion as she said she did owe the complainant the money, not understanding the specific elements of the charge. The Waterloo Magistrates Court in Freetown sentenced her to 4 years imprisonment in October 2006.

Fatima had 5 children and her youngest child, Michael, was 8 months old when she was convicted. Fatima was still breastfeeding at the time and as she did not have any family or friends who could take care of him, she took him with her to Pademba Road Prison. When Michael was approximately 2 years old he was taken from the prison to an orphanage by the Ministry of Social Welfare, reflecting their policy regarding children in prison. No contact was maintained between Michael and his mother until she was released from prison over 2 years later in October 2010. AdvocAid regularly visited Michael during his time in the orphanage and the distress due to separation from his mother were evident. The orphanage struggled to provide the children in its care, including Michael, with necessary medical and educational resources.

After she was released, Fatima and Michael were reunited. Shortly afterwards, Michael sadly passed away due to poor health. Fatima resumed her market trading activities however her struggles continue: she continues to be reliant on informal lending and borrowing to get by every month. She is now at risk of defaulting on other payments and is worried about the prospect of being re-arrested under charges of fraudulent conversion.

⁸⁶ Based on interviews with 10 female market traders, December 2010.

⁸⁷ Market Women's Association Chairperson interview, 2010.

⁸⁸ Pseudonyms are used to protect the former prisoner's identity as well as that of her children.

5.1 Microfinance Institutions

Several market women interviewed referred to the specific debt-related challenges they faced with microfinance institutions (MFIs), notably high interest rates, strict repayment timetables and risk of default. This was echoed in interviews with justice sector professionals, who pointed to cases where microfinance institutions act as the complainants in cases of fraudulent conversion.⁸⁹

Indeed market women in Sierra Leone are turning to the services of microfinance institutions, both non-profit and for-profit, as a critical source of credit. Given the extreme rates of poverty in the country and the lack of access to mainstream financial services, the majority of Sierra Leoneans do not have access to basic banking services, including facilities such as loans and savings accounts. Microfinance refers to the provision of financial services to low income clients, with such services often taking the form of small-scale loans.⁹⁰ Microfinance services in Sierra Leone have come to play a critical role for many small scale entrepreneurs and business people, with small loans often representing desperately needed financing that enables the purchase of farming tools, wholesale products for petty trading, as well as support for household expenses, for example. It is estimated that there were 11,647 active borrowers with microfinance institutions in the country in 2011, many of whom are women engaged in trading activities.⁹¹

However, far from a panacea, microfinance in Sierra Leone, like the justice system and other institutions, often reflects underlying patterns of poverty and marginalisation. Interest rates on microloans tend to be very high, just to cover their basic costs and ensure that the pool of capital is large enough for more loans. For example, some of the lower interest rates charged by a micro-finance institution (MFI) are those of non-profit organizations, such as the Grameen Bank, which has an interest rate of approximately 20%. For organisations that are offering micro-loans as part of a business model, interest rates tend to be much higher: the average interest rate is estimated to be 30%.⁹²

For many market traders reliant on such forms of credit, when unexpected expenses and emergencies arise, such as a sick child, the traders are often forced to use whatever limited resources are at their immediate disposal to address their household's most pressing needs. Due to the lack of any kind of cushion in the form of personal savings or support through government services, it is not uncommon to hear stories of such households using borrowed credit from an MFI to address the crisis, rather than being able to use such a loan to invest in productive activities, such as petty trading.⁹³ Additionally, most MFIs interviewed highlighted that there was a general lack of business skills and profit making knowledge in Sierra Leone, especially amongst women. It has also been noted that women in Sierra Leone are at greater risk of experiencing gender-based violence and abuse when they take out micro-finance loans and that their husbands or partners often take the money themselves or cut their financial support to the household.⁹⁴

⁸⁹ Interviews with market women, 2012.

⁹⁰ Please see, for example: <http://www.themix.org/about/microfinance>

⁹¹ MixMarket, 2011.

⁹² Please see: http://www.businessweek.com/magazine/content/07_52/b4064045920958.htm

⁹³ Interviews with AdvocAid Staff member, 2010 and with Market Women's Association Chairperson, 2010.

⁹⁴ Interview with Women's Partnership for Justice and Peace (WPJP) staff, 2010.

In such a context, where high interest rates are combined with a potent mix of poverty and gender-based violence, and with households securing multiple loans with various formal and informal lenders with limited business skills training, defaulting on a loan repayment to an MFI is not uncommon.⁹⁵

Yet despite the instability of many women's situations, the majority of MFIs interviewed had a policy of not restructuring loans opting instead, for example, to spread the repayment over a longer time period, breaking it down into smaller amounts. Some stated this was because it would affect their planned financial returns whereas others mentioned that the repayment system was computerised and they would have to restructure on a manual basis, which would be more expensive. However, this leaves women who cannot re-pay their micro-loans in a precarious position with limited options.⁹⁶

While it is extremely difficult to get a sense of numbers, based on interviews with staff at MFIs as well as legal professionals, it is clear that some MFIs are referring certain cases of unpaid debt to police, who are subsequently charging matters as fraudulent conversion.⁹⁷ It seems there is a wide range of practices between and within microfinance institutions and other more informal lending operations when a client defaults on loan repayment. Some work with the client to defer payment for a few months while others resort to more aggressive actions, including the involvement of the police and pursuing the matter through the court system. For example, one microfinance agency that distributes credit to groups of women stated that they encourage group members to go to the police if an individual is unable to pay, and stand as a witness in the court proceedings.⁹⁸ Another microfinance institution interviewed confirmed that their policy is to take incidents of loan default to the police and see it prosecuted in the criminal system, with an estimated twenty such prosecutions pursued to date for the MFI.⁹⁹ The reality of such practices on the part of MFIs, whether part of sanctioned organisational policy or not, is increasingly visible in the country's prisons, with detainees and prison officers often referring to such institutions as 'micro-jail'.¹⁰⁰

5.2 Alternative Dispute Resolution

Several organisations in Sierra Leone are promoting the use of alternative dispute resolution (ADR) mechanisms in addressing issues of debt and other civil matters. The Sierra Leone Market Women's Association (SLMWA), for instance, has a presence in most markets in Freetown and surrounding area, with members working closely with police to promote security in the markets.

Fraudulent Conversion Case Study #4 – Hawa¹⁰¹

⁹⁵ Sierra Leone is ranked 180th out of 187 countries on the 2011 Human Development Index, based on health, income and education indicators. <http://hdrstats.undp.org/en/countries/profiles/SLE.html>

⁹⁶ Interview with MFI staff members, 2010 – 2012.

⁹⁷ Interviews with MFI staff members, 2012 and legal professionals/ paralegals, 2010 - 2012.

⁹⁸ MFI staff interview, 2010

⁹⁹ Interview with MFI staff member, 2010.

¹⁰⁰ Interview with AdvocAid staff member, 2010.

¹⁰¹ Pseudonyms are used to protect the former prisoner's identity as well as that of her children.

Hawa is a market trader from Kenema. She regularly conducted business with two women, from whom she bought rice and bulgar wheat to then sell on credit. The agreement was that she would repay these women in two installments, with such business interactions being conducted regularly for several years.

In 2011, Hawa was not able to pay her creditors on time. Hawa states that someone stole her bag from the market, which contained her earnings and which she needed to be able to repay the initial loan. She asked her two creditors to be patient but they reported the matter to the police station. Hawa was charged with fraudulent conversion and remanded to Kenema Female Prison. Her matter was subsequently charged to Kenema Magistrates Court and Hawa pleaded not guilty to the charge.

AdvocAid's Paralegal tried to facilitate Hawa obtaining bail so that she could try and pay back the money owed. The Magistrates Court granted Hawa bail in October 2011 and AdvocAid's Paralegal contacted Hawa's relatives to see if they would stand as a surety for her. While Hawa's relatives came to Court prepared to stand as surety, the Court Clerk refused for Hawa to be granted bail unless she paid part of the money owing.

Hawa eventually changed her plea to guilty so that she could be sentenced, given the inability of her relatives to pay part of the money owed and thus stand as surety for her bail application. She felt it was better to serve a sentence and be set free rather than spend an unknown number of months on remand. Hawa was sentenced to 5 months imprisonment for the first complainant and seven months imprisonment for the second complainant.

The Association plays a specific role in providing alternative dispute resolution mechanisms, often through Committees, for minor disputes, including with regards to the non-payment of debts and other monetary problems as well as verbal abuse and minor thefts.¹⁰² More complex cases continue to be referred to the police and formal court system. The strength of such ADR methods in comparison to the formal court system relates to a number of elements, including: lower costs, faster and simpler processes, greater interaction between parties and the ability for both complainant and defendant to speak freely and to have proceedings conducted in a language all parties understand. Based on a judgment, the Committee then decides on a range of possible 'punishments' for the guilty party, which often consist of reparations, a fine, an apology and/or return of property, depending on the case. As noted in a handbook outlining the ADR methods employed by the SLMWA, what often happens is the following:

*"the offending party can bow down, touch the feet of the offended person and apologize to them. That person in turn touches the head of the offender as a sign of acceptance of the apology and of forgiveness. Such actions lead quickly and easily to forgiveness and reconciliation and have proven to be one of the best ways of reaching a peaceful settlement."*¹⁰³

¹⁰² Sheriff, 2006.

¹⁰³ Sheriff, 2006.

Further, the handbook stated that:

“the interest of the Committee is not simply to punish its members, but to provide a place where they can resolve disputes peacefully...”¹⁰⁴

This approach, of using community organisations and associations to facilitate mediation and other forms of alternative dispute resolution, is an area of promising practice in the country. Such approaches work to both reduce the burden on law enforcement and to promote the protection of women traders by minimising involvement in the justice system and the related, more severe forms of punishment, including the seizure of property, large fines and jail-time. ADR processes often also improve the likelihood of timely reparation for complainants given the increased ability of the guilty party to repay debts when they are not in prison.¹⁰⁵

Fraudulent Conversion Case Study #5 – Saptieu¹⁰⁶

Saptieu is a market woman from Kabala. She states that a lady from Guinea sold her millet at 600 Leones per cup for her trading activities. However, when the lady returned she claimed that the normal price was Le 2000 and that Saptieu owed her Le 1, 600, 000 (approximately \$370).

The complainant reported the matter to the police and in March 2011 Saptieu was arrested and charged with fraudulent conversion.

Saptieu was subsequently sentenced to 2 years imprisonment by the Kabala Magistrates Court and brought to Freetown Female Prison to serve her sentence. Freetown is about 5 hours drive from Kabala, meaning that Saptieu was separated from her family, without the ability to contact them. Following interventions by civil society and the prison service, Saptieu received a Presidential pardon in Christmas 2011 and was able to return home to Kabala.

6.0 The Impact of Women’s Imprisonment for Debt

Not only is the criminal treatment of debt cases in violation of international human rights treaties ratified by the Sierra Leonean government, it also serves a seemingly limited function in society beyond providing opportunities for corruption and retribution. The courts are backlogged, the prisons over-crowded, public safety has not been strengthened and complainants themselves are often left empty-handed at the end of the criminal trial of fraudulent conversion given the even more limited ability of defendants to repay the amounts owed when they are in prison. The courts have, too often, become a place where complainants

¹⁰⁴ Sheriff, 2006.

¹⁰⁵ Sheriff, 2006.

¹⁰⁶ Pseudonyms are used to protect the former prisoner’s identity as well as that of her children.

attempt a final effort to have their debts repaid, rather than a place where the rule of law is reinforced and strengthened.

When the prison system struggles to transport prisoners to the courthouse due to its lack of a budget for fuel, it is difficult to understand the logic behind the continued prosecution of fraudulent conversion and related charges, which represent approximately 10% of all crimes charged and thus a significant cost in terms of the administration of justice.¹⁰⁷ The diversion of debt cases into out-of-court mediation or other community-based alternatives would create an opportunity for critical resources to be focused on the prosecution of more serious criminal matters. It would also contribute to reducing the case backlog in the courts and raising standards in the country's prisons.

Obtaining Goods by False Pretences Case Study #1 – Musu¹⁰⁸

Musu is a young woman who was working in the provinces. She was selling clothes and owed a lady around \$1000 USD for various clothing items such as men's shorts and shoes. In 2007 she was sentenced to three years imprisonment for obtaining goods by false pretences or a fine of approximately \$1500.

Musu admits that she owed the money but states that she had began paying it back in parts. However, Musu was unable to pay the fine and so she served her sentence, later being transferred to the central prison in Freetown. Whilst in prison she was an inmate teacher, facilitating literacy classes supported by AdvocAid.

Upon release Musu tried her best to rebuild her life and started teaching at a school. However, in 2011 she received a civil default summons stating that she still owed the complainant \$1000, which was owing since 2007. The complaint also filed criminal charges alleging that Musu had made threatening remarks against her and had threatened to kill her, between December 2007 and December 2010.

AdvocAid's Legal Officer represented Musu in both cases. AdvocAid was able to obtain proof from the Sierra Leone Prison Service that Musu had served her sentence and that she was no longer indebted to the complainant. Further, AdvocAid argued that the criminal charges were false (particularly as during most of that period Musu was in detention) and that both actions were vexatious. Both cases were discharged, much to Musu's relief.

This case study illustrates how the legal process is often used by complainants to "revenge" someone whom they perceive has hurt them. It further shows that the complaint's likely objective for bringing criminal charges in the first place (to get back her money) was futile and that a civil summons or mediation would have been far more effective in achieving this objective. Lastly, it clearly illustrates the importance of free legal aid as otherwise Musu may have found herself back in prison at further expense to the State.

¹⁰⁷ Interview with SLP Corporate Services staff member, 2010.

¹⁰⁸ Pseudonyms are used to protect the former prisoner's identity as well as that of her children.

Beyond the toll that these charges take on the justice system, the impact on the women charged, arrested and detained under the charge of fraudulent conversion is enormous. It represents an incalculable cost on the well-being of women as well as their children, their families and communities. The loss of household income and economic activity that results from the imprisonment of a woman is significant, especially in a context of extreme poverty in the country. When a household is deprived of a meaningful source of income, other family members scramble to make up the difference, with very few households having any meaningful savings to cushion such a financial shock. They may be forced into riskier or more insecure income generating activities, involving illegal and black market activities, for instance. Children are taken out of school due to the inability of the family to pay for school fees. The nutrition and health of all family members suffer.¹⁰⁹

Women are the primary caregivers in Sierra Leone, within their families and within their communities. Thus when a woman is imprisoned it often seriously compromises her own emotional and psychological well-being as well as that of her children and extended family. Many women are unprepared for their arrest and have consequently not secured the care of their children before they are placed in detention.¹¹⁰ Once in detention, they often have a limited ability to communicate with the outside world: they are unable to verify the well-being of their children, unable to ensure their children are being cared for by appropriate family members or neighbours and unable to put plans in place for their care for the duration of their detention. Many children of imprisoned women end up in orphanages, as extended family members are unable to take on the care of any more children given their already precarious situations.¹¹¹ The standards of care in such state orphanages are often limited.¹¹² Even when a child is taken in by other family members, AdvocAid has often encountered situations where such children end up being taken out of school and forced to earn an income given the additional pressure an extra child puts on the household. The impacts of parental imprisonment on children are myriad:

“Children may have to take on new roles following parental imprisonment in order to provide domestic, emotional or financial support for other family members. Their relationships with the imprisoned parent and others around them frequently suffer. They may have to move to a new area, a new home or a new school because of imprisonment. The impact that imprisonment can have on the continuity of a mother-child relationship and the ultimate well-being of the child is significant.”¹¹³

Research on the topic notes that ruptured relationships between imprisoned parents and their children increase the likelihood that both parent and child will commit a crime in the future.¹¹⁴

In terms of the financial as well as psychological impacts of imprisonment, they go beyond the detention period. The stigma associated with prison in Sierra Leone means that a woman’s imprisonment can have repercussions long after her release. AdvocAid has observed numerous

¹⁰⁹ See, for example, Open Society Justice Initiative (OSJI), “The Socioeconomic Impact of Pre-Trial Detention”, 2011

¹¹⁰ Robertson, 2008.

¹¹¹ Mahtani and Thompson, 2008.

¹¹² Mahtani and Thompson, 2008.

¹¹³ Robertson, 2007.

¹¹⁴ Presentation by Isabel Altenfelder Santos Bordin, Committee on the Rights of the Child, Day of General Discussion, Geneva, September 2011.

cases where, when a woman is released from detention she finds that her husband, extended family or community, or all, have rejected her. For other women, many feel unable to return to their communities due to the shame of imprisonment. Beyond the significant emotional challenges that women leaving the prison system after charges of fraudulent conversion face, many also must contend with the continued re-payment of the original debt for which they were arrested, while also facing huge financial need in terms of starting up a business again, purchasing clothing and shoes and finding new accommodation, for instance.

Fraudulent Conversion Case Study #6 – Amie¹¹⁵

Amie is the mother of 4 children. She is a market trader and used to sell “junks” (second hand clothing) for a lady. She owed this lady around \$850 USD but was unable to pay her all the money as business had been slow and several of her customers paid on credit as they could not afford to pay the entire price up front. In March 2010, the lady complained to the police and Amie was arrested.

She was eventually released on police bail and tried desperately to pay back the money. Over the next few months she managed to pay back most of the money with only around \$130 remaining. However, the lady became impatient and Amie was arrested again in October 2010 and detained for a week in the police station. She was four months pregnant at the time of arrest and she was subsequently charged with fraudulent conversion and detained in Pademba Road Prison.

AdvocAid’s Legal Officer took up Amie’s case and was able to assist her in securing bail, which was granted after she had spent four months in prison.

A few weeks following her release Amie gave birth to a healthy baby boy. Her case is still being heard due to ongoing adjournments as of June 2012.

7.0 Conclusion and Recommendations

The continued criminal treatment of debt, through the use of fraudulent conversion and related charges, fails to serve the interests of Sierra Leone and its citizens, particularly women. Rather, it offers little in the form of compensation or redress to complainants, while creating opportunities for corruption throughout the legal process, from when the charge is made to when a judgment is issued. Fraudulent conversion cases are taxing an already overstretched and under-resourced judicial system and they put further pressure on the sub-standard prison system. Most importantly, the continued prosecution of fraudulent conversion cases is contributing to the vulnerability of economically active women and their families across the country. The criminalization of debt compounds and perpetuates the poverty and marginalisation experienced by so many women in Sierra Leone. These women deserve the full protection of the law, including fair and accessible means to resolve contractual disputes. The criminalisation of debt has no place in today’s Sierra Leone.

¹¹⁵ Pseudonyms are used to protect the former prisoner’s identity as well as that of her children.

There are a range of short-term and long-term actions that can be undertaken to minimise, and eventually eliminate, the criminalisation of debt in Sierra Leone. Such actions would be in line with the standards set out in the International Covenant on Civil and Political Rights. Such actions can also contribute to strengthening the legal protections of all women in Sierra Leone, ensuring that they are able to fully participate in the economic, social and political life of their communities. Some of these actions are outlined below. Importantly, many steps are already being taken by various stakeholders, demonstrating promising practices and offering powerful opportunities to build on. AdvocAid is committed to working with key partners in Sierra Leone to push these actions forward and advance the protection of women and girls in conflict with the law.

7.1 Prohibit Imprisonment for Fraudulent Conversion and Related Cases

Sierra Leone's Government should consider enacting legislation that strictly prohibits imprisonment for fraudulent conversion and other crimes so closely related to the inability to fulfill a contractual obligation, in conformity with Article 11 of the International Covenant on Civil and Political Rights and the African Commission's Ouagadougou Declaration which recommends "*Decriminalisation of some offences such as ... failure to pay debts ...*"¹¹⁶. A campaign was recently launched at the 51st session of the African Commission by Promoting Pre-Trial Justice in Africa to repeal these outdated offences inherited from colonial times, in order to reduce the rate of pre-trial detention and the prison population.¹¹⁷

A comprehensive Theft Act could be established, based on combining and updating all legislation that relates to theft, including the prohibition of imprisonment for civil debt matters. Furthermore, the Law Reform Commission is in a position to explore options for the reform of certain related pieces of legislation, having reviewed the Larceny Act and other theft related offences in 2006. The Law Reform Commission should consider making the requirement of fraudulent intention clear in any newly drafted theft legislation.

The draft Criminal Procedure Bill 2010 refers to various non-custodial sentences, such as deferred sentences or community service, and contains many relevant reforms to improve the administration of justice. The Government should ensure that this is enacted and implemented as soon as possible.

The Judiciary should implement the recommendations of the United Nations Rules for the Treatment of Women Prisoners (Bangkok Rules) which provides that non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate.

While such reform processes are critical, they can also be time consuming and lengthy. As an immediate solution to the criminalization of debt, the Department of Public Prosecutions could take action and place a moratorium on the issuance of any new charges of fraudulent conversion without formalised approval by a senior member of the Department.

¹¹⁶ Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reform in Africa 2003.

¹¹⁷ Promoting Pre-trial Justice in Africa Newsletter (PPJA) is an initiative, of the Civil Society Prison Reform Initiative, Community Law Centre, University of the Western Cape, South Africa. See further: <http://cspri.org.za/>

7.2 Ensure Comprehensive Training and Strengthened Accountability for the Police

In the short term, comprehensive training of police officers is a priority so as to ensure that they have the knowledge and skills to issue charges in line with the law. Such trainings should include specific information and guidelines on how to differentiate between civil claims and criminal offences, when and how to use alternative dispute resolution mechanisms and the minimum standards for charging. As part of renewed training and accountability efforts within the Sierra Leone Police, police management should prioritise the formulation and dissemination of clear standards for the issuance of charges that every police officer must comply with. These standards should be enforced through close supervision, randomised checks and strengthened oversight mechanisms, including an Independent Police Complaints Commission. The dissemination and enforcement of such guidelines is essential for a fully transparent and efficient justice system that is able to prevent weak cases from moving forward into the courts. Police performance management must be tied to an Officer's demonstrated respect for such standards.

While training for police officers remains an immediate priority, trainings on charging standards and sentencing guidelines should also be extended to police prosecutors, magistrates, State Counsel and other legal professionals in Sierra Leone.

7.3 Reform the Bail System

Accessing bail is critical for women in conflict with the law, especially due to most women's caretaking responsibilities. This is also key for women who owe debts in order that they can try and pay back the money rather than spending weeks to months in pre-trial detention.

Government and Civil Society need to educate the wider public concerning the requirements for bail as there is a great deal of misunderstanding, including that money needs to be paid to the police in advance to obtain bail.

Bail conditions should also be less onerous, especially for minor offences, so that more women are able to access bail.

The Anti-Corruption Commission should address frequent instances where police officers or court clerks ask people to pay bribes before being granted bail.

7.4 Implement Alternative Dispute Resolution Methods for Minor Offences

The use of Alternative Dispute Resolution mechanisms holds enormous potential in diverting minor disputes, such as a dispute over a debt, away from the court system. ADR could also result in the increased use of non-custodial sentences, involving the use of reparations and an apology from the guilty party, for example. By moving away from the adversarial processes of the formal court system, both complainant and defendant have a greater opportunity to come to a mutual understanding of their positions and an agreement on ways of addressing their grievances. By strengthening existing ADR methods and mechanisms, as embedded in associations like the Sierra Leone Market Women's Association, and ensuring that the police understand such

processes, there is a significant opportunity to strengthen access to justice, particularly for the country's most marginalised citizens.

In particular, Government and donors should invest in strengthening the leadership, capacity and resources of the Sierra Leone Market Women's Association so that they can have a wider outreach and impact in solving debt and other minor disputes. In support of ADR, the Law Reform Commission could consider the enactment of an Alternative Dispute Resolution Act.

Civil society can also play a key role in supporting sensitisation efforts encouraging mediation and ADR with debt-related disputes. For instance, from December 2010 AdvocAid has aired a radio drama on various radio stations (such as Star, Sierra Leone Broadcasting Corporation, Kiss, Eastern and Radio Maria) encouraging market women to use mediation to settle debt disputes. The drama also highlighted the negative results of taking such disputes to the police, such as the likelihood of not receiving the money back and the impact of imprisonment on the debtor and her family.

One of the recommendations in the Truth and Reconciliation Commission's final report was that the national legal system be further developed and improved to provide better and more civilized ways of resolving disputes and ensuring a simple method of obtaining justice in the country. ADR represents one way of working towards such a legal system.

7. 5 Support the Role of Paralegals in Strengthening Access to Justice

In line with ADR methods, an important role for paralegals has begun to emerge in Sierra Leone following the end of the conflict in 2002. Reflecting the lack of capacity in the courts and prisons, the long-term nature of reform of the formal justice sector as well as the extreme expense and scarcity of lawyers in Sierra Leone, paralegals have become leaders in communities across the country. Paralegals provide both legal advice to complainants and defendants in various disputes and they also often act as mediators between parties, offering an alternative mechanism for dispute resolution outside of the court system. Paralegals have become particularly popular in rural areas and smaller urban centers, where there is a real absence of qualified lawyers or court infrastructure to even hear cases.

Timap for Justice, a non-profit organization in Sierra Leone, has been enormously successful in providing access to justice for even the poorest members of Sierra Leonean society through a network of paralegals. Timap has also more recently trained community mediators across the country, who offer free mediation services in the resolution of minor disputes. AdvocAid also employs three paralegals who are charged with monitoring police stations and courts, both in Freetown and the provinces, and have been successfully diverting cases of fraudulent conversion where possible and appropriate, through mediation between the parties. With the piloting of a national legal aid scheme, there is a tremendous opportunity to more broadly support the work of paralegals in the country and their role in strengthened access to justice.

7.6 Ensure Micro-Finance is a Tool for Empowerment

Micro-finance represents a critical source of credit and financing for women across the country who are trying to improve their economic security and their families' wellbeing. In recognition of the challenges that many face in repayment, different approaches can be built upon that ensure micro-finance remains a positive tool for the empowerment of those living in poverty. As a starting point, MFIs must move away from current practices (whether they represent official policy or simply the practice of certain employees) that involve the police in trying to force repayment of loans by clients who have defaulted.

Alternative dispute resolution and mediation efforts are more effective approaches, more likely resulting in positive outcomes for all parties involved. Examples of other innovative efforts that recognize the specific circumstances of many women include offering more flexible repayment plans, for instance, providing business training and skills development, combining loans with training on gender based violence and fostering strong relationships between recipients of the loans, thereby building a support network for women in their community. Several non-profit organizations in Sierra Leone have followed such an approach, using micro-finance as a tool for not only increasing access to much needed credit but also as an opportunity to further advance women's resiliency.¹¹⁸

AdvocAid urges all MFIs in Sierra Leone, along with their donors, investors and lenders, to ensure that they are actively implementing the client protection principles and best practices outlined in the SMART Campaign.¹¹⁹ Such principles must be integrated into all policies, systems and procedures, with mechanisms established to monitor implementation and impact. Currently, only an estimated 3 out of 12 MFIs operating in the country have endorsed the SMART Campaign.¹²⁰ The Campaign outlines the following principles:

1. **Appropriate product design and delivery:** Providers will take adequate care to design products and delivery channels in such a way that they do not cause clients harm. Products and delivery channels will be designed with client characteristics taken into account.
2. **Prevention of over-indebtedness:** Providers will take adequate care in all phases of their credit process to determine that clients have the capacity to repay without becoming over-indebted. In addition, providers will implement and monitor internal systems that support prevention of over-indebtedness and will foster efforts to improve market level credit risk management (such as credit information sharing).
3. **Transparency:** Providers will communicate clear, sufficient and timely information in a manner and language clients can understand so that clients can make informed

¹¹⁸ For example, Women's Partnership for Justice and Peace (WPJP) in Bo and Access to Justice Makeni (Makeni) run specific micro-finance programmes targeted at women which take into account the vulnerabilities and challenges faced by most women in the communities where they operate. For example, WPJP's scheme includes training in gender based violence and has regular meetings to establish if there are any issues which they can assist with i.e. in one case the husband of one of the group members took the money she was loaned and the group managed to get this back for her.

¹¹⁹ The Smart Campaign, 2010.

¹²⁰ Personal Communication with Microfinance Specialist, 2011

decisions. The need for transparent information on pricing, terms and conditions of products is highlighted.

4. **Responsible pricing:** Pricing, terms and conditions will be set in a way that is affordable to clients while allowing for financial institutions to be sustainable. Providers will strive to provide positive real returns on deposits.
5. **Fair and respectful treatment of clients:** Financial service providers and their agents will treat their clients fairly and respectfully. They will not discriminate. Providers will ensure adequate safeguards to detect and correct corruption as well as aggressive or abusive treatment by their staff and agents, particularly during the loan sales and debt collection processes.
6. **Privacy of client data:** The privacy of individual client data will be respected in accordance with the laws and regulations of individual jurisdictions. Such data will only be used for the purposes specified at the time the information is collected or as permitted by law, unless otherwise agreed with the client.
7. **Mechanisms for complaint resolution:** Providers will have in place timely and responsive mechanisms for complaints and problem resolution for their clients and will use these mechanisms both to resolve individual problems and to improve their products and services.

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AdvocAid is a Sierra Leonean civil society organisation that supports access to justice and strengthened rights for girls, women and their children in conflict with the law. We work in four districts in Sierra Leone.

Our programmes include:

- Legal aid
- Welfare and rehabilitation services
- After care
- Preventative educational initiatives
- Strategic capacity building programmes
- Advocacy and policy reform

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(she changes the world)





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