



Education, Empowerment and Access to Justice for Women and Girls

1. Declaration of a State of Emergency in Sierra Leone – 24th March, 2020

On the 24th day of March 2020, the president of Sierra Leone H.E Julius Mada Bio by the authority vested in him under Subsection 1 of Section 29 of the Constitution of Sierra Leone, 1991, Act No. 6 of 1991, declared a state of public emergency in Sierra Leone for a period of 12 months having regard to the threat that the corona virus disease posed to the lives of the people and the economy of Sierra Leone, and the need to take effective measures to prevent, protect, and curtail the spread of the disease throughout Sierra Leone. Despite these derogations, Article 27 (2) of the African Charter provides for rights and freedoms enshrined in the African Charter to be exercised with due regard to the rights of others and common interest. It should be noted also, that **Article 4** of the ICCPR only allows states to make derogations from their international human rights obligations during a state of emergency, only if such derogations are proportional and strictly necessary in line with the Siracusa Principles. The state of emergency has since expired and was not extended as confirmed by the Government on 24th March, 2021

2. Substantive Elements of Preventive Measures put in place in Sierra Leone

As much as His Excellency stated that the state of emergency was not an opportunity to hoard goods, hike prices, or engage in acts of lawlessness and not meant to make the lives of Sierra Leoneans difficult or unbearable, there were preventive measures that were put into place to prevent and curtail the spread of the virus. On 18th March, 2020 H.E Julius Mada Bio announced to the Nation the Enhanced Public Health and Safety Measures to Prevent the Corona Virus (Covid-19) Freetown, Sierra Leone. The Ministry of Health and Sanitation had activated the Emergency Operations Centre to Level 2 to coordinate initial preparedness and response

➤ 3 day lock downs

In the wake of the COVID-19 pandemic, Sierra Leone government put in place measures to prevent and stop the spread of COVID-19 including a one-year public health State of Public Emergency on 24th March, 2020 and a three-day lockdown that commenced on 5th April 2020 and ended on 7th April 2020. With the increasing cases of COVID-19 in the country, a second lockdown was announced to last from 3rd to 5th May, 2020 to carry out contact tracing of the infected persons but also as a preventive measure to stop the spread of the disease.

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➤ **Curfew, reducing trading hours, ban of flights and restricted inter district travel (2020 and 2021)**

Upon announcements of heightened measures to curb the spread of the virus, inter district travel was restricted with exceptions of essential workers. On Sunday, April 26, the Emergency Response Centre (EOC), responsible for managing the corona virus disease (COVID-19) pandemic in Sierra Leone, announced the indefinite extension of existing partial lockdown and curfew measures. Under the measures, travel between districts was banned and a curfew put in place between 21:00 and 06:00 (local time). The lifting of the ban on inter-district travel was declared on Wednesday, 24th June 2020. Those carrying essential goods or providing essential services must carry an electronic pass. All schools, entertainment centers, and religious institutions were closed, and public gatherings banned. Places of congregational worship were closed in March only to be re opened from 13th July, 2020 with strict instructions to observe health protocols. In Freetown, market opening hours were limited to between 07:00 and 19:00 (local time). Banks could only open between 9am and 3pm local time and civil servants to work between 9 and 4pm. Public transport vehicles were allowed to operate at limited times of the day.

In January, 2021 EOC announced a new lockdown of the capital Freetown and a night curfew throughout the country to counter the sudden increase of Covid cases in the country. These measures were for two weeks initially, said in a statement from the Government center for response to COVID-19. With Freetown recording high increases and numbers, authorities decided to restrict entry and exit from the Western Area, the territory corresponding to Freetown and its surroundings. Travel outside Freetown was with an electronic pass subject to an essential issue and a negative test given within 72 hours. The inter district travel ban was lifted on 8th February, 2021. Travel outside Freetown considered essential is subject to a negative Covid test within 72 hours. In January, a curfew was re-established throughout the country from 22H00 to 5H00 (local and GMT). The curfew was later extended to Midnight and finally lifted on 24th March, 2021.

Suspension of Court hearings for a period of one month to curb any form of spread of the virus from 26th April, 2020 specifically the civil high court which was scheduled to commence work from the 11th of May 2020 was postponed to 10th of June 2020 and the January criminal session ending with immediate effect. The special criminal sessions which were scheduled to start on the 8th of May 2020 were postponed to 28th of May 2020. The May criminal sessions commencing 18th of May 2020 were postponed to 10th June, 2020 and visits to the persons in detention suspended in the Correctional Centres except only by their lawyers. On Monday 26th October, 2020 the Sierra Leone Correctional Service informed the public that it will resume normal families and friends' visitations to inmates on Tuesday 3rd November, 2020 for the first time since March, 2020.

All commercial flights to and from the capital's Lungi International Airport (FNA) were indefinitely suspended since Saturday, March 21, and on Friday, March 27, authorities announced the closure of all borders for 30 days, except for cargo transportation. The borders were later opened and airports commenced operation in July, 2020. International travelers must still obtain authorization before

arrival and must provide a negative polymerase chain reaction (PCR) COVID-19 test result issued within 72 hours prior to departure for the country. Additional tests, including a COVID-19 PCR and rapid diagnostic test (RDT), are conducted on arrival. Any arriving traveler whose RDT test is positive will be isolated at a government-approved facility at his/her own expense. Travelers will remain at an approved facility until the PCR test is returned, with authorities (which has since been removed) holding their passports until the results of the PCR test have been received. If the PCR test is positive, the traveller will be required to self-isolate

Introduction of the compulsory face mask wearing in public from 1st June, 2020 and the penalty for failure to wear one accorded one a fine ranging from \$2 to \$10. All persons, when attending a gathering, are required to wear a face mask and observe all health protocols. Washing hands, sanitizing and wearing masks in all public places still apply

3. Enforcement and Sanctions

Most of the measures put in place carried fines and or detention for violations. During the lock down when no one was expected to move, people who were moving around were arrested and detained at Police Stations for loitering or violating COVID prevention measures. To enforce these protective measures, the government put in place new sanctions regarding masks, curfew hours and any form of movement during lock downs. The army was also deployed to support the Police and patrol boarder points.

4. Impact on the exercise of human rights

The lock down measures, though commendable, had to be applied within the context of human rights and Sierra Leone's obligations thereof. The marginalised in our communities who include women and girls often feel the impact of restricted movements and lockdowns since such measures affected their access to their daily livelihood activities, clean water, health care, food, and even employment. In enforcing these restrictions, various abuses were committed against the people accused of having violated a curfew, lockdown, or state of emergency when a criminalization approach is implemented. No movements, no business transactions were expected during the 3 day lock downs for contact tracing. Without a doubt COVID19 has had a disproportionately negative effect on all the vulnerable in our communities. Though these restrictions are essential and a trade off between rights protection and a balance to ensure the public health, the deep effects accompanying the pandemic will most likely out last the pandemic.

A summary of the monitoring findings of detention places during the lockdown by AdvocAid paralegals, social workers and other staff found that lockdown regulations interfered with basic services. A total of 183 people were detained across the regions of Kenema, Makeni and Freetown during this second lockdown. Of these 5 were juveniles (2.7%). 77% of women detained during the lockdown were arrested for COVID-19 related offences, compared to only 31% of men.

Of the total 183 individuals arrested, 152 (83.1%) were male and 31 (16.9%) were female. However, of the women, the proportion arrested for COVID-19 related offenses was significantly higher.

For men, 31% of arrests were COVID-19 related (47 out of 152 arrests) but for women 77% of arrests were COVID-19 related (24 out of 31 arrests). Through AdvocAid's interventions and sensitisation work, they were able to secure the release of the 71 men and women arrested for breaching COVID-19 related restrictions. AdvocAid noted that it is the poor and marginalised that bear the brunt of a lockdown and other restrictions. Poor and marginalized individuals and groups bear the heaviest burden resulting from COVID-19 restrictions as it limits mobility and interaction – key survival requirements for marginalised and poor individuals and groups.

Many people are not be able to comply with restrictions on movements or curfews as important resources such as ablution facilities and water (for drinking and hand washing) are shared, inaccessible or situated far away. Governments must be made aware of the plight of poorer communities and be cautious in the measures meted out to enforce lockdown laws and regulations. The enforcement of these laws through arrest and detention may hold severe socio-economic consequences for them and their families' wellbeing. A one size-fits-all approach to fighting the virus could lead to devastation amongst poorer and marginalised communities through enforced hunger and hardship.

However, it is important that protection measures do not prove counterproductive by disproportionately and negatively affecting the marginalised in our communities. The experiences shared by some of the women and girls highlight how such regulations and their enforcement can put women, girls and all vulnerable in the society disproportionately at risk of contact with the law. Most of the affected populations were not acting in defiance of the new measures but out of the need to find food, water, and petty trading to earn money to sustain their families. The arrests made during lock downs for those who had to move to fetch water or buy bread to feed their loved ones was not unusual. The human rights issues arising from the COVID-19 pandemic include right to health, the right to housing, the right to water and sanitation, the right to food and nutrition, the right to employment and social security, women's rights, children's rights, rights of persons deprived of their liberty, freedom of assembly, freedom of movement all in contravention of the African Charter.

Most market women were affected by the curfew to stop selling goods by 7pm and yet these women carry the weight of their extended families as bread winners and now they were getting arrested for violating curfew regulations because they wanted to catch a last minute sale or didn't have enough sales and can't find transport to go home on time. Some of them did not had as much sales from the usual buyers who were mainly people returning from work as they closed shop earlier than before the pandemic and then fell short on loan payments then got arrested by the Police and the cycle continued.

The Commercial Sex Workers (CSWs) who are often arrested for violating curfew regulations and their livelihood has been affected due to curfew regulations but mainly subject to abuse by their clients who could not afford to pay them for the hours they had spent with them since with the introduction of the curfew, the women would have to spend a night where they were upon commencement of curfew hours violating rights of women under the Maputo Protocol

With the criminal justice system adapting to alternative ways to manage court hearings, fair trial rights became a challenge all in contravention of Article 7 of the African Charter which provides for a right to fair trial specifically the suspension of court hearings that left many who could have easily been

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discharged, granted bail or given suspended sentences disproportionately affected by such measures. And now the new regulations to wear face masks in public places has got cross cutting members of different communities falling victim to the new petty offences created to prevent the spread of the pandemic. The slow reaction to release prisoners and even the few numbers released on presidential pardons still risked exposing many who stay incarcerated to the risk of covid19 violating their right to health(Article 16 of the African Charter)

With the discriminatory application of fines ranging between \$2 and \$10 often targeting the poor street vendors, AdvocAid was able to draft guidelines on mask compliance and enforcement to NaCOVERC the body managing COVID outbreak in the Country to avoid holding people in detention for failing to pay fines when found not wearing masks as it proved counterproductive to prevention of the spread of the virus in detention cells.

5. Recommendations

In contrast to other international human rights instruments, the African Charter does not contain a derogation clause. Therefore limitations on the rights and freedoms enshrined in the Charter cannot be justified by emergencies or special circumstances. The only legitimate reasons for limitations of the rights and freedoms of the African Charter are found in Article 27(2), that is, that the rights of the Charter “shall be exercised with due regard to the rights of others, collective security, morality and common interest.” Therefore the recommendations made could be adopted to ensure respect and protection of human rights in emergencies.

- Alternatives to pre-trial detention and the commutation or temporary suspension of certain sentences to reduce new admissions to prisons and reduce the risk of COVID-19 transmission. This will be particularly relevant in the case of minor petty offences, including those of a non-violent and non-sexual nature. The Government of Sierra Leone should adopt alternatives to arrest and detention. Poor and vulnerable persons may not be able to adhere to the lockdown laws and regulations; not out of defiance against the lockdown, but out of desperation to secure food and essentials to care and feed their families. It is imperative that lockdown regulations and laws not create offences or criminalise otherwise legal activities now resulting in arrest and detention. This will only result in greater pressure on already strained systems. The use of arrest and detention should be avoided and be used as a measure of last resort and for the most serious offences, given the risks and opportunities related to arrest and detention during the pandemic. States should limit the use of pre-trial detention and the implementation of non-custodial measures as an effective measure that reduces risks of spreading COVID-19 as beneficial for both detainees and law enforcement. Measures such as cautions or warnings should be encouraged and other non-custodial measures such as conditional discharge, monetary fines, community service, probation and referral for counselling or rehabilitation should be considered.
- Human-rights complaint protocols for law enforcement officials in the context of emergency measures, and ensure training of such officials.

- Awareness on human rights in the context of emergency measures, and access to justice to ensure accountability and redress especially for the security personnel in charge of enforcing such preventive measures
- Ensure civil society space, including responsible media, and democratic political participation.
- Adopt a public health response to emergencies than a criminal approach. The Government of Sierra Leone should adopt a rights centred and public health approach rather than a law enforcement approach with the least restrictive means to address a public health crisis.
- The Government of Sierra Leone should develop and implement capacity building and training programmes for criminal justice actors that will cover the criteria for decision making on arrest and prosecution and guidance on diversion from the criminal justice system during public health crises and state of emergencies.
- The need to harmonize domestic legislation to comply with international standards and these may include revising domestic law to ensure that arbitrary arrests are prohibited, as well as introducing safeguards such as ensuring that the detained person has the right to inform a close relative or someone else of his/her situation immediately and the right to have immediate access to a lawyer, family visitation among others.
- The Government needs to reduce overcrowding in detention centres as this increases the risk of covid-19 infection rates. For example; it could start from inmates arrested for committing petty offences and also vulnerable low-risk and pre trial detained women and lastly decriminalizing petty offences like loans or debts.
- In line with human rights obligations the Government should set up effective and efficient systems to monitor the measures adopted and to take corrective measures and undertake investigation in cases of allegations of violations of human and peoples' rights during the enforcement of emergency measures put in place to prevent and stop the outbreak of COVID-19
- The measures adopted to fight COVID-19 should not lead to discrimination and stigmatization of any one on the basis of any grounds of discrimination listed under Article 2 of the African Charter or similar grounds. States should ensure that people affected by the virus and people coming from countries with major spread of the virus are treated with dignity and humanely and that they are not subject to attacks and discriminatory treatment.

Even as the crisis persists, we are committed to continue to develop new and creative ways and adapt our strategies to whatever circumstances we may find ourselves in to ensure that we do not now criminalize COVID19 but continue to protect and promote human rights during this pandemic as we all play a vital role ensuring that these measures are necessary, proportionate, non-discriminatory and compliant with national, regional and international human rights standards.

