



**AdvocAid Submission to the United Nations Working Group on the Issue of  
Discrimination against Women in Law and in Practice:**

**Women Deprived of Their Liberty – Sierra Leone**  
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*Photos by Boaz Reisel/AdvocAid*

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## **AdvocAid**



We are pleased that the Working Group is focusing on the often neglected issue of women deprived of their liberty. More international attention and support is needed to assist women in conflict with the law, particularly from donors and the international women's rights movement. Funding for organizations providing holistic services to incarcerated women needs to be prioritized and increased. Further, the voices of women impacted by the justice system should be included and given more attention.

## **I. Justice System**

### **1. What are the main causes for women coming in to conflict with the law and facing the associated deprivation of liberty, including pre-trial detention?**

In Sierra Leone, a number of interconnected, socio-economic factors lead to the incarceration of women. Key among these are poverty, domestic violence, coercion, discrimination, untreated mental illness, corruption and lack of access to justice.

Sierra Leone remains a patriarchal society - one where women are disadvantaged and under-represented in both the traditional and formal governance systems. Imprisonment is closely related to poverty, both as the reason for women's offences and because women most often cannot afford legal services or to pay fines or bail.<sup>1</sup> Antiquated laws mean that too often women are imprisoned for allegations over small debts, including those incurred by their husbands, and other petty crimes such as loitering. Delays in the justice system, lack of access to legal services and challenges obtaining bail can result in lengthy pre-trial detention.

Most women in detention tend to have experienced physical and emotional abuse or mental health problems. Only a small proportion of women are detained for violent offences, such as murder or infanticide. Most of these women have suffered from violence or abuse themselves, which is often overlooked during sentencing. Many are cases of self-defense.

The women who come into conflict with the law, are often primary or sole carers as well as breadwinners and their detention can have a devastating effect on their family, particularly on young children, who may be detained with their mothers. Once arrested, many women are abandoned by their families due to the social stigma or simply because of the distance to the nearest detention center, leaving them with no one to advocate for them. Frequently, the Correctional Service has neither the capacity nor funding to be able to respond to women's specific needs. Further, the laws and policies applied by the Correctional Service often do not conform to the United Nations Bangkok Rules.

There are no State services to support formerly incarcerated women. There is significant stigma and lack of understanding about the causes of women's imprisonment, and due to the many challenges Sierra Leone faces – particularly after the devastating Ebola crisis – women in the criminal justice system are not prioritized by government and donors.

In a survey of female prisoners in Sierra Leone carried out by AdvocAid in 2014<sup>2</sup>, 50% were aged between 18-30 years. Slightly over 30% of the women were single, with the remaining either married or having been in some serious relationship. Close

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<sup>1</sup> Sabrina Mahtani, *Women and the Criminalization of Poverty: Perspectives from Sierra Leone*, 2013, Signs Journal of Women and Culture and Society, [https://www.jstor.org/stable/10.1086/670919?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/10.1086/670919?seq=1#page_scan_tab_contents)

<sup>2</sup> The survey included 80 women prisoners from eight (8) different prisons or correctional facilities in Sierra Leone

to 80% of the women were mothers, with the majority having one or two biological children.



Over 1/3 of women surveyed had never been to school whilst the remainder had some level of basic education. These women classed themselves as poor, earning less than Le 100,000 per month (roughly US \$20/£13). Health wise, just over half of the respondents said they had medical problems and 5% were pregnant. Only 20% claimed to use drugs or depend on alcohol, but they appeared not to have received any treatment for alcohol, drugs, suicide or mental health issues. The women who received treatment for alcohol, drugs, suicidal thoughts and other mental health issues stated that their mental health condition had worsened while in prison. All women, who had attempted suicide, claimed that this had happened whilst they were in prison.

Over 70% of the women surveyed were convicted and serving sentences of 1, 2 or 4 years duration. 40% of these women had been offered an alternative to imprisonment by the court, which was a fine in the range of Le 200,000–1,000,000 (\$40–200). However, these fines were beyond their reach to pay resulting in continued incarceration.

For those granted bail, but still in custody, the main reasons for continued incarceration was due to either not having anyone to stand as surety for them or they could not fulfill the bail conditions imposed e.g. surety not resident in the area or having a fixed abode worth the sum of the bail bond.

Over 60% of the women who participated in the survey reported they were victims of domestic violence. Of those women surveyed, 54% claimed that the domestic violence happened many times, whilst 46% claimed that it happened less frequently. 25% had been sexually abused by a spouse/partner or other family member.

Just 14% of women surveyed had previous convictions.

**Which are the groups of women who are most vulnerable and why?**

Generally, women who are poor and illiterate are especially vulnerable in Sierra Leone. In particular, women working in the informal economy (such as petty traders) are prone to being arrested for theft related offences such as obtaining money by false pretences or debt (see further below). Sex workers are often targeted by the police, for money or sexual exploitation, and arrested for offences such as loitering. Most women enter into sex work due to poverty or exploitation. For example, young girls who are sent to extended families from rural areas for education or work often struggle to pay the school fees and send remittances back to the family.<sup>3</sup> Women without connections or a strong familial support network in the local area are also particularly vulnerable.

**Please list the types of offenses for which women, or any particular group of women, are typically charged with, including administrative offenses.**

- Murder – Offences Against the Persons Act 1861
- Wounding/ Wounding with Intent – Offences Against the Persons Act 1861
- Infanticide – Offences Against the Persons Act 1861
- Fraudulent Conversion or Obtaining Money/Goods by False Pretenses – Larceny Act 1916
- Theft - Larceny Act 1916
- Loitering – Public Order Act 1965
- Public Insult and Provocation - Public Order Act 1965
- Drug related offences – Pharmacy & Drugs Act 2001
- Domestic Violence – Domestic Violence Act 2007
- Child-Stealing/ Human Trafficking – Anti-Human Trafficking Act 2005

**2. Please indicate if there are cases of women facing detention in relation to civil law suits and identify the particular groups of women mostly affected.**

Women are often imprisoned for debt in Sierra Leone, which is being treated criminally based on the charge of ‘fraudulent conversion’ and other similar crimes, such as obtaining money under false pretenses (contained in the Larceny Act of 1916). Such charges are designed to penalize the intent to defraud. However, the reality is one where corruption, limited financial and human resource capacity, lack of knowledge about legal rights, limited investigative capacity and outdated laws, all contribute to the fact that straightforward disputes over debt too often result in the detention of women in Sierra Leone under one of these criminal charges.

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

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<sup>3</sup> AdvocAid, *New documentary shows harassment and violence faced by sex workers*, 7 December 2017, <http://advocaidsl.org/new-documentary-shows-harassment-violence-faced-sex-workers/>



and several legal professionals interviewed as part of our research on the issue noted that fraudulent conversion in Sierra Leone has evolved far beyond the definition contained in the Larceny Act.

The criminalization of debt is more evident for women engaged in petty trading activities, a key economic activity for women across the country and 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.

The lack of social services and business skills training as well as women's role as primary caregivers in many families can also make women vulnerable to such charges. For example, if a child is sick, money that was borrowed for business purposes may be used to cover medical fees, with the debtor subsequently unable to pay back their creditor on time.<sup>4</sup>



**3. What are the main challenges for women's access to justice, including, for example, the availability and quality of legal representation, the ability to pay for bail, and the existence of gender stereotyping and bias in judicial proceedings?**

Sierra Leone has around 500 lawyers for a population of around 7 million people. Most are situated in the capital, Freetown, and only a handful provide criminal legal aid due to limited remuneration and lack of prestige. Very few women lawyers work in criminal law. This results in women having limited access to justice and very little support from people who understand their challenges, particularly in the areas outside of the capital.

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<sup>4</sup> See further, AdvocAid, *Women, Debt and Detention*, (2012), <http://advocaidsl.org/wp-content/uploads/2015/11/AdvocAid-Women-Debt-and-Detention-Report.pdf>

A few public interest organizations provide legal aid services, such as Timap for Justice or AdvocAid, and the government body, the Legal Aid Board. However, most legal aid providers are overstretched and do not have a specific knowledge about the particular needs and issues impacting women in the criminal justice system. For example, a history of abuse may not be put forward in mitigation. Further, most legal aid services do not represent women at an appellate level due to the specialized expertise needed and being overstretched. AdvocAid has rectified several miscarriages of justice by undertaking appeals of women who have been sentenced and it is critical that more funding is provided for these legal services.<sup>5</sup>

There is a lack of understanding about the bail process and police officers often unlawfully ask for a “fee” to be paid which restricts women’s ability to access bail. In Sierra Leone, no money is deposited to secure bail, just a promise to pay the bailbond if the person jumps bail. AdvocAid and the police have created “bail is free” campaigns, which have increased awareness but this is still an impediment to women accessing bail.<sup>6</sup> What is more, women are often not able to meet the bail conditions because they do not have a friend or family member living in the area in which the court is based who is classified by the court as a “suitable”. See question 4(b) below for further discussion about bail.

Women who are not successful in bail applications for serious offences can be in detention for many months, in some cases more than a year, waiting for their trial to commence in the High Court. This is due to backlogged courts, corruption and lack of availability of juries.

Gender stereotyping and bias contributes to women’s imprisonment. For example in rural areas women are often not considered suitable sureties for detained women.

In Sierra Leone, the majority of female defendants are arrested for minor, petty crimes borne of poverty. Like many other countries in Africa, Sierra Leone has on its statute books sweeping, ill-defined petty offences which disproportionately impact poor and vulnerable women. One example is the offence of loitering. This effectively criminalizes the act of being ‘in a place’, and it is irrelevant whether the person is trespassing in that place, causing disorder or possessing any illegal purpose. Sex workers are often detained by the police for this crime of ‘loitering’ and AdvocAid has produced a documentary, which discusses the abuse suffered by sex workers at the hands of the police.

As for serious crimes, cultural acceptance of a certain degree of domestic violence against women and lack of intervention in domestic violence situations before they become serious, contribute to the large number of cases in which women are charged with murder or other violent offences arising from self defence situations. Finally, access to quality mental health services is extremely limited across Sierra Leone. Women with untreated mental health conditions can find themselves caught up in the criminal justice system.

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<sup>5</sup> <http://advocaidsl.org/project/our-stories/mks-story/>

<sup>6</sup> <http://advocaidsl.org/pay-no-bribe-for-bail-2/>

#### **4. (a) What have been the main drivers for the increasing or decreasing of the female prison population in your country in the past decade?**

##### Number of Women in Prison

Sierra Leone has 14 prisons in total. In 11 of these, women are detained in separate wings. There are only three separate prisons for women in Sierra Leone (in Freetown, Bo and Kenema).

- Total number of prisoners in Sierra Leone (as of July 2018): 4,167
- Total number of women in prison in Sierra Leone (as of July 2018): 215 (5.1 percentage of the overall prison population).

Please note that the number of women in prison in Sierra Leone is increasing. The Institute for Prison Studies noted that the number was 136 (3.3 percent of the overall prison population) in 2017.

##### Drivers Increasing the Female Prison Population

Poverty (exacerbated by the Ebola crisis), corruption and delays in the justice system, enforcement of laws criminalizing petty offences, and lack of alternatives to imprisonment contribute to the increasing female prison population in Sierra Leone.

##### Good Practice Examples

- Paralegals

AdvocAid have trained community-based paralegals, sometimes formerly incarcerated women or sex workers themselves, to deliver legal advice and interventions to women detained in police stations, prisons and courts. This has been an effective low cost solution to addressing the critical legal aid gap and reduces pre-trial detention as paralegals can help to secure bail (by finding sureties and navigating the complicated process) as well as mediating minor matters so they are diverted from the criminal justice system.

- Legal rights awareness

AdvocAid has used creative ways to educate women about their legal rights, such as through TV and radio dramas, posters, training for groups of women (such as sex workers or market women) and illustrated booklets.<sup>7</sup>

- Holistic Interventions

Supporting organizations that have a holistic approach to women's imprisonment is vital to ensure a gender-sensitive approach and that key aspects of intervention are not overlooked. For example, organizations that only provide legal aid may be able to offer representation at court but will not support services for incarcerated women or post-prison support services to aid women when they are released. They may also not be familiar with the Bangkok Rules, understand pathways to women's imprisonment or push for gender-sensitive application of criminal laws and sentencing. NGOs with

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<sup>7</sup> Examples can be found on our website: <http://advocaidsl.org/resources/>



a holistic approach not only offer more comprehensive services to support incarcerated and formerly incarcerated women, but also work with these women to push for more systemic change in the justice system through evidence-based advocacy because they understand the complexities of the challenges women face.

- Amplifying the voices of incarcerated and formerly incarcerated women

It is critical to involve and amplify the voices of incarcerated and formerly incarcerated women so they can share about their experiences of the criminal justice system, what needs to be changed and how. This will support better understanding of pathways to women's imprisonment, challenge negative stereotypes and support reform. AdvocAid have facilitated this through documenting stories of women in and out of prison, photo essays, documentaries and supporting women who are willing to engage with policy makers. We have also supported the formation of an ex-prisoner support group – Go Bifo (which means “Moving Forward” in Krio).

**4. (b) To what extent are noncustodial measures used, in accordance with the United Nations Rules for the Treatment of Women Prisoners and Noncustodial Measures for Women Offenders (Bangkok Rules)?**

Non-custodial measures are not often used in Sierra Leone. The proposed Criminal Procedure bill would introduce community sentences but its passing has stalled. Sentencing regulations are yet to be passed, but once they are there it would give guidance to judges about gender-sensitive application of criminal laws.

Most offences offer fines as an alternative, but this approach has the effect of imprisoning the poor – women who cannot afford to pay the fines have no choice but to serve terms of imprisonment.



The police and Magistrates have been more willing in recent years to resolve minor offences through alternative dispute resolution, allowing paralegals to try and resolve the matter before it proceeds through the criminal justice system.

The Bail Regulations 2017 require that the court considers an alternative to remand in the case of a defendant who is a primary care giver, pregnant or lactating mother.<sup>8</sup> In those cases, the court can only resort to detention taking into account the nature and circumstances of the offence and the risk that the defendant poses. In all cases, where a person is granted bail but has no suitable surety, the court is obliged to fix bail conditions that are reasonable and proportionate to the relevant offence and to take into account the individual circumstances and the defendant.<sup>9</sup>

## **II. Other Institutions**

- 1. What other institutions outside the justice system exist in your country wherein women and girls are institutionalized on grounds such as care, correction, protection and prevention against potential harms, etc.? Please list the groups of women and girls who are most concerned in each situation.**

Women with serious mental illness can be detained in a state-run psychiatric hospital with outdated facilities and treatment and poor living conditions. Interim care centres for victims of sexual and gender-based violence matters and in need of care and protection, and orphanages exist and are mainly owned and run by non-governmental organizations.

Customary law governs the majority of people in Sierra Leone and is applicable outside of the capital city. The Local Courts administer customary law and have powers to detain in minor criminal matters. Non-custodial measures would include fines, compensation and tendering an apology.

- 2. Please explain the decision-making process for the institutionalization of women and girls in each situation, including the role of women and girls themselves in the decision on institutionalization. Please highlight any good practices in terms of enabling women to exercise agency within institutional systems, with due respect to their rights?**

Women and girls can be referred by the judge or magistrate to the psychiatric hospital during a criminal justice trial for assessment and, on conviction, for detention. The level of understanding of mental health within the justice system is poor and the relevant legislation is outdated. We understand that the government is currently undertaking a review of the existing laws, which include the Lunacy Act 1902. Women can give consent to be examined, but do not have a say in the proceedings. For interim care centres and orphanages, social workers make the decisions on behalf of the girls.

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<sup>8</sup> Regulation 7, Bail Regulations 2017

<sup>9</sup> Regulation 10(3), Bail Regulations 2017

## Recommendations from formerly incarcerated women

In preparation of this report, AdvocAid spoke to 5 members of the Go Bifo [Moving Forward] support group. These are their views:

What would like to see the government do to stop women being in prison?

- Police to investigate cases properly before charging to court
- Government to provide better trained magistrates and judges
- Government to assist women with micro finance soft loans
- Empower community task forces or committees to handle and mediate disputes in communities to avoid them entering into the criminal justice system
- Before the judge gives their judgment he/she must look deep into that case (e.g. take into account gender-specific issues) before passing their judgment.
- Police and the justice system must stop from being partisan

What is the impact of imprisonment on you and your family?

- Gives bad reputation and stigma
- Led to suffering to my family
- Depression
- Breaking of family ties
- Caused the family to relocate

