



# **DECRIMINALISING POVERTY IN SIERRA LEONE: *CALL FOR REFORM OF PETTY OFFENCES***

## **Position Paper**

AdvocAid and the Centre for Accountability and the Rule of Law  
*August 2019*

“ All Sierra Leoneans must be equal before the law. And the laws this time must be like a cloth, it must be made to fit the people that it is meant to serve. ”  
Sierra Leone Truth and Reconciliation Commission, quoted from an essay by Augustine Lavai-Tiva Bundu

“ The republic of Sierra Leone shall be a state based on the principles of freedom, democracy and justice. ”  
Section 5(1) of the Constitution of Sierra Leone 1991

“ The criminalisation of petty offences contributes to discrimination and marginalisation by criminalising poverty, homelessness and unemployment and impact the poorest and most marginalised persons in our communities. ”  
Commissioner Med S.K. Kaggwa, Foreword to the African Commission on Human and People's Rights' "Principles on the Decriminalisation of Petty Offences"

“ Legal systems must be reformed and modernised so they are responsive, innovative, inclusive, people-centred and uphold human rights. ”  
The Elders, a group of independent leaders brought together by Nelson Mandela

“ When I was arrested [for just walking home one night], the whole family suffered. ”  
An AdvocAid client, arrested for the petty offence of loitering

## Background on Petty Offences

The **African Commission on Human and Peoples' Rights** (the "Commission") was created in 1987 to protect and foster the evolution of human rights in Africa. The Commission has worked specifically to develop instruments to aid in the interpretation of criminal justice matters under the **African Charter on Human and Peoples' Rights** ("African Charter"). After years of working to decongest prisons, in 2017 the Commission identified **the criminalisation of petty offences**, defined as "minor offences for which the punishment is...a warning, community service, a low-value fine or short term of imprisonment, often for failure to pay the fine,"<sup>1</sup> as a major cause of prison overcrowding. It also found that arrests and imprisonment for petty offences disproportionately impact poor and marginalised individuals.<sup>2</sup>

In October 2018 the Commission **published the final version of its Principles on the Decriminalisation of Petty Offences in Africa**, requiring State Parties to the African Charter to take steps to **decriminalise and declassify petty offences**.

<b>Decriminalisation:</b>	<i>The process of removing an act that was criminal, and its associated penalties, from the law</i>
<b>Declassification:</b>	<i>Curtailing the enforcement of criminal laws.</i> <sup>3</sup>

These Principles outlined that in order to comply with Article 6 of the African Charter (the right to liberty and security of the person, and the prohibition on arbitrary arrest and detention), the law defining criminal conduct must be: 1) clear, precise and accessible, 2) necessary and proportionate to a legitimate objective, and 3) aligned with regional and international human rights standards.<sup>4</sup> By ratifying the African Charter in 1983, Sierra Leone has therefore agreed to recognise the rights, duties and freedoms enshrined in that instrument and to adopt legislative or other measures to uphold them.<sup>5</sup>

## Purpose of this Position Paper

In 2017, AdvocAid and the Centre for Accountability and the Rule of Law (CARL) received funding from OSIWA to implement the project titled *Decriminalizing Poverty: Promoting Review and Reform of Petty Offences in Sierra Leone*. AdvocAid and CARL's baseline research report included (1) **legal analysis** of petty offences enshrined in Sierra Leonean law, (2) **research** on how those laws are used within the criminal justice system, and (3) research on **prevailing attitudes** towards petty offences among justice sector actors. In writing this position paper, AdvocAid and CARL have used insights from this baseline research report, additional consultations with affected populations,<sup>6</sup> and our ongoing work representing individuals in conflict with the law to **highlight key findings and recommend strategies and reforms** to address these issues.

## Context in Sierra Leone: Why this is important

In Sierra Leone, petty offences include laws which are vague, which are disproportionate to the level of offence committed, which are often wrongly applied and which violate human rights standards and the Constitution of Sierra Leone. Petty offences account for a high proportion of cases entering the criminal justice system in

<sup>1</sup> African Commission on Human and Peoples' Rights, *Principles on the Decriminalisation of Petty Offences*, 2018, [http://www.achpr.org/files/instruments/decriminalisation-petty-offences/principles\\_on\\_the\\_decriminalisation\\_of\\_petty\\_offences\\_efpa.pdf](http://www.achpr.org/files/instruments/decriminalisation-petty-offences/principles_on_the_decriminalisation_of_petty_offences_efpa.pdf)

<sup>2</sup> Part 1, African Commission's Principles.

<sup>3</sup> Lukas Muntingh and Kristen Petersen, "Punished for Being Poor: Evidence and Arguments for the Decriminalisation and Declassification of Petty Offences," 2015, <https://acjr.org.za/resource-centre/punished-for-being-poor-evidence-and-arguments-for-the-decriminalisation-and-declassification-of-petty-offences>.

<sup>4</sup> Part 5, African Commission's Principles.

<sup>5</sup> Article 1, African Charter on Human and Peoples' Rights, [http://www.achpr.org/files/instruments/achpr/banjul\\_charter.pdf](http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf).

<sup>6</sup> Additional consultations took place with female commercial sex workers, members of the executive leadership of the Market Women's Association, and Executives of the Bike Riders Union (B.R.U), Drivers Union and the Sierra Leone Tricycle Association (KeKeh Riders) for the preparation of this paper.

Sierra Leone. Of the 718 cases recorded by AdvocAid and CARL in 2017 in Sierra Leone for the purposes of our baseline research, **33% of offences were petty offences**.<sup>7</sup> People accused of these offences are often dealt with by the justice system in inconsistent or unjust ways.

The three primary petty offences in our baseline research for which individuals were imprisoned or subject to a fine were the non-payment of debt (fraudulent conversion and obtaining money/goods by false pretences comprised 38% of all petty offences), loitering (30%), and minor traffic offences (32%).<sup>8</sup>

**It is critical to evaluate how and why these offences are being used for the following reasons:**

1. **Protection of human rights:** arresting a person for going about normal, daily activities amounts to a violation of a person's liberty and freedom of movement. These stated offences, due to how they are currently worded or applied, enable these violations to occur.
2. **Cost to justice system:** an excessive number of persons charged with petty offences during our research ended up in the Magistrates Court. Additionally, if individuals are unable to afford fines, the attendant cost to provide for the inmates falls on the State. Petty offence cases place a heavy burden on the police, courts and correctional centres.
3. **Overcrowding of prisons:** in January 2019, Freetown Male Correctional Centre exceeded its capacity by over 800% and the Freetown Female Correctional Centre exceeded capacity by over 400%.<sup>9</sup> Overcrowding causes correctional centres to lack adequate physical conditions to protect individuals from ill treatment and other safeguards required by the African Charter and Luanda Guidelines.<sup>10</sup> Diverting petty offences into non-custodial alternatives could decrease the prison population and raise standards in the country's correctional centres, and decriminalising offences would reduce case backlog in courts.
4. **Disproportionate impact on vulnerable populations:** Over 90% of those charged with petty offences during our research were unemployed or in low-paid work (e.g. petty traders, bike and taxi drivers, labourers, commercial sex workers).<sup>11</sup> Petty offences disproportionately impact poor and marginalised people who spend more time in public spaces, rely on loans to sustain their businesses and may be unable to pay fines.
5. **Cost to families:** not only does arrest or imprisonment disrupt an individual's life, but they also disrupt relationships and a family's income. Petty trading and informal businesses are critical economic activities for many Sierra Leonean households. Instead of handling straightforward situations without arrest or imprisonment, criminalisation can entrench poverty and burden families emotionally and financially.
6. **Opportunity for abuse or corruption:** the discretion held by law enforcement officials in the application of these offences creates an opportunity for abuse and corruption. The risks of corruption

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<sup>7</sup> AdvocAid & CARL's research included the following as petty offences: loitering, non-payment of debt (i.e. fraudulent conversion & obtaining goods/money by false pretences), insulting conduct, and minor traffic offences. This definition aligns with the African Commission's Principles. This position paper prioritises the 3 primary petty offences from our research: loitering, non-payment of debt, and minor traffic offences.

<sup>8</sup> CARL and AdvocAid, *Decriminalising Poverty in Sierra Leone: Petty Offences Baseline Research*, 2019.

<sup>9</sup> Id. The report found that on the dates of documentation, the capacity of the Freetown Male Correctional Centre was 324 inmates, but the Centre housed 2,600 inmates (exceeding capacity by 802.4%), and the capacity of the Freetown Female Correctional Centre was 18 inmates, but the Centre housed 76 female inmates (exceeding capacity by 422.2%).

<sup>10</sup> Luanda Guidelines on the Conditions of Arrest, Police Custody & Pretrial Detention in Africa

<sup>11</sup> CARL and AdvocAid, *Decriminalising Poverty*. Those in low-paid work or unemployed breaks down as followed: Trader (50%), Unemployed (14%), Bike Rider (12%), Driver (7%), Labourer (5%), Commercial sex worker (3%). The remaining 9% are business persons (4%) and Students (5%).

can undermine public confidence in the rule of law, increase the cost of doing business, stigmatize individuals and cause inefficiencies in other service areas.<sup>12</sup>

### ***Moving Forward: Recommendations for Reform***

Using the insights gained from our research, consultations and ongoing work, this position paper makes key recommendations to address the issue of criminalized petty offences. **We identify three primary petty offences**, as enshrined across various Sierra Leonean laws, which require attention, review and reform.

<b><i>Petty Offence</i></b>	<b><i>Relevant Laws</i></b>	<b><i>Summary of Offence</i></b>	<b><i>Issue</i></b>
<b>1. Loitering</b>	Public Order Act 1965, Section 7; Criminal Procedure Act 1965, Section 13(1)(e)	Being in a place and not providing a sufficient account of why someone is in that place.	Law is vague and open to abuse by law enforcement officials.
<b>2. Non-Payment of Debt</b>	Larceny Act 1916, Section 20(1)(iv)(b), Section 32	<i>Fraudulent Conversion:</i> fraudulently converting another's property to his own use or benefit. <i>Obtaining Money/Goods by False Pretences:</i> obtaining money or goods with intent to defraud.	The offences of fraudulent conversion and obtaining goods/money by false pretences are wrongly applied to civil debt matters, criminalising the non-payment of debt <i>without</i> fraudulent intent.
<b>3. Minor Traffic Offences</b>	Sanctions are contained in subsections throughout the Road Traffic Act 2007.	Examples include parking in the wrong place and using defective warning instruments.	Laws contain disproportionate maximum sanctions for the level of the offence. Laws lack clear sentencing guidelines, leaving them open to inconsistent and discriminatory application.

<sup>12</sup> National Technical Expert Team, National Anti-Corruption Strategy (Sierra Leone) (2014-2018), Anti-Corruption Commission, <https://psru.gov.sl/sites/default/files/STRATEGY.pdf>.

## Action for Stakeholders

Implementing our recommendations will require input from a variety of stakeholders. **Below is a summary of the most relevant recommendations for each category of stakeholders:**

Stakeholder	Relevant Recommendations
<b>Chief Justice and the Judiciary</b>	<b>Issue temporary directives for:</b> <ul style="list-style-type: none"> <li>• Clear sentencing guidelines* for debt offences under the Larceny Act 1916.</li> <li>• Continuation of the alternative dispute resolution (ADR) process for debt offences, through which the matter is either handled by the Magistrate or referred to an organisation for mediation.</li> <li>• Clear sentencing guidelines for traffic offences under the Road Traffic Act 2007.</li> </ul>
<b>Inspector General of Police, Sierra Leone Police (SLP)</b>	<b>For the Inspector General of Police to issue guidance that:</b> <ul style="list-style-type: none"> <li>• Declares loitering a non-arrestable offence.</li> <li>• Declares non-payment of debt a non-arrestable offence.</li> <li>• Mandates the SLP to refer debt-related offences to existing ADR processes.</li> <li>• Ensures accountability of police officers' issuance of spot fines.</li> </ul>
<b>Human Rights Commission of Sierra Leone (HRCSL)</b>	<b>Advocate for:</b> <ul style="list-style-type: none"> <li>• The repeal and amendment of loitering laws.</li> <li>• The amendment of offences for non-payment of debt and the introduction into legislation of an express prohibition of imprisonment for inability to fulfil a contractual obligation, including non-payment of debt.</li> <li>• The revision of maximum sanctions for traffic offences per the Law Reform Commission's review.</li> </ul>
<b>Law Reform Commission</b>	<b>Initiate comprehensive reviews</b> of the Larceny Act 1916, Public Order Act 1965, and Road Traffic Act 2007 in order to ensure that all offences, sentencing procedures and penalties for offences, are clear; necessary and proportionate to meet a legitimate objective; and comply with human rights standards and the Sierra Leone Constitution. If needed, <b>create sub-committees</b> for each respective review that may conduct research and consultations.
<b>Attorney General and Minister of Justice</b>	Use the Law Reform Commission's recommendations of new and revised laws to draft and table the proposed legislation before Parliament.
<b>Parliamentary Human Rights Committee</b>	Advocate for the legal reforms to be brought to Parliament and lobby colleagues to support the needed legislation.
<b>Civil Society &amp; Affected Populations</b>	Raise awareness about rights, legislation, and impact of criminalising petty offences for targeted stakeholders and the general public through a mix of media and community outreach. Develop advocacy efforts that will help to hold decision makers accountable and affected populations engaged.

Details regarding each recommendation are found on the following pages.

\* Sentencing guidelines are constrained due to the lack of a new Criminal Procedures Act, however the Chief Justice could still issue a temporary directive.

## RECOMMENDATION 1: DECRIMINALISE LOITERING OFFENCES

**1.1 Repeal loitering laws.** We recommend that the Sierra Leone Parliament repeal Section 7, Public Order Act 1965 and Section 13(1)(e), Criminal Procedure Act 1965 to prevent arbitrary and unjust treatment and arrest of individuals in Sierra Leone.

**1.2 Amend loitering laws.** If the above sections are not repealed, then we recommend that Parliament amend these sections to (1) reflect appropriate time and location limitations and (2) make clear that an individual's conduct must present a threat to public order and security. This will ensure that laws deal with specific kinds of behaviour, rather than having an excessively broad application.

*\*The draft Criminal Procedure Bill 2010 contains this reform. We urge Parliament to enact this bill as soon as possible.*

**1.3 Issue guidance to make loitering a non-arrestable offence.** Until reforms to legislation are made, we recommend that the Inspector General of Police issue intermediate guidelines to the Sierra Leone Police, stating that no person should be arrested under Section 7, Public Order Act 1965 or Section 13(1)(e), Criminal Procedure Act 1965.

**1.4 Conduct broad review of the Public Order Act 1965.** The Public Order Act contains several other provisions (e.g. offences of rogues / vagabonds (s.8), libel (Part V), and insulting conduct (s.3)) that are drafted in vague terms, open to subjective interpretation and application. We recommend that the Law Reform Commission initiate a broad review to ensure these laws are fit for their purposes.

### Relevant Laws

**Section 7, Public Order Act 1965** – *“Any person in or about any stable house or building, or under any piazza, or in the open air, and not having any visible means of subsistence, and not giving a good enough account of himself, shall be deemed an idle and disorderly person, and shall, on conviction thereof, be liable to imprisonment for any period, not exceeding one month”*

**Section 13(1)(e), Criminal Procedure Act 1965** – *“Any constable may without a warrant of arrest – arrest any person whom he finds between the hours of six in the evening and six in the morning lying or loitering in any street, highway, yard, compound or other place, and not giving a satisfactory account of himself”*

### Challenges and Limitations of these laws

- These laws are broad and vague. Simply the act of being in a place and not giving a “good enough” or “satisfactory” account of himself/herself (as subjectively judged by a police officer) provides basis for an arrest.
- As a result:
  - It is impossible to know with any certainty how to avoid committing the crime.
  - For those who work between 6 p.m. and 6 a.m. – often those from marginalised populations – section 13(1)(e) has the effect of criminalising their sole source of income.<sup>13</sup> Without a time limit, Section 7 allows arrest at any point, with vague requirements to be satisfied for the arrest.
  - Police officers have unfettered power to arrest or threaten to arrest any person, irrespective of whether they are a threat to public order/security.
- These provisions allow discriminatory application, are contrary to the rule of law, breach human rights standards (incl. Article 5, 6 and 12, African Charter) and do not comply with the Sierra Leone Constitution (incl. s. 17, 18, 20, 21, 22 and 27).

<sup>13</sup> Insights from consultative interviews with affected populations to gather feedback after the baseline report.

## The consequences of criminalisation

These laws enable police to arrest a person for going about normal, daily activities. This gives police, and those with authority and influence over the police, the ability to control the life, liberty and movement of individuals around them.

### Reported Examples of Criminalised Behaviour

*These are examples documented through AdvocAid and CARL's baseline research in 2017.*

**Tamba\*** is a student in Makeni. He was on his way home from studying with a group of students when he was arrested for loitering. He was given the choice between a one-month prison sentence and a Le100,000 fine.

**Abdul** was sentenced to 3 months imprisonment or a fine of Le 200,000 for doing business around midnight.

**Nenebah** was arrested for loitering for simply walking home from a club late at night.

## RECOMMENDATION 2: DECRIMINALISE NON-PAYMENT OF DEBT OFFENCES

**2.1 Amend Larceny Act 1916 to decriminalise non-payment of debt.** We recommend that Parliament **expressly prohibit imprisonment for** inability to fulfil a contractual obligation, which includes non-payment of debt. \*\* We recommend that Parliament also amend Section 20(1)(iv)(b) and Section 32, Larceny Act 1916 in order to make clear, for the avoidance of any doubt, that those sections apply only where there is fraudulent intent. \**Sierra Leone's draft Criminal Procedure Bill 2010 includes non-custodial sentences for civil debt offences such as deferred sentences and community service.*

**2.2 Issue guidance on assessing debt offences.** Until the above legal reforms are implemented, we recommend that:

(a) the Inspector General of Police (IGP) issue guidance to the Sierra Leone Police (SLP) to declare non-payment of debt a non-imprisonable offence, so that the police can only arrest where there is sufficient evidence of fraud and a minimum level of debt, and the IGP mandates the use by the SLP of existing informal resolution (IR) processes for any debt-related offences;

(b) the Chief Justice issue a temporary directive to on sentencing guidelines for debt offences, including a minimum level of debt and the fact that the prosecution must prove the existence of fraudulent intent.

**2.3 Mandate the use Alternative Dispute Resolution (ADR) Methods prior to court proceedings.** We recommend that the Chief Justice issues a directive mandating that in debt-related matters, parties must attempt to resolve a dispute through an ADR method, such as mediation, before a suspect is tried in the magisterial court, either from the police process or through a private criminal summons.

**1.4 Conduct broad review of the Larceny Act 1916.** We recommend that the Law Reform Commission initiate a review of the Larceny Act 1916 to ensure that each offence aligns with appropriate sentencing and penalty measures.

### Relevant laws

**Section 20(1)(iv)(b), Larceny Act 1916 – Fraudulent Conversion** - *“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 misdemeanour and on conviction thereof liable to penal servitude for any term not exceeding seven years”*

\* Each name in every “Reported Examples of Criminalised Behaviour” section has been anonymized to protect the identity of the individual involved.

\*\* This recommendation would codify in domestic Sierra Leonean legislation the prohibition that already exists at Article 11, ICCPR, to which Sierra Leone acceded.



**Section 32, Larceny Act 1916 – Obtaining Money or Goods by False Pretences** - *“Every person who by any false pretence (1) with intent to defraud, obtains from any other person any chattel, money, or valuable security, or causes or procures any money to be paid, or any chattel or valuable security to be delivered to himself or to any other person for the use or benefit or an account of himself or any other person... shall be guilty of a misdemeanour and on conviction thereof liable to penal servitude for any term not exceeding five years”*

### **Challenges and Limitations of these laws**

- These sections intend to criminalise deliberate and fraudulent behaviour. However, the use of these provisions has extended beyond that meaning.
- In practice, these sections criminalise pure debt situations that are non-violent, where no fraudulent intention exists, and which should be handled as civil matters.<sup>15</sup>
- As a result:
  - People who intend to pay creditors are arrested, and failure to pay is merely that s/he is unable to do so due to poverty.
  - Imprisonment not only restricts a debtor’s ability to repay a debt, but restricts their ability to make an income– comprising the well-being of entire families.<sup>16</sup>
  - Instead of resolving disputes through less costly ADR methods, the courts waste money through criminalising debt and contribute to the overcrowding of correctional centres.<sup>17</sup>
- Both imprisonment for non-payment of debt and the indirect discrimination that this has on those in poverty are breaches of human rights (Article 11 International Covenant on Civil and Political Rights, Articles 2 and 3 of African Charter) and s.27 of the Sierra Leone Constitution.

### **The consequences of the criminalisation of non-payment of debt**

In our research, approximately 75% of those arrested for these offences were petty traders.<sup>18</sup> It is common for petty traders to receive goods on credit from suppliers and pay the suppliers once they have sold their goods. These offences are often used to arrest such petty traders if their goods or money are stolen, the supplier asks for the money sooner than expected, or the trader does not yet have the money.

#### **Reported Examples of Criminalised Behaviour**

*These are examples documented through AdvocAid and CARL’s baseline research in 2017 and AdvocAid’s ongoing work.*

**Umar** was arrested for receiving Le10,000 (the equivalent of \$1 USD) from another man after saying that he had a supply of husk rice, when he did not.

**James** borrowed le 500,000 from his friend. After two months passed and he had not returned the money, the friend reported the matter to the police.

**Francess’** boyfriend borrowed Le1,200,000 from a microcredit institution, but fell sick and spent the loan to pay for medical treatment. He did not survive the illness and died shortly after. Francess was called in as her boyfriend’s surety, and was unable to pay off his debt. She was detained in prison until her boyfriend’s family came to pay off the debt.

<sup>15</sup> ICCPR Article 11: no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation, such as debt.

<https://treaties.un.org/doc/publication/unts/volume-999-i-14668-english.pdf>

<sup>16</sup> Women, Debt & Detention: An Exploratory Report on Fraudulent Conversion and the Criminalisation of Debt in Sierra Leone, 2012, <http://advocaidsl.org/wp-content/uploads/2018/12/AdvocAid-Women-Debt-and-Detention-Report.pdf>.

<sup>17</sup> Women, Debt & Detention, pg. 28: “The strength of such ADR methods... 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.”

<sup>18</sup> Only those persons for whom we had a recorded employment status were included in the percentage calculation.

## RECOMMENDATION 3: REFORM SANCTIONS FOR MINOR TRAFFIC OFFENCES

**3.1 Review and reform the maximum sanctions for petty traffic offences.** We recommend that the Law Reform Commission conduct a review of the Road Traffic Act 2007 and assess which sanctions are proportionate with the crimes committed, in order to propose appropriate reforms to Parliament. We also recommend that the Commission **consider non-custodial alternatives** to arrest and detention.

**3.2 Issue guidance to the judiciary on proportionate sentencing measures for traffic offences.** Per the Law Reform Commission's suggested review, we recommend that the Chief Justice issue a temporary directive clarifying proportionate sentencing measures. These include levels for minimum and maximum fines depending on the nature of the offence, any aggravating circumstances (e.g. repeat offending), and non-custodial alternatives to arrest and detention.

**3.3 Ensure accountability of spot fine issuance** – We recommend that the Inspector General of Police issue guidance to law enforcement regarding the application of s.85 of the Road Traffic Act 2007 so that (a) the manner in which police officers issue spot fines is consistent, proportionate & non-discriminatory; (b) officers issue receipts to anyone issued a spot fine confirming the amount, date and location of the fine, the relevant legislation, and the process to appeal a fine or file a complaint; and (c) officers make corresponding notes of the issued fine at the police station. This will help to ensure accountability of police decisions and minimise the scope for abuse in relation to minor traffic offences.<sup>19</sup>

### Relevant Laws

**Road Traffic Act 2007** – sanctions are contained in subsections throughout the Act. Minor offences include broken park lights, driving without a seat belt, parking in the wrong place, not producing a driving license on demand, and more. By way of example:

**s. 85:** "(1) A police officer...may impose a spot fine on a person who commits an offence provided for in regulations made under this Act where – (a) the offence is committed in the presence of the police officer or authorised person; and (b) the relevant fine for the offence is one that may...be levied on the spot."

**S.111** - "Any person of 18 years or above who –(a) drives a motor vehicle on a road; or (b) sits in the front or rear seat of a motor vehicle being driven on the road, without wearing a seat belt commits an offence and is liable on summary conviction to a fine not exceeding Le 100,000 or to imprisonment not exceeding 6 months or to both"

**S.119** - "A person who, without lawful authority drives, rides or parks a motor vehicle wholly or partly on a cycle track commits an offence and is liable on summary conviction to a fine not exceeding Le250,000 or a term of imprisonment not exceeding 12 months or to both."

### Challenges and Limitations of these laws

- The maximum sanctions for non-compliance with offences in the Road Traffic Act 2007, which are typically a choice between paying a fine or a term of imprisonment, are onerous and disproportionate to the relevant offences.
- These laws also lack a clear set of sentencing guidelines regarding the amount of fine or time of imprisonment, leaving their application open to abuse and inconsistency by law enforcement.<sup>20</sup>
- As a result:

<sup>19</sup> Institutions responsible for police accountability include the Independent Police Complaints Board, the Anti-Corruption Commission, Internal Police Complaints Mechanism, Office of the Ombudsman, Human Rights Commission of Sierra Leone. See AdvocAid's Police Manual: [http://advocaidsl.org/wp-content/uploads/2019/04/AdvocAid-Police-Complaints-Manual\\_final.pdf](http://advocaidsl.org/wp-content/uploads/2019/04/AdvocAid-Police-Complaints-Manual_final.pdf).

<sup>20</sup> A 2016 report by Citizen's Agenda for Prosperity (CAP), a coalition of civil society organisations including CARL, showed that 90% of persons charged with even the vaguest and most minor traffic offences ended up being convicted. They were either required to pay a fine or serve a custodial sentence.

- The application of the sanctions is inconsistent and subject to the discretion of law enforcement officials: two individuals committing the same petty traffic offence may receive completely different sentences.
- According to AdvocAid and CARL's research, nearly ¾ of those convicted for traffic offences were bike riders, taxi drivers, and traders – all with low-income employment.<sup>21</sup> Those who cannot pay a fine due to poverty are forced to serve a prison sentence. Consequently, the sanction indirectly discriminates against the poor and exacerbates their poverty by preventing them from working.
- This clearly breaches human rights protecting a person's liberty and freedom from discrimination under the African Charter (Art. 6) and the Sierra Leonean Constitution (incl. s.17).

### ***The consequences of the criminalisation of minor traffic offences***

Our research and experience show that those convicted of petty traffic offences often find themselves incurring disproportionately severe penalties. Due to the threat of lengthy prison sentences, people are often asked to pay large fines on the spot (under s.85, Road Traffic Act 2007). When an individual can afford it, s/he often does so without any record of paying the fine, demonstrating a lack of accountability of those officials. Additionally, given the high illiteracy rate of many drivers and individuals subject to these fines, the lack of transparency in the laws exacerbates the risk of their vulnerability under these laws.<sup>22</sup>

#### **Reported Examples of Criminalised Behaviour**

*These are examples of cases documented through AdvocAid and CARL's baseline research in 2017.*

**Kai** failed to park his car in the correct location. He was sentenced to 24 months imprisonment or a le 250,000 fine.

**Alpha** overloaded his vehicle and failed to produce vehicle documents. For this act, he was sentenced to 24 months imprisonment or a le 500,000 fine.

### ***Conclusion***

It is clear that reform of petty offences is needed to enable Sierra Leone to comply with its obligations under the African Commission's Principles, other international and regional human rights standards and the Constitution of Sierra Leone. Our research confirms that petty offences account for a significant proportion of the offences reaching police stations in Sierra Leone, and exposes the disproportionate and unjust impact that the existence and enforcement of petty offences has on vulnerable persons. As one interviewee sagely commented, 'An unintended consequence of the law is that, the poorer you are, the closer you are to jail.'

**Action is needed among all stakeholders to curb this disproportionate impact.**

<sup>21</sup> Decriminalising Poverty baseline research data.

<sup>22</sup> Insights from consultative interview with the Sierra Leone Tricycle Association to gather feedback after the baseline report.

## Who We Are



**AdvocAid** is a civil society organisation working across Sierra Leone to support women and girls who are in conflict with the law, providing free legal representation, legal rights education and welfare support for detainees and ex-inmates. We have been operating for over 10 years and provided support to thousands of women and girls.



**Centre for Accountability and the Rule of Law** is a civil society organisation which calls for transparency and accountability in Sierra Leone. It was established over a decade ago primarily to foster transparency and citizen participation in the post conflict transitional justice process. Since its establishment it has expanded its activities to include the monitoring of various governance related programmes.



**Open Society Initiative for West Africa (OSIWA)** plays a dual role in the region as both an advocate and grant-maker by enabling itself to be agenda-setters both within and alongside other organizations working on the ground. The Foundation works through a unique combination of grant making, advocacy, partnership building and technical assistance.