

WOMAN WAHALA NA PRISON

*CAUSES AND CONSEQUENCES OF
WOMEN'S IMPRISONMENT IN SIERRA
LEONE*

THE CYRUS R. VANCE CENTRE
FOR INTERNATIONAL JUSTICE
AND ADVOCACY



“Our society as a whole – the way our society is structured – it serves the purpose of the male, where the strength of men is almost in every aspect of life. Even when matters are brought before the court, if you as the judge or magistrate are not careful most of these women will lose their case.”

Judge in Kenema

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¹ AdvocAid, which was founded in 2006, works with girls and women caught up in Sierra Leone’s often unjust legal system. They are the only organization in West Africa providing holistic access to justice via free legal representation, education empowerment, detainee

support and a moving forward program, ensuring detainees leave as stronger women with brighter prospects.

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LIST OF ABBREVIATIONS

ACHPR	African Commission on Human and People’s Rights
ADR	Alternative Dispute Resolution
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CSO	Civil Society Organization
DPP	Director of Public Prosecutions
FGM	Female Genital Mutilation
ICCPR	International Covenant on Civil and Political Rights
MSWGCA	Ministry of Social Welfare, Gender and Children’s Affairs
NGO	Non-governmental Organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
SGBV	Sexual and Gender-Based Violence
SLCS	Sierra Leone Correctional Service
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Program
UNICEF	United Nations Children's Fund



EXECUTIVE SUMMARY

Although women represent a minority of the global prison population, their rate of imprisonment has been rapidly growing over the last two decades. As the UN Special Rapporteur on Violence Against Women has said, “much more remains to be done to identify and address the pathways to women’s incarceration; to establish better, safer and more gender-sensitive conditions for women prisoners; to ameliorate the negative consequences of women’s imprisonment; and to reduce the numbers of women in prison around the world.”²

This study focuses on the causes and consequences of women’s imprisonment in Sierra Leone, and compares policy and practice around women’s detention against the country’s obligations under international standards and human rights law. It presents the findings of a research project carried out by two human rights organizations, the Cyrus R. Vance Center for International Justice and AdvocAid. It comprises interviews with 86% of the female prison population in Sierra Leone between November and December 2019; a total of 80 women behind bars, along with 15 formerly incarcerated women, 15 prison staff, 19 stakeholders, and 10 relatives of women in or previously detained in prison.

With the publication of this study, the Cyrus R. Vance Center for International Justice and AdvocAid hope to fill an important research gap and spark an essential conversation on the causes and consequences of women’s imprisonment in Sierra Leone and beyond. In doing so it seeks to amplify the voices of the women who participated in the research, and to demonstrate the need to address the structural issues that contribute to women’s imprisonment and then continue to hinder their full enjoyment of rights after their release.

Below are some of the more significant findings of this study.

1. PATHWAYS TO PRISON

1.1 Poverty

Almost all the women in prison at the time of the study were economically disadvantaged and often the main caretakers of young children. 71% said that before going to prison they could only afford one or two meals per day. Almost half had been the main earners of their households and 88% were taking care of at least one child before their arrests. 83% of the children of incarcerated women were younger than 18 prior to their mothers’ arrests.

Already marginalized in society, 34% of women had either been convicted of or charged with crimes related to poverty and drug abuse such as drug trafficking, loitering, fraudulent conversion, obtaining money or goods by false pretense, conspiracy to steal, larceny, robbery and burglary. The percentage may actually be higher since the vast majority of the women we surveyed were detained in the maximum-security prison in the capital, Freetown, which houses those who are accused of or have committed serious crimes.

Larceny was the most common among the non-violent offenses that women had been charged with or convicted of. According to testimony from these women, they had usually stolen small sums of money, mostly from family members, to provide for their children.

Despite lobbying from civil society and recommendations from the African Commission on Human and Peoples’ Rights to decriminalize and declassify petty offenses, these are still criminalized in Sierra Leone. The study found that many women, who were mostly petty traders and often the breadwinners of their households, had been accused or convicted of ‘fraudulent conversion’ or ‘obtaining money by false pretense’. According

² Special Rapporteur on Violence Against Women, *Pathways to, conditions and consequences of incarceration for women*, U.N. Doc.

A.68.340

to many of these women, they had taken small loans for business purposes and used the money to settle unforeseen domestic expenses and meet the basic needs of their children and families. Our interviews indicated that police officers can often be eager to arrest under these charges in order to attempt to recover the money to return to the lender, while levying a portion for themselves. The study also found that when a woman is convicted of such offenses, the lender does not generally recover the money owed and the State incurs substantial expenses in detaining these women who, it could be argued, could instead have been working to repay the lender.

“I have eight children and sometimes it was just impossible to take care of them all. So, I borrowed some money from a friend but when I couldn't pay back, she turned me in to the police. I am so worried, who will make sure that my children go to school and are well fed now?” – Woman in prison

According to the formerly incarcerated women who participated in this study, another common petty offense for which women are imprisoned is loitering. Our focus groups indicated that loitering laws are particularly likely to be used to criminalize women who do not comply with traditional gender norms such as being out late, and especially those who engage in sex work, which is otherwise legal. Women with a lived experience of prison interviewed for the study reported that sex workers are at an increased risk of suffering violence at the hands of police.

Although the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) encourage gender-sensitive alternatives to detention,³ particularly for minor crimes, Sierra Leone does not provide non-custodial sentences aside from steep fines, which many of the women interviewed for this study reported being unable to pay.

³ See Rules 57-62 of The Bangkok Rules

⁴ See, inter alia, Bangkok Rules, Rule 61

1.2 Prior experiences of abuse

The detained women who participated in this study had suffered violence before prison, during their experience in the criminal justice system and prison, and after their release. About half of these women had survived at least one form of abuse during their childhood, while 72% had suffered violence as adults at the hands of their partners, and 45% from someone other than their partner, usually their father, uncle, neighbor or a male acquaintance. Despite domestic laws prohibiting domestic and sexual violence in Sierra Leone, many women do not report the abuse to the police, reportedly often because they fear not being taken seriously. Legal professionals also explained that some women prefer to resolve these issues in the informal justice system. Our research indicates however that the informal justice system, as well as customary law, are often skewed against women. These are also not codified and differ from one ethnic group to the other.

20% of the imprisoned women had been charged or convicted of murder. Murder carries an automatic death sentence, in violation of international human rights law.⁴ No person on death row has been executed since 1998. However, the current President has not yet signed a moratorium on executions. Out of the 24% of women who committed a crime against their partner or spouse, 94% reported that they had been beaten, bullied, belittled, or sexually harmed by this person prior to the crime. 69% said they acted in self-defense. While domestic law makes provision for a defense of self-defense, if a woman is found guilty of murder, a history of violence cannot be considered at sentencing as a mitigating factor because of sentencing guidelines which provide for an automatic death penalty for murder. This practice is in breach of international legal standards.⁵

“My husband left me for another woman. He wouldn't give me more than 2,000 Leones (\$0.20) every now and then for our child to eat. One day I was having a walk with my child tied to my back

⁵ The updated Model Strategies and Practical Measures on the Elimination of Violence against Women and Girls in the Field of Crime Prevention and Criminal Justice, General Assembly resolution 65/228, annex, adopted on 21 December 2010 states in provision 15(k) that self-defense claims by women who have been victims of violence, particularly in cases of battered woman syndrome, must be taken into account during investigations and prosecutions and at sentencing.

when I saw my husband. He came close to me and asked me to leave so I said that he should leave. He removed his belt and started flogging me. So, I lowered because I wanted to throw my shoe at him, but he pushed me and my child to the ground. That's when I lost my temper. I picked up a bottle and threw it at him. He died at the hospital" – Woman in prison

Under international standards,⁶ women should have access to gender-sensitive and trauma-informed mental health care and rehabilitation programs while in detention. Yet, only 24% of the women surveyed had met with a counsellor or prison staff upon entering prison to discuss whether they had suffered abuse. Counselling is mostly provided by prison staff, church initiatives, or civil society organizations.

1.2 Mental Health

Research into mental health issues in Sierra Leone is difficult due to limited mental health awareness. However, about half of the women in prison interviewed for this study reported suffering from depression and 40% from anxiety before entering prison. A history of poor mental health could void criminal responsibility and mean that a person is referred to a mental health hospital rather than prison,⁷ and is a factor that should be considered by judges in deciding whether to grant bail under domestic law.⁸ However, it is difficult to conduct a mental health assessment for criminal trials in Sierra Leone. There are only two psychiatrists in the country with the necessary certification. This, combined with low training on mental health among the judiciary, means a history of poor mental health is generally ignored at trial.

1.3 Education

Our study revealed that more than half of women in prison in Sierra Leone at the time were illiterate. 45% had never attended school. Our research

indicated that low levels of education and legal literacy could be linked to the finding that some women had plead to charges that they do not understand. This may be exacerbated by a culture in which women often do not challenge male authority. The majority of women who participated in this study reported not having received legal advice at the police station as required under international legal standards.⁹ Some women claimed having been “tricked” by the police into signing confessions. Others reported having been asked to sign a written statement they were unable to read or understand.

“When I was at the police station, they were just giving me papers to thumbprint without asking me to explain further and I don't really know what they had me thumb print.” – Woman in prison

When cases are charged to court, much of the court process is in English, which for many women in Sierra Leone is not their first language. Under international human rights law, everyone has a right to a free interpreter if they cannot understand the language used in court.¹⁰ However, there are no qualified court interpreters in Sierra Leone. Police officers often act as voluntary translators to Krio, which is not understood by all women from rural communities. Local civil society are also reportedly concerned with police officers acting as interpreters because of their lack of neutrality since often they are also part of the prosecution's team.

Many of the women who participated in the study said they felt “tricked” by the criminal justice system. They complained they had not been allowed to explain themselves in court or pleaded guilty on the advice of the police who told them they would be free if they did so. Because of the lack of interpreters or jurors, trials are repeatedly adjourned. Civil society organizations reported concerns with juror's bias against women because they are predominantly male retired civil servants.

⁶ Bangkok Rules, Rule 12

⁷ Mandela Rules, Rule 109

⁸ The Bail Regulations 2018, s. 7(1)(b-d)

⁹ Basic Principles on the Role of Lawyers Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3, annex

¹⁰ ICCPR, art. 14(f)

Additionally, because of their very limited education and legal literacy, some of the women who participated in the research were unable to say if they had been offered bail, did not know which crime they had been charged with, and could only describe the events that led to their imprisonment. A small group reported having been convicted of murder, when they had actually been convicted of manslaughter, which carries a lighter sentence.

2. CONSEQUENCES OF DETENTION

2.1 Physical and mental health

The research has found that Sierra Leone continues to adopt an excessive use of pre-trial detention. Only 37% of the women who were interviewed had been convicted. As a result, the correctional center in the capital, Freetown, is severely overcrowded. It was designed to initially hold 18 prisoners, but it currently houses more than 60. These results are particularly alarming, as the excessive use of pre-trial detention leads to overcrowding, which, combined with limited access to water and sanitation, can contribute to the spread of diseases. Following the COVID-19 outbreak this is all the more concerning.

Even in correctional centers that are rarely overcrowded, water supply and sanitation are inadequate; this poses a challenge to women's hygiene needs, especially during menstruation or pregnancy. According to international standards, women in prison are entitled to at least the same level of healthcare that is available to the general population¹¹ and should receive gender-specific healthcare services.¹² However, women in prison, formerly incarcerated women, and prison staff who participated in the study, reported that healthcare provision in prisons is insufficient. This study also found that the prison authorities do not adequately provide for women's specific health services, including gynecological care and cervical and breast cancer screenings, in any centers. Relatives of women with a lived experience of prison reported that poor physical and mental health

in prison can have long-lasting effects on women after their release.

Unmet needs, both in prison and outside, and prison conditions can trigger or exacerbate mental health illness. 54% of women surveyed reported a mental health condition starting or deteriorating in prison. Depression and anxiety were the most common conditions reported. About 5% of those surveyed in prison reported having either self-harmed or attempted suicide while in detention. This figure is likely greater given that at least one correctional center reportedly banned mosquito nets after women used them to attempt suicide. Relatives of formerly incarcerated women reported that these women's behavior changed after the experience of prison. Women who had been to prison also reported struggling to reintegrate into society and having suicidal thoughts even after release.

"Before, we used to have ropes where inmates used to hang their dresses, but an order was given by the manager that all ropes should be banned because we had an inmate who used such rope to strangle herself. Since then, inmates have been drying their clothes on the ground." – Correctional center officer

This study uncovered a strong link between women's limited communication with families and friends and their mental health outcomes. 45% reported never having received visits while in prison. Many had lost touch with their children while in detention, and sometimes even after their release. Women cited the lack of contact with their children as a major cause of anxiety and depression. 9% of the children of incarcerated women who participated in this study were unaccounted for in the outside world.

"I have five children. I do not know anything about them, whether they are alive or not. This is very scary, and I always cry" – Woman in prison

¹¹ Bangkok Rules, Rule 10

¹² CEDAW, Rule 12

2.2 Stigma, family connections and abandonment

Many women in prison worry about the stigma they will suffer after their release and a number of those interviewed felt that this stigma is much stronger for women compared to men, which will impact the extent to which they can rebuild their lives. The women interviewed for this study expressed concern about reintegrating, renting a house or finding employment. Almost all interviewed women had children waiting for them outside prison yet only 24% of fathers were caring for children after the mothers had been arrested. Many women reported that their partners had abandoned their children and started new relationships or had remarried. In some cases, families and partners sold the women's property. 52% of those interviewed in prison feared for their safety due to the possibility of retaliation. This will also impact on their ability to settle back into their communities.

“For the guys, going to prison is nothing. But for a woman... it affects her. When women go back to their communities after prison, they are just outcasts, they are nobodies.” – Legal Aid Board Makeni

Relatives of women in prison and those of formerly incarcerated women also reported facing stigma within their community and extended family. Children of women in prison are often shamed and mocked because of their mothers. Some even leave school as a result of the stigma.

2.3 Economic impact

Our study has shown that since there are almost no opportunities for women to earn a wage while in prison, they leave prison poorer than when they entered. International standards require that detained women be provided with appropriate educational and training programs while in prison.¹³ The few opportunities offered to women in Sierra Leone's prisons are therefore insufficient. As a result, many women leave prison without

having developed the vocational skills, education and connections needed to find stable employment. Most women in prison interviewed were petty traders; many with a lived experience of prison said they are unable to find initial capital to restart their business after their release due to stigma and loss of social safety nets.

About half of the women in detention were the main earners of their households before their arrests and many used to be the primary caretakers of minors. Their imprisonment therefore had a significant impact not only on themselves but on their children and families. 35% of these women did not think they would be able to support themselves and their families after leaving prison.

“As an old woman who is the breadwinner of a home, my whole family is crumbling down gradually. I have a lot of people that depended on me for their survival, but now that I am here and have lost everything, what is the fate of these people?” – Woman in prison

3. CONCLUSION AND KEY RECOMMENDATIONS

Under international standards, States have an obligation to understand the characteristics of women in contact with the law,¹⁴ so that they can respond appropriately. This includes recognizing and tackling the root causes and risk factors serving as pathways to the imprisonment of women.¹⁵ This study has found that the women in prison interviewed all shared similar social factors: they were mostly economically disadvantaged and primary caretakers of young children, survivors of violence, illiterate, and with unmet mental health needs. However, the study has also evidenced that structural inequality and gender discrimination play a fundamental role in women coming in contact with the law and in their experiences post-release. Sierra Leone must therefore recognize in law, policy and practice, that these are pathways, conditions and consequences of women's imprisonment and constitute a form of discrimination – in

¹³ Mandela Rules, Rule 96

¹⁴ Bangkok Rules, Rule 67

¹⁵ U.N. Special Rapporteur on Violence Against Women, *Pathways to, conditions and consequences of incarceration for women*, Note by the Secretary-General, U.N. Doc. A/68/340

breach of Sierra Leone's international obligations.

The study has shown that incarceration has devastating consequences on women, particularly in areas such as mental and physical health, familial connections, and social and economic reintegration. This highlights the urgent need to develop gender-specific alternatives to incarceration in line with international standards, to avoid, where possible, the adverse consequences that custodial sentencing has on women in Sierra Leone.¹⁶

In summary, this study therefore recommends that the Sierra Leonean government:

- Conduct further research on the different and disproportionate impacts that the criminal justice system has on women in order to better understand and address their needs;
- Develop alternatives to incarceration and community-based non-custodial measures such as diversion, community service and community-based treatment, which address the pathways to women coming into contact with the law, allow them to maintain family ties, and reduce some of the more devastating consequences of imprisonment, while also likely being more cost-

effective for the State;

- Decriminalize and declassify petty offenses including loitering, fraudulent conversion and obtaining goods or money by false pretenses, insulting conduct, and minor traffic offenses;
- Abolish the mandatory death penalty and develop sentencing guidelines which fully take into account mitigating factors such as a history of abuse or mental health conditions in sentencing;
- Ensure greater investment in legal empowerment services such as paralegals and lawyers
- Provide women in prison with gender-specific health services, including gynecological, antenatal and postnatal care and cervical and breast cancer screenings; these services should include mental health support as well as suicide and self-harm prevention strategies;
- Increase efforts in post-release support and develop options such as home leave, open prisons, halfway houses and community-based programs to facilitate the transition of women from prison to the outside world and to reduce stigma.

A full list of recommendations is included at the end of the report.

¹⁶ See Bangkok Rules, Rule 60 and Rule 41

KEY FACTS AND FIGURES

2. Poverty

Many women commit economic and petty crime for their survival and that of their children. When a state chooses to pursue prosecutions and long sentences for economic and petty offenses, the state is effectively punishing poverty.



71%

of women said that before going to prison they could only afford one or two meals per day.

46%

had been the main earners of their households

1. Mental health

Poor mental health can be both a pathway and a consequence of imprisonment. Given the the harmful impact incarceration has on women, custodial sentencing should only be used as a measure of last resort.



40%

of women said they had suffered from anxiety before their imprisonment.

only **3** were diagnosed with a condition.

PATHWAYS TO PRISON

4. Prior experience of abuse

Women who are in prison for violent offenses have usually committed the violent act in response to domestic and/or sexual abuse. Defenses of self-defense often fail women who have had slow-burn reaction to violence.



72%

of women told us that prior to prison they had suffered at least one type of abuse from their partner or spouse



Emotional
52%



Physical
46%



Financial
30%



Sexual
19%

3. Limited education and literacy level

Many women in prison in Sierra Leone have low levels of education and legal literacy and do not understand the criminal justice process. Women should be provided with information on their rights in a language that they can understand and in a manner that is accessible to them.



54%

of women were illiterate

The Freetown Female Correctional Centre is severely overcrowded. It houses at times more than



60

women in a facility initially designed to hold

18

5. Physical health

Backlogs in the courts and strict bail conditions lead women to languish in pre-trial detention for longer than necessary. Overcrowding, combined with limited access to water, can contribute to the spread of diseases and poorer sanitation. This is all the more concerning following the COVID-19 outbreak.

6. Family ties

Many women report losing touch with their families and children once they go to prison. Some say their partners abandoned their children and started new relationships when they were arrested.

88%



of women had children outside prison.



A total of 153 children - 127 of whom were minors at the time of the mother's arrest.

CONSEQUENCES OF IMPRISONMENT

8. Economic status

Due to the extremely limited opportunities for women to earn while detained, they leave prison poorer than when they entered. Training and education programs in prison are scarce. As a result, women who leave prison have a hard time finding the initial capital to restart their business, stable employment or appropriate accommodation.



35%

of women did not think they would be able to support themselves and their families post release.

7. Social and safety network

Many women have safety concerns and fear retaliation when they leave prison. This also impacts on women's ability to settle back into their communities.



52%

of women said they feared for their safety after release



Introduction

Although the female prison population worldwide has been steadily increasing since 2000,¹⁷ women in prison are still relatively neglected in both research and policy. Too little is known about the pathways that lead women to prison and the consequences of prison on their lives. While global research has started to shed light on the causes and consequences of women's imprisonment, much further investigation is required. There is also a need for a global rethinking of appropriate responses in the criminal justice and penal systems which are still largely designed for and by men. This is especially true of Sierra Leone where, despite some research into women in prison conducted by AdvocAid among others, there has been no country-wide study of the causes and consequences of women's imprisonment.

This study aims to answer two questions:

1. What social factors are associated with female imprisonment in Sierra Leone?
2. What are the consequences of imprisonment on women in Sierra Leone and their social networks?

The research's hypothesis, based on global research, is that women's pathways and experiences around imprisonment are often different to men's – and less understood or responded to in policy and practice – because of social factors around gender. Namely that the way that access to assets, participation, perceptions, institutions, laws and policies play out in society, result in that women are driven to crime for different reasons than men.¹⁸ Similarly, women are equipped differently than men when faced with the criminal justice system, prison, and life after prison. These

disparities need to be better understood if Sierra Leone is to better respond to women's needs.

Another key question to consider is the extent to which these social drivers and factors are discriminatory, and heavily disadvantage women. Under international law, States are obligated to ensure that women are equal before the law and are protected from discrimination at all stages of the criminal justice process.¹⁹ Women's experiences of discrimination are a driver to incarceration. The State must therefore address this and develop crime prevention strategies that take this factor into account.²⁰ Inequality also aggravates the negative consequences of women after imprisonment. The State must therefore acknowledge this and develop policies on reintegration that take into account women's particular needs.²¹

Global research increasingly shows the disparities between women's pathways to prison and consequences compared to men's. Research has found that certain factors are more common among women who commit crimes compared to men, including mental health issues and substance abuse,²² and experience of sexual or physical abuse.²³ The majority of women who go to prison are poor and imprisoned for petty economic or drug-related crimes.²⁴ Very few have committed violent crimes in comparison to men.²⁵ Female poverty limits women's access to justice, such as their ability to obtain legal representation or meet bail conditions.²⁶ As a result, many women languish in pre-trial detention longer than necessary. Because women tend to have less access to education, it follows that they may be less likely to understand the court process and the

¹⁷ Walmsley, R., 2017. Women and girls in penal institutions, including pre-trial detainees/remand prisoners 13

¹⁸ Jhpiego. Gender Analysis Framework: Gender Analysis Toolkit For Health Systems <https://gender.jhpiego.org/analysis/toolkit/gender-analysis-framework/>

¹⁹ ICCPR, art. 26; ICESCR, art. 2; CEDAW, arts. 1, 3, 15; African Charter, art. 3; Maputo Protocol, arts. 2, 8.

²⁰ Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-First Century, U.N. Doc. A/Res/55/59 (2001).

²¹ U.N. Special Rapporteur on Violence Against Women, *Pathways to, conditions and consequences of incarceration for women*, Note by the Secretary-General, U.N. Doc. A/68/340, para. 81 (2013) [hereinafter *Pathways to incarceration*].

²² Watson, R., Stimpson, A., Hostick, T., 2004. Prison health care: a review of the literature. *International Journal of Nursing Studies* 41, 119–128

²³ Wright, E.M., Van Voorhis, P., Salisbury, E.J., Bauman, A., 2012. Gender-Responsive Lessons Learned and Policy Implications for Women in Prison: A Review. *Crim. Just. & Behavior* 39, 1612–1632

²⁴ UNODC, 2018. *World Drug Report – Women and Drugs: Drug use, drug supply and their consequences*

²⁵ *ibid*

²⁶ Prison Watch Sierra Leone, Timap for Justice, United Nations Development Programme, & Open Society Justice Initiative, 2013. *The Global Campaign for Pretrial Justice: Improving Pretrial Justice in Sierra Leone*, OPEN SOCIETY FOUNDATIONS, 40–41

implications of how they plead, increasing the risk of injustice.²⁷ Meanwhile, because women are commonly raised to respect male authority and to operate mainly in a domestic sphere, they can be less vocal outside of this sphere, and therefore arguably less able to demand that their rights be respected in largely male-dominated criminal justice systems.²⁸

These and other factors call for an approach to criminal justice that is gender-sensitive. Global research already shows how penal policy, facilities, provisions, and routines have historically been designed for men based on genderblind policies and data.²⁹ For example, support for abuse, separation anxiety, poor mental health or addiction, which as highlighted are disproportionately linked to women, are rarely provided in prisons. Prison health facilities are often particularly ill-equipped to deal with women's health issues, including pregnancy, menstruation, and female-specific forms of cancer. Visiting regimes often do not accommodate contact visits with small children. These many deprivations mean that detention has longer-term effects on women, and continue to impact them long after their release.³⁰ These effects will take a significant toll on women's health, housing, employment, and connections with family.³¹ Furthermore, because women tend to have less economic opportunity than men and face greater stigma for having been in prison, they have a much harder time re-entering society.³² Programs that prepare incarcerated women for life after prison often do not take these factors into account.

This study therefore aims to analyze the causes and consequences of women's imprisonment in Sierra Leone, with the hypothesis that structural inequality plays an important part in both. It also seeks to fill the gap in research on this issue in Sierra Leone and contribute to the increasing body

of knowledge internationally. We hope the study will amplify the voices of women in prison and with lived prison experiences in Sierra Leone and highlight the urgent need to address structural inequality and create gender-responsive policies – including non-custodial measures – that address the unique challenges of women's pathways to and from incarceration .

The research was also designed as a capacity building tool for a global network of organizations and advocates working with women in prison on how to conduct similar research in their countries. It is part of a larger initiative of the Cyrus R. Vance Center for International Justice to promote global collaboration on improving conditions of women's imprisonment.³³

²⁷ Mahtani, S., 2013. Women and the Criminalization of Poverty: Perspectives from Sierra Leone. Signs

²⁸ Baker, J., 2015. Conditions For Women In Detention In Zambia 41

²⁹ UK Aid & Penal Reform International, 2013. UN Bangkok Rules on women offenders and prisoners. URL <https://cdn.penalreform.org/wp-content/uploads/2013/07/PRI-Short-Guide-Bangkok-Rules-2013-Web-Final.pdf>

³⁰ Report of the Rapporteur on violence against women, its causes and consequences, 2013. Pathways to, conditions and consequences of incarceration for women, UN doc. A/68/340

³¹ *ibid*

³² *ibid*

³³ The Women in Prison Project convenes women prisoners' rights advocates from the Americas, Africa, and Asia to both share information about conditions of women's imprisonment and build capacity for improved monitoring and reporting of conditions in women's prisons. In addition to this research the Women in Prison project has undertaken (i) an international conference on women's incarceration in Bogota, Colombia, which brought together 49 advocates from 23 countries, including nine formerly incarcerated women; (ii) a report "Women in Prison: Africa Regional Initiative" which was developed in collaboration with NGOs and law firms in Nigeria, The Gambia, Malawi, Kenya and Tanzanian; and (iii) an advocacy campaign to improve governments' response to the Covid-19 crisis in places of detention in the Global South with a focus on the special needs of women in detention.

COUNTRY CONTEXT

Sierra Leone is a small country in West Africa, with a population of nearly eight million people.³⁴ Close to half of the population is younger than 14 years-old,³⁵ and 51 per cent are women.³⁶ This is largely the result of the eleven-year civil war (1991 – 2002), which saw many young men killed or flee the country. The war, coupled with an Ebola outbreak in 2014 that claimed nearly 4,000 lives, has greatly hindered Sierra Leone's development.³⁷ The country ranks 181st out of 189 countries in the Human Development Index in 2019.³⁸ The 2020 Global Multidimensional Poverty Index indicated that Sierra Leone is reducing its overall poverty faster than any other country in the world.³⁹ However, more than half of Sierra Leoneans still live below the poverty line.⁴⁰

Sierra Leone is home to 16 ethnic groups; the Temne and the Mende are the most populous, followed by the Limba, the Fula, the Mandingo, the Kono, and the Krio, the latter being the descendants of liberated African slaves. The *lingua franca* is Krio, although each ethnic group has its own language and distinct cultural beliefs. English is the official language and is used throughout the education system, media, and at some official events, but is rarely spoken in everyday life and then, by only a few. Religion plays a very important role and most Sierra Leoneans report affiliation to a creed, particularly Islam (77 per cent) and Christianity (21.9 per cent).⁴¹ Religion has not traditionally been a source of tension and intrareligious marriage is frequent. Polygamous marriage is relatively common among Muslim men,⁴² as are both legal and traditional marriages. Traditional

marriages are regulated under customary law in local courts headed by community leaders.

In Sierra Leone, chronic poverty is aggravated by illiteracy. Only 32.4 per cent of Sierra Leoneans older than 15 are literate.⁴³ While 70.5 per cent of boys aged between 15 and 24 are educated, this is true of only 52.1 per cent of girls.⁴⁴ Traditional gender roles are often barriers to girls' education, with families often reluctant to invest in girls' education since they will eventually marry into another family. While the legal age of consent is 18 years of age, by law, a younger girl can get married with the consent of her parents.⁴⁵ According to UNICEF, Sierra Leone has the 18th highest prevalence rate of child marriage in the world⁴⁶ – 39 per cent of girls in Sierra Leone are married before their 18th birthday and 13 per cent are married before the age of 15.⁴⁷

Pregnancy is a common reason for child marriage. It is a way for families to avoid the perceived shame of birth out of wedlock and is also seen as a gateway to adulthood.⁴⁸ *Pikin nor de bon pikin* is a common saying in Krio, meaning 'a child does not bear a child'. In 2013, Sierra Leone had the 7th highest teenage pregnancy rate in the world.⁴⁹ It has been estimated that during the Ebola crisis adolescent pregnancy rates went up by 50 per cent⁵⁰ as a result of poverty-stricken girls turning to survival sex, many of whom were supporting siblings.⁵¹ The Ebola crisis left many orphaned; around 25 per cent of children in Sierra Leone live with someone other than their

³⁴ World Population Review <http://worldpopulationreview.com/countries/sierra-leone/>

³⁵ Index Mundi https://www.indexmundi.com/sierra_leone/demographics_profile.html

³⁶ Statistics Sierra Leone, 2017. Sierra Leone 2015 Population and Housing Census Thematic Report on Gender

³⁷ Robinson, C., 2019. Primary health care and family medicine in Sierra Leone. African Journal of Primary Health Care & Family Medicine 11

³⁸ United Nations Development Programme, 2019. 2019 Human Development Index Ranking <http://hdr.undp.org/en/content/2019-human-development-index-ranking>

³⁹ Down to Earth, 2020. What Sierra Leone teaches us on poverty measurement. <https://www.downtoearth.org.in/blog/africa/what-sierra-leone-teaches-us-on-poverty-measurement-72553>

⁴⁰ United Nations Population Fund, 2018. Sierra Leone Population and Housing Census National Analytical Report. UNFPA

⁴¹ Statistics Sierra Leone, 2017. Sierra Leone 2015 Population and Housing Census Thematic Report on Gender

⁴² *Ibid*

⁴³ United Nations Development Programme <http://hdr.undp.org/en/countries/profiles/SLE>

⁴⁴ UNICEF, At a glance: Sierra Leone https://www.unicef.org/infobycountry/sierraleone_statistics.html

⁴⁵ Customary Marriage and Divorce Act 2009

⁴⁶ Statistics Sierra Leone (SSL) and ICF International, 2014. Sierra Leone Demographic and Health Survey 2013. Freetown, Sierra Leone and Rockville, Maryland, USA: SSL and ICF International

⁴⁷ Girls not Brides <https://www.girlsnotbrides.org/child-marriage/sierra-leone/>

⁴⁸ Robinson and Defence for Children International – Sierra Leone, 2015. A mountain to Climb: Gender Based Violence and Girls Rights to education in Sierra Leone

⁴⁹ United Nations Population Fund, 2013. Adolescent Pregnancy: A Review of the Evidence : https://www.unfpa.org/sites/default/files/pub-pdf/ADOLESCENT%20PREGNANCY_UNFPA.pdf

⁵⁰ Foreign policy, 2016. The Ebola Rape Epidemic No One's Talking About : <https://foreignpolicy.com/2016/02/02/the-ebola-rape-epidemic-west-africa-teenage-pregnancy/>

⁵¹ Girls not Brides <https://www.girlsnotbrides.org/child-marriage/sierra-leone/>

biological parents.⁵² The practice of informal fosterage is common, and the foster child is referred to in Krio as *menpikin* or *galpikin* (boy-child and girl-child).

In the UN's Sustainable Development Goal rankings for health, Sierra Leone featured in the bottom 10 countries.⁵³ Health outcomes are especially poor for women. Female Genital Mutilation (FGM) is widespread, with almost 90 per cent of women aged between 15 and 49 having undergone it.⁵⁴ The rate of maternal mortality is the highest in the world with 1,360 deaths per 100,000 live births.⁵⁵ Pap smears are only carried out by the non-governmental *Marie Stopes* hospital in the capital, Freetown, which means that women have very limited access to screening for cervical cancer. Mental health issues are also prevalent. Following a long civil conflict, the Ebola outbreak, and a deadly mudslide that killed more than 1,000 people in 2017, many Sierra Leoneans have suffered significant levels of trauma.⁵⁶ Mental health however is still widely misunderstood and stigmatized, and care provisions still fall far below minimum standards.⁵⁷

INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK⁶⁴

For decades, international and regional laws addressing the rights of people who come into contact with the criminal justice system were designed for, and by, men. As more women enter prisons and jails, however, international and regional standards have gradually evolved to more directly address states' obligations to women who are involved in the criminal justice system. In 2010, the United Nations General Assembly adopted The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (known as the Bangkok

Sierra Leone is a highly patriarchal society. It consistently ranks as one of the bottom 10 countries in the world for indicators on gender equality,⁵⁸ although important progress has been made recently around economic participation for women, according to the World Economic Forum.⁵⁹ Sexual and gender-based violence (SGBV) remains prevalent, especially in the domestic context: 45 per cent of women aged 15-49 years report having experienced physical and/or sexual violence by an intimate partner at least once in their lifetime,⁶⁰ yet the police are unlikely to intervene in what they consider to be domestic matters.⁶¹ This is supported by perception within the community – data shows that 73.3 per cent of women in Sierra Leone believe that intimate partner violence can be justified.⁶² Rape is also pervasive. While 8,500 cases were recorded in 2019 according to the police service, many cases are not reported, or are reported but not prosecuted, and the actual figures are likely much higher.⁶³ In March 2019, the President of Sierra Leone, Maada Bio, declared rape and sexual violence a national emergency and passed the Sexual Offences (Amendment) Act 2019, which increased the maximum penalty for rape of a child from fifteen years to life imprisonment.

Rules), which are non-binding principles to help States prevent discrimination against women in prisons.

The binding international principles of non-discrimination and equality meanwhile underpin States' obligations toward women in the criminal justice system. These principles, and States' corresponding obligation to address the causes, consequences, and conditions of women's incarceration, are protected in a number of treaties to which Sierra Leone

⁵² Statistics Sierra Leone, 2018. Sierra Leone Multiple Indicator Cluster Survey 2017, Survey Findings Report. Freetown, SL

⁵³ Fullman, N. et al., 2017. Measuring progress and projecting attainment on the basis of past trends of the health-related Sustainable Development Goals in 188 countries: an analysis from the Global Burden of Disease Study 2016. *The Lancet* 390

⁵⁴ UNICEF, At a glance: Sierra Leone https://www.unicef.org/infobycountry/sierraleone_statistics.html

⁵⁵ United Nations Development Programme <http://hdr.undp.org/en/countries/profiles/SLE>

⁵⁶ Harris, D. et al., 2020. Mental health in Sierra Leone. *BJPsych Int.* 17, 14–16

⁵⁷ *ibid*

⁵⁸ According to the United Nations Gender Inequality Index (GII), in 2018 Sierra Leone ranked 184 out of 189 countries in the world for gender equality. The GII measures the inequality between women and men in three different dimensions: reproductive health, empowerment, and labor market participation.

⁵⁹ World Economic Forum, 2020. The Global Gender Gap Report. http://www3.weforum.org/docs/WEF_GGGR_2020.pdf

⁶⁰ Statistics Sierra Leone (SSL) and ICF International, 2014. Sierra Leone Demographic and Health Survey 2013. Freetown, Sierra Leone and Rockville, Maryland, USA: SSL and ICF International

⁶¹ OSAC, 2019. Sierra Leone 2019 Crime & Safety Report

⁶² UNICEF, At a glance: Sierra Leone https://www.unicef.org/infobycountry/sierraleone_statistics.html

⁶³ United Nations Development Program, 2010. Sierra Leone: sexual violence remains unpunished

⁶⁴ This was researched and prepared by Oladoyin Olanrewaju and Nathalie Greenfield, under the supervision of Professors Elizabeth Brundige and Professor Sandra Lynn Babcock - Cornell University Law School.

is party. Considered together, these rules govern States' responsibilities (1) to prevent crime by addressing its root causes, (2) to eliminate unjustified incarceration and criminalization, (3) to conduct prosecutions that are attentive to gender bias, and (4) to ensure that conditions of confinement address the unique needs of women deprived of their liberty.

Prevention: Addressing the Root Causes of Women's Imprisonment

Under international standards, Sierra Leone has affirmative obligations to address the root causes of women's imprisonment, to understand the characteristics of women in contact with the law,⁶⁵ and to develop crime prevention strategies that address the factors linking women to both crime and victimization.⁶⁶ Poverty and gender-based violence are two of the biggest such factors that bring women into contact with the criminal justice system.

Studies of women prisoners reveal a strong link between poverty and incarceration.⁶⁷ Poverty drives women's incarceration when women resort to unlawful means to support themselves and their families.⁶⁸ Research indicates that in Sierra Leone, women who are poor and illiterate are especially vulnerable to being caught up in low-level criminal activity.⁶⁹ Gender-based violence (GBV) is also a leading cause of women's contact with the criminal justice system,⁷⁰ and this is recognized by the Bangkok Rules.⁷¹ As women have the right to be free from all forms of GBV, including domestic violence,⁷² reducing its prevalence should be a primary goal of any reform efforts.⁷³

⁶⁵ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), U.N. Doc. A/RES/65/229, Rule 67 (2011) [hereinafter Bangkok Rules]. The Commentary accompanying Rule 67 state: "Efforts shall be made to organise and promote comprehensive, result-oriented research on the offences committed by women, the reasons that trigger women's confrontation with the criminal justice system, . . . [and] the characteristics of women offenders[.]"

⁶⁶ Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-First Century, U.N. Doc. A/Res/55/59 (2001).

⁶⁷ Cornell Center for the Death Penalty Worldwide, *Judged for More Than her Crime, A Global Overview of Women Facing the Death Penalty*, CORNELL LAW SCHOOL, 18 (September 2018).

⁶⁸ Women continue to be the predominant caretakers in many societies which imposes an additional economic burden on women with dependent children. See Special Rapporteur on Violence Against Women, *Pathways to, conditions and consequences of incarceration for women*, U.N. Doc. A.68.340, para. 85 (2013) (noting that "more women have dependent children than do male prisoners.") [hereinafter *Pathways to incarceration*].

⁶⁹ AdvocAid Submission to the United Nations Working Group on the Issue of Discrimination Against Women in Law and Practice, *Women Deprived of Their Liberty—Sierra Leone*, ADVOCaid, 5 (12 Oct. 2018).

⁷⁰ See U.N. Special Rapporteur on Violence Against Women, *Pathways to incarceration*, *supra* note 4, at para. 84; See generally Cornell Center for the Death Penalty Worldwide, *supra* note 3.

⁷¹ Bangkok Rules, preliminary observations, para. 9.

⁷² Maputo Protocol, art. 23; Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 19: Violence Against Women*, U.N. Doc. CEDAW/A/47/38, para. 7 (1992) [hereinafter CEDAW GR 19].

Decriminalization of status and petty offenses

Women, globally, are more likely than men to be poor, and proportionally, to commit petty offences, as noted above. International standards prohibit the criminalization of poverty,⁷⁴ and propose more humane approaches to addressing it, rather than penalizing misdemeanors such as loitering. The Guiding Principles on Extreme Poverty and Human Rights encourage States to take steps to incorporate women into the economy by promoting women's equal access to work, education, and training, and providing adequate standards of living.⁷⁵ International law also protects women from being charged and convicted for actions that appear to deviate from traditional gender norms.⁷⁶ Additionally, international law protects women who are sex workers.⁷⁷ Indeed, CEDAW's General Recommendation 19 specifically recommends that States protect women engaged in sex work and notes that sex workers "are especially vulnerable to violence . . . and tend to be marginalized."⁷⁸ In Sierra Leone, however, women engaged in sex work are often commonly prosecuted under anti-loitering statutes.⁷⁹

Non-discrimination in the criminal justice process

International law ensures women the right to be free from discrimination at all stages of the criminal justice process, and to be equal before the law.⁸⁰ As such, States must conduct gender-sensitive trials and gender-sensitive sentencing proceedings that eliminate bias and recognize inequality in law, policy and process – and all public bodies and authorities must comply with the non-discrimination principle.⁸¹ International treaties also address States' roles in recognizing the special circumstances of

⁷³ Maputo Protocol Article 3, 4; CEDAW Article 1; CEDAW GR 19, para. 7 (1992).

⁷⁴ See, e.g., U.N. Special Rapporteur on Extreme Poverty and Human Rights, *Report of the Special Rapporteur on Extreme Poverty and Human Rights on his Mission to the United States of America*, U.N. Doc. A/HRC/38/33/Add. 1, paras. 71-73 (4 May 2018).

⁷⁵ See, e.g., Maputo Protocol, arts. 12, 13, 15, 19; CEDAW, Preamble, arts. 2, 3, 10, 11, 13; ICESCR, arts. 2, 3, 6, 7, 9, 11, 13; African Charter, arts. 2, 14, 15, 17, 22; Guiding Principles on Extreme Poverty and Human Rights.

⁷⁶ CEDAW, art. 5.

⁷⁷ Sex workers include "female, male and transgender adults and young people who receive money or goods in exchange for sexual services, either regularly or occasionally . . ." See UNAIDS, *Guidance Note on HIV and Sex Work*, at 4 (2012) available at http://www.unaids.org/en/resources/documents/2012/20120402_UNAIDS-guidance-note-HIV-sex-work. See ICESCR, art. 6 (protecting "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts").

⁷⁸ CEDAW GR 19, paras. 15–16 (1992).

⁷⁹ AdvocAid Submission to the United Nations Working Group on the Issue of Discrimination Against Women in Law and Practice, *supra* note 5, at 5.

⁸⁰ ICCPR, art. 26; ICESCR, art. 2; CEDAW, arts. 1, 3, 15; African Charter, art. 3; Maputo Protocol, arts. 2, 8.

⁸¹ CEDAW Article 2(d); CEDAW, *General Recommendation No.35 on gender-based violence against women, updating General Recommendation No. 19*, U.N. Doc. CEDAW/C/GC/35, para. 26(c) (2017).

women in legal proceedings, such as greater caretaking responsibilities, fewer access to resources, and experiences of GBV.

International law prohibits discrimination against survivors of gender-based violence, which are predominantly women. Among other responses, the state must acknowledge and consider the harm that survivors of violence have suffered when investigating and prosecuting them. States must provide gender-sensitive training for judicial and law enforcement officers;⁸² and “recognize women’s histories of victimization” when sentencing, especially as mitigating evidence.⁸³ Sierra Leone has laws that prescribe the mandatory death penalty for certain offences, which do not consider GBV or any mitigating evidence in capital sentencing proceedings, and this violates international human rights law.⁸⁴

Addressing the consequences of women’s imprisonment on women and their families

States have specific obligations to incarcerated women and their families,⁸⁵ because it is a fundamental legal principle that all persons deprived of their liberty must be treated with “humanity and respect for the inherent dignity of the human person,”⁸⁶ and it must be applied without sex-based

discrimination.⁸⁷ The Bangkok Rules help States understand how to do this,⁸⁸ such as how to mitigate the impact of imprisonment on women and their families, and how to provide gender-specific services in women’s prisons, such as mental health support, sexual and reproductive health services, substance abuse support, and rehabilitation services.⁸⁹

Gaps in international legal protections for women in the criminal legal system

Although the international framework governing the causes and consequences of women’s incarceration is comprehensive, there remain a number of gaps. International law and standards fail to focus on women’s contact with the police prior to arrest and do too little to address the criminalization of petty offenses. Once women are accused, the international framework also fails to fully address the often-lesser access to justice that women have because of poverty and gender biases. Moreover, international legal standards reflect a failure to mainstream gender across all aspects of the criminal justice process. In the context of incarceration, this means adopting a gender focus across all aspects of the criminal justice system and the laws governing women’s places of detention within it.

⁸² UN Women, *Beijing Declaration and Platform for Action, Beijing +5 Political Declaration and Outcome*, § D para. 121, § D1 paras. 124(g), 124(n), § 12 para 232(i). (1995).

⁸³ See Bangkok Rule 61.

⁸⁴ Human Rights Committee, Gen. Comment 36, § 37; *Lubuto v. Zambia*, Comm. No. 390/1990, U.N. Doc. CCPR/C/55/D/390/1990/Rev.1, § 7.2 (H.R.C. 1995); *Matter of Ally Rajabu and Others v. United Republic of Tanzania*, App. No. 007/2015, African Court on Human and Peoples’ Rights, §§ 102, 109 (2019).

⁸⁵ Bangkok Rules, Rule 2(1) (addressing admissions procedures for women and children); 3 (addressing the confidential recording of information about a woman inmate’s children); 5 (requiring that a regular supply of water be available to women and their children); 15 (prison substance abuse treatment programs must take into account the special needs of women and their children); 21 (requirements for the searching of children); and 33(3) (where children are in prison with their mothers, awareness raising on child development and training on child health care shall be provided to prison staff).

⁸⁶ ICCPR, art. 10(1).

⁸⁷ Human Rights Committee, General Comment No. 21 (1992).

⁸⁸ The Commentary to Bangkok Rule 67 recommends that states organize and promote comprehensive research on “the impact of secondary criminalization and imprisonment on women, as well as programmes designed to reduce reoffending by women, as a basis for effective planning, programme development and policy formulation to respond to the social reintegration needs of women offenders.”

⁸⁹ Bangkok Rules, Rules 6, 8; UN Office of the High Commissioner for Human Rights, *Women and Detention*, at 1, available at https://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/Women_and_Detention.pdf.

METHODOLOGY

Research participants

The study draws on a total of 124 structured and semi-structured interviews, eight unstructured interviews and three focus groups conducted across Sierra Leone between November and December 2019. These interviews were conducted with detained and formerly detained women, their families, correctional center officers, NGO staff, and public servants. In total, the researchers met with 86 per cent of women imprisoned in Sierra Leone at the time of the research at seven out of the 14 correctional centers in which women are incarcerated.

To breakdown these figures, researchers administered the survey to 67 women detained in correctional centers. Private in-depth structured interviews were conducted with 13 randomly selected women detained in the same centers,⁹⁰ with 15 correctional center officers and with 10 family members of women who are or have been detained. We held 19 in-depth semi-structured interviews with those working with the prison population in the country – such as NGOs, the judiciary and other public servants – to complement the findings of the study. Lastly, 15 participants made up the three focus group discussions with previously incarcerated women who AdvocAid has supported over the years. Unexpectedly, eight survey participants asked that their stories be more fully recorded, which provided valuable data, although gathered in a less structured way.

Researchers visited the following female centers: the Freetown Female Correctional Center – the only female maximum-security prison in Sierra Leone – and the other low security centers in Makeni, Bo, Port Loko, Moyamba, Kono and Kenema. Centers not visited: Bonthe, Magburaka, Kabala, Kailahun, Matru Jong, Pujehun and Kambia. The vast majority of survey and interview participants came from among the 64 women detained in Freetown at the time of the study, while the other correctional

centers had a headcount of between one to eight detained women each.

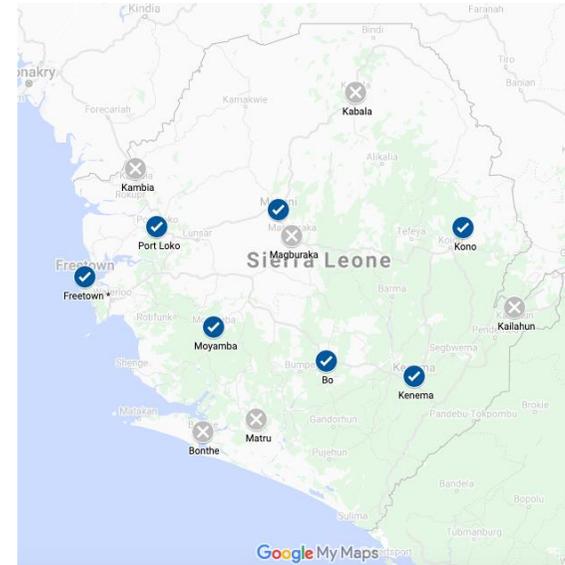


Figure 1: Female correctional centers in Sierra Leone

Developing the research tools

The initial desk research, which provided context for the data analysis, was carried out between August and December 2019 and updated in February 2020. It includes both academic sources and reports from UN bodies, NGOs and civil society organizations (CSOs). The Human Rights Clinic at Cornell University Law School in the U.S. conducted a review of the international and regional human rights obligations that Sierra Leone has towards women in prison, with guidance from the Cyrus R. Vance Center for International Justice in the U.S. and AdvocAid in Sierra Leone (see Annex 1 for the full analysis). The research questionnaires were developed by taking

⁹⁰ We interviewed 86% of women imprisoned in Sierra Leone at the time of the data collection, with 80 out of 93 incarcerated women being interviewed either in the form of a survey or through in-depth interviews.

into account the objectives of the study, the experience of those involved, the mandates of AdvocAid and the Cyrus R. Vance Center for International Justice, and the literature reviewed. The research team developed the interview guides and processes following consultation with the Sierra Leone Correctional Service (SLCS), and with formerly incarcerated women. At a first stage, we developed structured questionnaires and a survey for women in prison to obtain a consistent body of data across most of the female prison population. We also developed structured questionnaires for use with correctional center officers, families of women who were or had been detained. Lastly, we developed semi-structured questionnaires to be administered to a smaller number of stakeholders, from NGO staff to the judiciary.⁹¹ Those drew out key themes from the initial data, while leaving ample space for each interviewee to express themselves based on their particular expertise and experience.

Ethics, trauma, and cultural sensitivity

The research team adopted a trauma-informed and gender-sensitive approach in developing the interview guides. Before beginning the study, the research team met with formerly incarcerated women to discuss the issues they thought we should investigate, and the best way to approach difficult topics to avoid re-traumatizing or offending those interviewed. We carefully considered questions around mental health and prior experiences of abuse, and made sure to provide support services following the interviews. We arranged for counselling sessions for all women in prison after the last day of interviews in each correctional center; this was facilitated by AdvocAid's partnership with the Sierra Leone Correctional Service. The support included counselling and follow up from AdvocAid's paralegals and social workers, who have training and experience working with detained women.

Before submitting the application for ethical approval, we sought feedback on the ethical and technical robustness of the study from two ad hoc

⁹¹ We interviewed officials of the Ministry of Social Welfare Gender and Children's Affairs in Freetown and Bo; members of the judiciary in Freetown, Makeni, Kenema, and Bo; the Ombudsman in Port Loko; the Sierra Leone Correctional Service headquarters; lawyers of the Legal Aid Board in Freetown, Moyamba, Makeni, Port Loko, Kono and Bo. Lastly, we conducted interviews with civil society organizations: the Centre for Accountability and Rule of Law in Bo and Makeni; AdvocAid in Kenema and Makeni; Prison Watch in Freetown.

review committees. The first committee was composed of professionals from or based in Sierra Leone with experience conducting research in the country. This first committee included: Aisha Fofana Ibrahim (50/50 Sierra Leone), Adam Goguen (University of Makeni, Sierra Leone), Braima M. Koroma (Sierra Leone Urban Research Center) and Ahmed Jalloh (Prison Watch Sierra Leone). The second committee was composed of international experts with experience conducting research into women and incarceration, including Professor Elizabeth Brundige (Cornell University Law School, U.S.), and Jo Baker (Independent Researcher, United Kingdom).

We hired five Sierra Leonean women to carry out the data collection in the correctional centers.⁹² They were supervised and trained by the lead researcher and AdvocAid's Monitoring and Evaluation Officer Joseph Caesar Bangura. The data collectors were trained with specific attention to sexual and gender-based violence, inequality, and how power dynamics play out in the local context. They played a key part in translating the interview guides into four local languages – Krio, Temne, Mende and Kono – and also helped the research team ensure that the guides were culturally appropriate, and that the trauma-informed and gender-sensitive approach was not lost in translation.⁹³ The data collectors used Oakley's interviewing method when collecting data.⁹⁴ This method requires the interviewer to build a rapport with the interviewee and try to minimize power hierarchies by allowing mutual sharing and creating a genuine bond of trust. Following the training of the data collectors, and prior to the data collection, we invited formerly incarcerated women to give feedback on the interview guides. The feedback they provided on how to frame the questions led to further training of the data collectors and improvement in the translations.

Safety, confidentiality, and consent

All interviews with women in detention took place in areas of the correctional centers where their answers could not be heard by officers or

⁹² Isha Isatu Barrie, Salamatu Elizabeth Kargbo, Mariatu Gbessay Kanu, Jerikatu Lansana, and Saio Josephine Kadiatu Marrah.

⁹³ Leung, L., Miedema, S., Warner, X., Homan, S., Fulu, E., 2019. Making feminism count: integrating feminist research principles in large-scale quantitative research on violence against women and girls. *Gender & Development* 27, 427–447

⁹⁴ Oakley, A., 1981. Interviewing women: A contradiction in terms?, in: Roberts H (Ed.) *Doing Feminist Research*. Routledge and Kegan Paul, London, pp. 30–61. See also Oakley, A., 2016. *Interviewing Women Again: Power, Time and the Gift*. Sociology 50

other women detained. The research team met with the Sierra Leone Correctional Service prior to the study and obtained a formal written commitment that every correctional center would guarantee the privacy and confidentiality of the interviews. The research team carried with it an official letter from the head of the Correctional Service stipulating this commitment at every Correctional Center. Other interviews were conducted either at the AdvocAid's offices in Freetown, Makeni and Kenema or at the interviewees' offices. We kept the tone of the interviews relaxed and conversational and attempted as much as possible to equalize the relationship between the interviewers and the interviewees.⁹⁵

The research team obtained oral consent from women in prison, previously incarcerated women and their families. We chose this approach because of feedback we received at the beginning of the study from formerly incarcerated women who suggested consent forms might be intimidating for these groups of interviewees. This approach also ensured that women in prison, previously incarcerated women and their families were less likely to be identified⁹⁶ and were therefore less likely to limit the information they disclosed or provide self-protecting responses.⁹⁷ Additionally, women in prison were asked by the interviewer to explain back the consent script to confirm that they had the capacity to truly provide informed consent.⁹⁸ Correctional center officers and other actors working with women in prison were asked to sign a consent form before interviews. They were offered anonymity to mitigate any risk they might incur.

After a first analysis of the data, we met with women who had participated in the research and had since been released to discuss the findings of the study. During this session, we shared the research findings and asked whether they were satisfied that these were representative of their lived experience of prison, and society more broadly. We also asked whether they felt we had captured the issues that were important to them. Their

input provided important background information and helped better frame the report, especially on the issue of prior experience of violence.

Analysis

The study relies on both qualitative and quantitative methods. As mentioned, the research team surveyed most of the women in Sierra Leone's prisons, while a smaller randomly selected group of women participated in in-depth semi structured or unstructured interviews. While the survey with women in prison was used to develop descriptive statistics, we analyzed the other interviews through a thematic and gendered analysis. In doing so, we examined the data for demographic characteristics and commonalities among the women interviewed, and links between these patterns, women's pathways to prison, and consequences of imprisonment.

Research has established that, globally, sex-based discrimination and gender norms are important factors in shaping the nature and impact of women's interactions with the criminal justice system.⁹⁹ We incorporated this understanding into the design of the research and its analysis, informed by the Gender Analysis Framework. This analyses data through the four domains: access to assets; practices and participation; beliefs and perceptions; and institutions, laws and policies.¹⁰⁰ Regarding pathways into prison this includes for example, the role of economic marginalization, limited access to education and decent employment, childhood victimization and exploitation, mental illness, and sexual and gender-based violence.¹⁰¹ It also includes institutions, laws and policies that are harmful to women, and that they often do not understand or grasp. We discuss issues that particularly affect women while in prison such as family connections, health, hygiene and safety. Finally, we look at the effects that imprisonment has on women upon re-entry into society.

⁹⁵ Jenkins, K., Narayanaswamy, L., Sweetman, C., 2019. Introduction: Feminist values in research. *Gender & Development* 27

⁹⁶ Roberts, L. & Indermaur, D., 2008. The Ethics of Research with Prisoners, *Current Issues in Criminal Justice*, 19:3, 316

⁹⁷ Roberts L. & Indermaur D., 2003. Signed consent forms in criminological research: Protection for researchers and ethics committees but a threat to research participants? *Psychiatry Psychology and Law* 10:2

⁹⁸ Moser, D.J., Arndt, S., Kanz, J.E., Benjamin, M.L., Bayless, J.D., Reese, R.L., Paulsen, J.S., Flaum, M.A., 2004. Coercion and informed consent in research involving prisoners. *Com Psychiatry* 45, 1–9

⁹⁹ UNODC, 2020. Toolkit on Gender-Responsive Non-Custodial Measures https://www.unodc.org/documents/justice-and-prison-reform/20-01528_Gender_Toolkit_complete.pdf

¹⁰⁰ Jhpiego. Gender Analysis Framework: Gender Analysis Toolkit For Health Systems <https://gender.jhpiego.org/analysistoolkit/gender-analysis-framework/>

¹⁰¹ Owen, B.A., Wells, J., Pollock, J.M., 2017. *In search of safety: confronting inequality in women's imprisonment*. University of California Press, Oakland, California

Box 1: Terminology

We use the term **‘woman in prison’** to describe women who are imprisoned, regardless of whether they are in pre-trial detention, on remand or convicted. When necessary, we make explicit at what stage of the legal procedure the women interviewed were. The choice of the term ‘woman in prison’ is based on feedback received at a conference organized by the Cyrus R. Vance Center for International Justice in Bogotá, Colombia. At the conference, formerly detained women discussed the importance of narrative and word-choice as well as the stigma attached to terms such as ‘offenders’, ‘inmates’, ‘prisoners’ or ‘former offenders’.

While we sometimes use the word **‘prison’**, we refer most often to **‘correctional center’** while avoiding the term ‘detention center’. In an effort to improve the prison system, the government of Sierra Leone recently undertook a rebranding, which includes a change of name from detention to correctional center.

The word **‘gender’** is used to define the socially constructed characteristics, opportunities and roles that are generally attributed to ‘female’ and ‘male’ within a society at a specific time. ‘Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities.’¹⁰² While we recognize that gender is not binary,¹⁰³ for the purpose of this research, we only look at the differences between ‘woman’ and ‘man’ as traditionally understood in Sierra Leonean society.

We also discuss **‘gender-based violence’** (used interchangeably with **‘prior victimization’**), which we define as gender norms and unequal power dynamics between women and men.¹⁰⁴ A person is thus a victim of a crime by virtue of her gender alone. SGBV affects women disproportionately and includes physical, sexual and psychological harm.¹⁰⁵

When we talk about **‘pathways’** we refer to the use of the word in the report of the Special Rapporteur on violence against women, its causes and consequences ‘Pathways to, conditions and consequences of incarceration for women’.¹⁰⁶ The research found a link between women’s incarceration and experiences of violence. Further, we build on the findings in Owen, Wells, and Pollock’s book ‘In search of safety: confronting inequality in women’s imprisonment’,¹⁰⁷ which establishes a link between women’s incarceration and economic marginalization, limited access to education and decent employment, childhood victimization and exploitation, mental illness, and sexual and gender-based violence

Please note that references to “women in prison” or “formerly incarcerated women” in discussing the findings of the study refer to women who participated in the study and are not meant to be a general representation of every woman in these categories in Sierra Leone.

¹⁰² Hannan, C., 2001. Office of the Special Advisor on Gender Issues and Advancement of Women Gender Mainstreaming: Strategy For Promoting Gender Equality

¹⁰³ Dale, H., 2018. Understanding Gender Variance: including intersex, trans, non-binary & gender fluid individuals

¹⁰⁴ European Institute for Gender Equality <https://eige.europa.eu/gender-based-violence/what-is-gender-based-violence>

¹⁰⁵ *ibid*

¹⁰⁶ Report of the UN Special Rapporteur on Violence Against Women, 2013. Pathways to, conditions and consequences of incarceration for women

¹⁰⁷ Owen, B.A., Wells, J., Pollock, J.M., 2017. In search of safety: confronting inequality in women’s imprisonment. University of California Press, Oakland, California



FINDINGS

1. Who are the women in prison in Sierra Leone?

Box 2: IN SUMMARY

This study has found that Sierra Leone adopts an excessive use of pre-trial detention for women. Only 37 per cent of the women in prison interviewed had been convicted. Backlogs in the courts and strict bail conditions have led to women remaining in pre-trial detention for longer than necessary; the women surveyed for this study had spent on average 427 days in pretrial detention.

Fifty-four per cent of women in prison at the time of the study were illiterate and 45 per cent had never attended school. These women were also overwhelmingly poor and almost half had been the main earners of their households before their arrests. Eighty-eight per cent of these women had children outside prison. While 83 per cent of the children of incarcerated women were younger than 18, only 24 per cent of fathers assumed their care when the mothers were arrested. Nine per cent of the children of incarcerated women were unaccounted for.

Outside of the global norm, many of the women in prison interviewed had committed serious offenses. This aspect requires further research.

KEY RECOMMENDATIONS:

- To ensure that bail conditions take into account the social and economic realities of women in Sierra Leone;
- To develop gender-responsive alternatives to detention and only use incarceration as a measure of last resort, in line with international standards.

Pretrial and convicted women in prison

There are 21 prisons in Sierra Leone. 14 commonly hold female detainees, of which only two (Kenema and Freetown) are exclusively female correctional centers. According to the World Prison Brief, the overall prison population of Sierra Leone was 4,732 in December 2019.¹⁰⁸ This included pre-trial and convicted detainees.

Data provided by AdvocAid shows that there were 93 women in detention in the country between November and December 2019: 64 were held in Freetown, six in Makeni, eight in Kenema, two in Moyamba, two in Bo, one in Kono, one in Port Loko, three in Magburaka, three in Kabala, three in Kailahun. The female correctional centers in Mattru Jong, Bonthe, Punjehun and Kambia were empty during this period. We interviewed 86 per cent of the women detained in Sierra Leone during that period. Of the 67 women we surveyed, only one was not Sierra Leonean; she came from neighboring Guinea.

Existing research indicates that pre-trial detention continues to be excessively used in Sierra Leone both for women and men.¹⁰⁹ According to this study's data, 62 per cent of the women surveyed were on pre-trial detention and 37 per cent had been convicted. This is in spite of guidance in The United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) and the African Commission's Luanda Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa (Luanda Guidelines), which state that pre-trial detention should only be

¹⁰⁸ Prison Studies, World Prison Brief. <https://www.prisonstudies.org/country/sierra-leone>

¹⁰⁹ Open Society Foundations, 2013. Socioeconomic Impact of Pretrial Detention in Sierra Leone. Open Society Foundations, New York

used as a measure of last resort in criminal proceedings.¹¹⁰ The Bangkok Rules further emphasize that, taking account the experiences of violence of many women offenders and their caretaking responsibilities, States should develop gender-specific alternatives to custodial measures both for women in pretrial detention and those who have been sentenced.¹¹¹

Table 1: percentage of pretrial/convicted women in prison

	Count	Percentage
Awaiting indictment	7	10%
On remand	35	52%
Convicted	25	37%

Pretrial and convicted women detainees were often not separated in the centers visited by the research team. They simply wore different colored uniforms. Everyone is entitled to trial within a reasonable time or release under international standards,¹¹² yet, the women we interviewed had spent an average of 427 days in pretrial detention. Some had only entered prison that month and 13 per cent had spent over 1,000 days awaiting trial. The interviews indicated that trials are often slow and complicated, and many women fail to meet bail conditions.

“It is not good for women to spend so many years in prison. We have one inmate who has spent 7 years and is still on trial without conviction. There is an urgent need for speedy trials.” – Correctional Center Officer

¹¹⁰ United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), Rule 6.1; Luanda Guidelines s. 1(b)

¹¹¹ Bangkok Rules, Rules 57-62; See also: UNODC, 2020. Toolkit on Gender-Responsive Non-Custodial Measures

¹¹² International Covenant on Civil and Political Rights, art. 9(3). This is echoed in the African Charter, art. 7(1)(d).

¹¹³ Constitution of Sierra Leone 1991, s. 17 (3) (a) and 17 (3) (b)

¹¹⁴ Criminal Procedure Act 1965, s. 80

¹¹⁵ See a detailed discussion on the issue of bail in Sierra Leone: AdvocAid, 2018. Pay No Bribe for Bail <http://advocaidsl.org/wp-content/uploads/2018/12/Pay-No-Bribe-For-Bail-Policy-Report.pdf>

¹¹⁶ *ibid*

¹¹⁷ Communication No. 526/1993, *M. and B. Hill v. Spain* (adopted on 2 April 1997), UN doc. GAOR, A/52/40 (vol. II), p. 17, para. 12.3

Box 3: Bail in Sierra Leone: a gendered issue?

In Sierra Leone, a person who is arrested can be held in a police cell for up to 10 days if suspected of capital offenses, offenses carrying life imprisonment or economic and environmental offenses. They can be held for up to 72 hours for any other crime.¹¹³ After this initial period, the person must be either released or charged. During this time the police have powers to grant bail.¹¹⁴ According to the Legal Aid Board, these powers are often abused by police who solicit bribes from those who have been arrested.¹¹⁵ According to the same interviewees, as some people do not know that bail is free in Sierra Leone, they can be led to believe that there is a fee to pay.¹¹⁶

“I think that the police asked for some money to help me get bail and we didn't have it, so I am here” – Woman in prison

The UN Human Rights Committee has consistently reiterated that “bail should be granted, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party.”¹¹⁷ Under Sierra Leonean domestic law, the courts must grant bail to all except those charged with murder or treason, in which cases only a judge may do so, or unless courts have a particular reason not to.¹¹⁸ Following considerable lobbying on the part of the Legal Aid Board, legal professionals, and civil society organizations, the government passed new important Bail Regulations in 2018, which state that a court in Sierra Leone must now take into account whether the defendant is pregnant, a lactating mother or a primary caregiver.¹¹⁹ Consideration must also be given to the health status of the defendant and to whether s/he has physical or mental disabilities.¹²⁰ Typically, bail conditions in Sierra Leone require two sureties who live in the same city as the court.¹²¹ Recently the judiciary in some parts of the country have started accepting sureties who live in the defendant’s hometown.¹²² However, it is sometimes required that the sureties own property, which can be especially difficult for women who are usually poorer and have fewer connections than their male counterparts.¹²³

¹¹⁸ Criminal Procedure Act 1965, s.79

¹¹⁹ The Bail Regulations 2018, s. 7(1)(e-g)

¹²⁰ The Bail Regulations 2018, s. 7(1)(b-d)

¹²¹ AdvocAid, 2018. Pay No Bribe for Bail <http://advocaidsl.org/wp-content/uploads/2018/12/Pay-No-Bribe-For-Bail-Policy-Report.pdf>

¹²² Interview with Legal Aid Board Makeni, 2019

¹²³ Global Campaign for Pretrial Justice, Prison Watch Sierra Leone, Timap for Justice, United Nations Development Programme, Open Society Justice Initiative, Open Society Foundation, Open Society Foundations, Open Society Institute, 2013. The Socioeconomic Impact of Pretrial Detention in Sierra Leone. Open Society Foundations, New York

“When I went to court, I was offered bail but could not be released because I had no surety to stand for me. The surety had to have a house plan and I don't know anyone who owns a house.” – Woman in prison

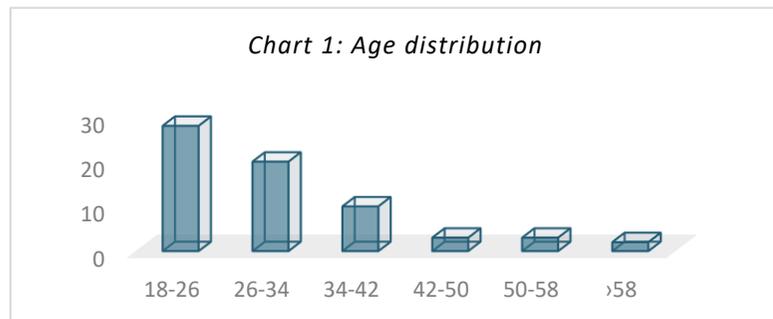
Most of the women interviewed in pre-trial detention during this study said that they had been denied bail. The study shows that 62 per cent of women in pre-trial detention had allegedly committed serious offenses, which could explain why they had not been granted bail. The judges and magistrates we interviewed, in fact, explained their concern that if they grant bail in cases involving serious offenses, the accused may not appear in court.¹²⁴

However, it could be argued that women who have committed an offence for the first time and have children and family who live in the area are unlikely to flee. The other 38 per cent of women in pre-trial detention accused of non-serious offenses were also not granted bail.

Of the women in pre-trial detention we surveyed, 29 per cent said they could not meet the two sureties bail condition was. An additional 15 per cent said that they had trouble producing sureties who could provide a house plan to show that they owned property. Many of the women we interviewed said that even just reaching their families to ask them to stand as sureties was almost impossible. According to them, this is due often to stigma or because the relatives and friends are scared that they will be asked to pay money or will be implicated by association.¹²⁵ 17 per cent of the women in pre-trial detention said they did not know why they had not been granted bail.

Age and marital status of women in prison

Most women surveyed were below 50 years of age (92 per cent) and the oldest woman was 61. This is in line with the demographics of the country, where just over 7 per cent of the population is 55 and over.¹²⁶



Since divorce is not customary in Sierra Leone, it is unsurprising that before prison none of those interviewed were divorced. Yet, 9 per cent said they were separated before their arrest. More than half had a partner but were not legally married – this includes those in customary marriages. Seven per cent were in polygamous marriages and 12 per cent were in legal monogamous marriages. A minority, 4 per cent, were single and 6 per cent were widowed.

Pregnancy and children

Only two women we interviewed were pregnant, and one woman reported having given birth at a government hospital while in detention. Eighty-eight per cent of women interviewed had children outside prison; a total of 153 children. Of those, 127 were minors at the time of the mother's arrest.

¹²⁴ Interview with the judiciary in Makeni and Bo, 2019

¹²⁵ See a detailed discussion on the issue of bail in Sierra Leone: AdvocAid, 2018. Pay No Bribe for Bail <http://advocaidsl.org/wp-content/uploads/2018/12/Pay-No-Bribe-For-Bail-Policy-Report.pdf>

¹²⁶ Index mundi https://www.indexmundi.com/sierra_leone/age_structure.html

Almost two-thirds (62 per cent) of the women who had children younger than 18 living outside responded that a close blood relative was taking care of at least one child. Only 24 per cent said that at least one of their children was living with their partner or spouse, which may suggest a broader pattern around paternal care and responsibility in Sierra Leone. As we will discuss in more detail, according to the women we interviewed, following their arrest, many of their partners abandoned their children and started new relationships. Seven per cent of women with children had at least one child in a foster home – usually a foster home run by the NGO Don Bosco. Only a minority of children of women in prison were being taken care of by neighbors or friends. Six women did not know where their children were at all, which represents 14 children unaccounted for.

“I have five children. I do not know anything about them, whether they are alive or not. This is very scary, and I always cry” – Woman in prison



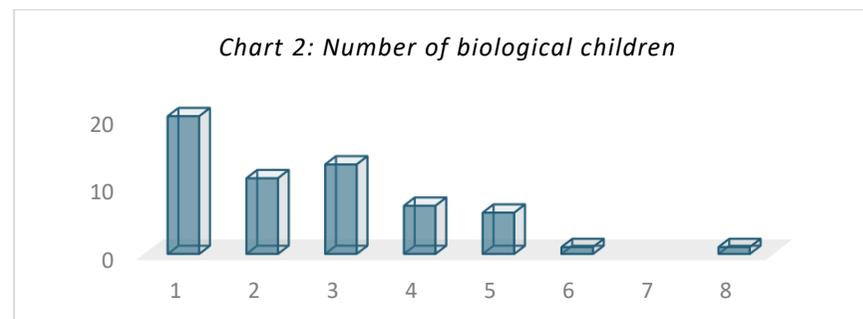
of women had children outside prison.



A total of 153 children - 127 of whom were minors at the time of the mother's arrest.

Twenty-five per cent of women surveyed had one or more foster children in their care at the time of their arrest. All those who had *menpikin* or *galpikin* also had biological children. The women who did foster children in addition to their biological children were, on average, taking care of more

than 4 children each.



Education

According to international standards, everyone has the right to education and particular efforts must be made to eliminate gender-based discrimination so that women have equal access to education.¹²⁷ However, as discussed in the Country Context section above, women in Sierra Leone tend to be less educated than their male counterparts.¹²⁸ This is often a result of structural inequality. For example, many families prefer not to spend scant resources on educating girls given that they will eventually be married into another family.¹²⁹ Other barriers to women and girls' education include poverty, early marriage, teenage pregnancy, sexual abuse, disabilities, and, finally, caretaking responsibilities.¹³⁰ During the civil war and the Ebola crisis, many girls found themselves as the breadwinners of their household.¹³¹ More women than men have been found to be the breadwinners of their households at early ages (15-24 years).¹³² To provide for their families, research shows that many girls become involved in sexually exploitative relationships.¹³³ There is a high risk that these relationships result in early pregnancies, which perpetuate the cycle of poverty from one generation to the other. Early pregnancy is one of the main reasons why girls drop out of school before the age of

¹²⁷ CEDAW, art. 10; see also UNESCO Convention against Discrimination in Education

¹²⁸ UNICEF, At a glance: Sierra Leone https://www.unicef.org/infobycountry/sierraleone_statistics.html

¹²⁹ Robinson and Defence for Children International – Sierra Leone, 2015. A mountain to Climb: Gender Based Violence and Girls Rights to education in Sierra Leone

¹³⁰ Street Child, 2018. A Study on the Barriers to Education for Children with Disabilities in Sierra Leone

¹³¹ *ibid*

¹³² Statistics Sierra Leone, 2017. Sierra Leone 2015 Population and Housing Census Thematic Report on Gender

¹³³ *ibid*

15.¹³⁴

Over half of the women surveyed in prison were illiterate. This means that the majority of women in prison in Sierra Leone between November and December 2019 were illiterate. An additional 13 per cent had only a limited ability to read and write, such as being able to write their name. 21 per cent said they could somewhat read and write, only 12 per cent were fully confident in this ability.

“Growing up from a poor family in Kabala is really not easy. I never went to school because I have many siblings and so my mother could not pay fees for everybody. I now understand the importance of education after learning a few things through the adult education course. I wish everyone would understand how important it is.” – Woman in prison

Table 2: Ability to read and write

	Count	Percentage
<i>I am confident in my writing/reading</i>	8	12%
<i>I have some ability to read and write</i>	14	21%
<i>Limited ability to read and write</i>	9	13%
<i>Not able to read and write</i>	36	54%

It follows that very few women had completed an education. Forty-five per cent reported not having attended school at all. 16 per cent said they had only undertaken some years of primary school and 2 per cent had completed it. A further 21 per cent reported having commenced secondary education and an additional 10 per cent having completed it. Cumulatively, only 6 per cent of women surveyed had pursued higher education. One woman had completed vocational studies, while another had started university but had not graduated. One woman held an undergraduate

university degree and another woman held a master’s degree.

Employment and Economic Background

Globally women and girls are overrepresented among the poor and less educated.¹³⁵ They also tend to have less access to decent employment compared to men and boys.¹³⁶ In response, international standards require States to put in place measures that promote women’s equal access to work, career advancement, training and education.¹³⁷

In Sierra Leone, men are traditionally regarded as the heads of their households in terms of decision making, irrespective of their age or economic background. Yet, in just under a third of families, women are the breadwinners.¹³⁸ According to the Ministry of Social Welfare, Gender and Children’s Affairs (MSWGCA), women are often left with the responsibility of domestic expenses and are expected to take care of and financially provide for their children without the support of their partners.¹³⁹

Of the women we surveyed, only 21 per cent did not earn a wage before their arrest. Of those who did earn a wage, 46 per cent were the main or only earners of their households. 28 per cent reported they were equal earners with their partners or spouses. This means that most women in prison in Sierra Leone at the time of this study, who had minor children on the outside, were likely the primary caretakers of their young children before their arrest. It also suggests that the mothers’ detention will likely have a significant impact on the children, as well as on themselves. Women’s role as caretakers and breadwinners is one of the reasons the Bangkok Rules encourage gender-sensitive alternatives to prison.¹⁴⁰

The research showed that most women had been informally employed, the majority as petty traders. Others were employed as housekeepers and

¹³⁴ Robinson and DCI-SL, 2015. A mountain to Climb: Gender Based Violence and Girls Rights to education in Sierra Leone

¹³⁵ United Nations, 2011. Report of the Special Rapporteur on extreme poverty and human rights

<https://www.ohchr.org/Documents/Issues/EPoverty/A.66.265.pdf>

¹³⁶ *ibid*

¹³⁷ CEDAW, arts. 2, 3, 10, 11, 13. See also: Maputo Protocol, arts. 12, 13, 15, 19 and African Charter, arts. 2, 14, 15, 17, 22

¹³⁸ Statistics Sierra Leone, 2017. Sierra Leone 2015 Population and Housing Census Thematic Report on Gender

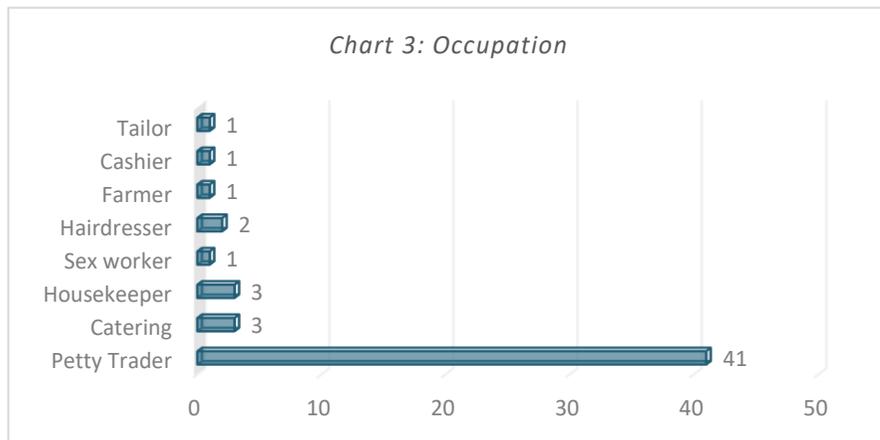
¹³⁹ Interview with MSWGCA in Freetown, 2019

¹⁴⁰ Bangkok Rules, Rule 58

hairdressers.

“[My cousin] was the breadwinner of the house, and now that she is not around, all of those that were dependent on her for their survival are greatly affected.” – Relative of a woman in prison

The vast majority of the women surveyed were very poor: 71 per cent said that before going to prison they could only afford one or two meals a day. Three women said they went hungry most days. One woman reported she was homeless before being arrested. Only five per cent reported owning property. Most of the women surveyed described their living conditions as very modest: two thirds (67 per cent) said that in their previous accommodation they either slept on the floor or on a mattress on the floor. Just over half of these women said they had electricity in the house before their arrest.



Offenses committed by women in Sierra Leone

Globally it has been found that only a minority of women who are incarcerated have committed violent crimes, and certainly at a much lower rate than men.¹⁴¹ Their crimes are much more likely to be petty offenses,

drug-related, or economic. As highlighted, research has shown that women committing economic offenses is link to the fact that they are more greatly marginalized while still carrying the burden of providing for their families, often alone.¹⁴²

According to our research however, 54 per cent of the women we interviewed had been charged or convicted of ‘offenses against the person’ formed .In offenses against the person we include those under the Offences Against the Person Act 1961: infanticide, murder, conspiracy to commit murder, wounding and wounding with intent, manslaughter, assault/battery, and administering poison. In total, 20 per cent of those interviewed had been convicted or charged with murder. An additional five per cent were charged with infanticide. Meanwhile, eight per cent were in prison for offenses related to child trafficking and child stealing. It should be noted that the vast majority of the women surveyed were detained in the maximum-security prison in the capital, Freetown, and we were not able to interview approximately 31 per cent of the prison population in lower security prisons. This might explain why so many of the women we surveyed were in prison for violent crimes. Women accused or convicted of serious crimes are detained in Freetown. Outside Freetown, 75 per cent of women interviewed had either been convicted or charged with crimes related to poverty. This difference between the findings in Sierra Leone and global patterns deserves further attention.

Of all the women we interviewed, 34 per cent had either been convicted or charged with crimes related to poverty and drug use – drug trafficking, loitering, fraudulent conversion, obtaining money or goods by false pretense, conspiracy to steal, larceny, robbery and burglary. Two women had either been charged or convicted of perverting the course of justice because they stood as sureties for family members who jumped bail. Lastly, one woman was in pre-trial detention for loitering and theft and another was convicted of assault and wounding with intent.

¹⁴¹ Wright et al., 2012. Gender-Responsive Lessons Learned and Policy Implications for Women in Prison: A Review. Crim. Just. & Behavior 39

¹⁴² United Nations, 2011. Report of the Special Rapporteur on extreme poverty and human rights <https://www.ohchr.org/Documents/Issues/EPoverty/A.66.265.pdf>

Table 3: Offenses (includes in-depth interviews)

	Count
<i>Infanticide</i>	4
<i>Murder</i>	16
<i>Wounding/Wounding with Intent</i>	9
<i>Conspiracy to commit murder</i>	3
<i>Child trafficking</i>	3
<i>Drug trafficking</i>	1
<i>Multiple offences</i>	2
<i>Administering poison</i>	1
<i>Manslaughter</i>	8

<i>Child stealing</i>	3
<i>Assault/battery</i>	2
<i>Robbery/Burglary</i>	1
<i>Theft/Larceny</i>	11
<i>Conspiracy to steal</i>	3
<i>Obtaining money/goods by false pretense</i>	7
<i>Fraudulent conversion</i>	3
<i>Loitering</i>	1
<i>Perverting the course of justice</i>	2

2. Pathways to Prison

This section will review the findings of the study regarding the common pathways leading women to prison in Sierra Leone. It will draw on global findings and relevant contextual knowledge of Sierra Leone. It will present particular patterns that the research has found relating to social factors such as poverty, experiences of gender-based violence, low levels of education and poor mental health. We will also examine the hypothesis that women’s pathways to incarceration are heavily linked to gender-based discrimination and inequalities in the criminal justice system and broader society.

Poverty

Box 4 : In Summary

As already discussed, most of the women in prison at the time of the study were poor and often the main earners of a large household. Many of the women reported having stolen small sums of money to provide for their families. Among the economic or petty crimes they had been accused or convicted of, larceny was the most common.

Petty offenses are still criminalized in Sierra Leone and can result in imprisonment. This study found that the most common petty offenses are ‘fraudulent conversion’ and ‘obtaining money by false pretense’. According to the testimony of some

interviewees, women can be imprisoned under these charges after borrowing money for business purposes but using it to pay for unforeseen expenses or to meet the basic needs of their children and families. When women are convicted of these two offenses, the lender does not recover their money.

According to formerly incarcerated women, domestic loitering laws, which criminalize a person for being somewhere without being able to give account of why they are there, are used to criminalize women suspected of engaging in sex work. Some women reported that sex workers are at an increased risk of suffering violence at the hands of police when arrested under loitering laws.

Contrary to international standards, there are currently no provisions for non-custodial sentences under Sierra Leonean law aside from fines.

KEY RECOMMENDATIONS:

- To decriminalize and declassify petty offenses including loitering, fraudulent conversion and obtaining goods or money by false pretenses, insulting conduct, and minor traffic offenses;
- To encourage alternative dispute resolution or civil summons to resolve minor crime, and put in place other community based non-custodial measures that address the pathways to women coming into contact with the law.

As discussed, the research team interviewed 86 per cent of the female prison population at the time and found that most were poor and illiterate and the main earners of a large household. Many women who commit economic and petty crimes in Sierra Leone do so for their survival and that of their families.¹⁴³ Prosecution and harsh sentences for non-violent and petty offenses is effectively a way of punishing poverty.¹⁴⁴ Female poverty further leaves women with fewer chances of accessing justice and being able to meet bail conditions.¹⁴⁵ Inequality is therefore a driver of women's lack of access to justice; a factor that courts may not properly consider.

Since many women who commit minor crimes do not pose a threat to public safety, these cases could qualify for non-custodial sentencing. However, although the Bangkok Rules encourage gender-sensitive alternatives to detention,¹⁴⁶ Sierra Leone does not provide non-custodial sentences aside from steep fines, which many of the women we interviewed reported being unable to pay. The research also revealed that families sometimes become indebted in order to pay the fines.

"The judge granted me a fine of 1,000,000 Leones (\$100) as an alternative to being held here but I could not afford that. So, I was sentenced to 2 years, 6 months imprisonment." – Woman in prison

"I had to go through a lot to pay a fine of 1,000,000 Leones (\$100) for [my sister's] release. It was not easy for me to raise such amount. All the members of the family contributed to raise such money. Some even went to get a loan to support her. So, it affected us financially." – Sister of a formerly incarcerated woman

Larceny

Larceny, conspiracy to steal, and robbery or burglary are all offenses that are related to poverty. Nineteen per cent of the women we spoke to had either been charged or convicted of one of these offenses. Many of the

women charged with larceny reported stealing small sums of money to provide for their children, drawing a link between crime and the pressures of providing for families. Some interviewees claimed that the sentences imposed were disproportionately harsh. For instance, one woman said that she had been sentenced to four years in prison after stealing a radio and 650,000 Leone (\$65) from her cousin. It is important to contrast these sentences with those handed down for serious crimes such as corruption, for example where the person convicted usually pays a fine and does not face imprisonment.¹⁴⁷ The effects of detention on the welfare of the woman, her family and community can be devastating, as we will discuss further in this report. In many cases, women stole from their family members, who turned them in to the police.

"I am lagging behind in my education. If I am out of this place, I swear I will find ways to work hard and pay my debt to my sister. Some disagreements are domestic and must be sorted outside of court, I don't think that being here has made any positive effect on me." – Woman in prison

Petty Offenses

Petty offenses are strongly linked to poverty and are defined by the African Commission on Human and Peoples' Rights as:

"Minor offenses for which the punishment is prescribed by law to carry a warning, community service, a low-value fine or short term of imprisonment, often for failure to pay the fine. [...] Petty offenses are entrenched in national legislation and, in most countries, fall within the broader category of minor offenses, misdemeanors, summary offenses or regulatory offenses".¹⁴⁸

In 2018, the Commission recommended that State Parties to the African

¹⁴³ Mahtani, S., 2013. Women and the Criminalization of Poverty: Perspectives from Sierra Leone. Signs

¹⁴⁴ See Annex: 'A Guide to the International Framework (Prepared by Cornell University Law School)' for a more detailed discussion.

¹⁴⁵ Prison Watch Sierra Leone, Timap for Justice, United Nations Development Programme, & Open Society Justice Initiative, 2013. The Global Campaign for Pretrial Justice: Improving Pretrial Justice in Sierra Leone, OPEN SOCIETY FOUNDATIONS, 40–41

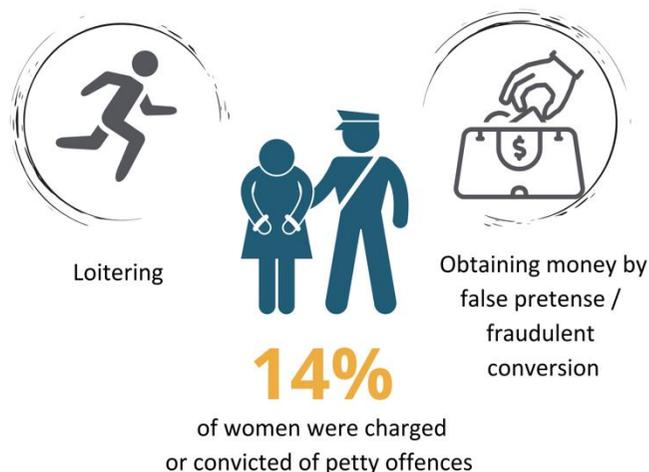
¹⁴⁶ See Rules 57-62 of The Bangkok Rules

¹⁴⁷ The Sierra Leone Telegraph, 2019. <https://www.thesierraleonetelegraph.com/three-public-officials-convicted-of-corruption-in-sierra-leone/>

¹⁴⁸ African Commission on Human and Peoples' Rights, Principles on the Decriminalisation of Petty Offenses, 2018. http://www.achpr.org/files/instruments/decriminalisation-petty-offenses/principles_on_the_decriminalisation_of_petty_offenses_efpa.pdf

Charter take steps to decriminalize and declassify petty offenses.¹⁴⁹ In Sierra Leone, AdvocAid and the Center for Accountability and the Rule of Law have advocated for such offenses to be decriminalized, such as loitering, the non-payment of debt (including fraudulent conversion and obtaining goods or money by false pretenses), insulting conduct, and minor traffic offenses. These offenses largely over-penalize those who are poor and marginalized.¹⁵⁰ Petty offenses continue however to be criminalized in Sierra Leone. As a result, poverty becomes a pathway to prison for both women and men. This is contrary to international standards, which prohibit the criminalization of petty offenses which is often the same as the criminalization of poverty.¹⁵¹

Women who had been either charged or convicted of petty offenses represented 14 per cent of those we surveyed.



¹⁴⁹ ACHPR noted that petty offenses violate Articles 2, 3 and 18 of the African Charter on the right to equality and non-discrimination; Article 5 on the right to dignity and freedom from torture, cruel, inhuman or degrading punishment and treatment and Article 6 on the right to liberty and security of the person and freedom from arbitrary arrest and detention.

¹⁵⁰ AdvocAid and Center for Accountability and Rule of Law, 2019. Decriminalising Poverty In Sierra Leone: Call For Reform Of Petty Offences. Position Paper <https://advocaidsl.org/1942-2/>

¹⁵¹ UN Special Rapporteur on Extreme Poverty and Human Rights, *Report of the Special Rapporteur on Extreme Poverty and Human Rights on his Mission to the United States of America*, U.N. Doc. A/HRC/38/33/Add. 1, paras. 71-73 (4 May 2018).

¹⁵² Interview with the judiciary in Makeni, 2019

¹⁵³ Interviews with women in prison, 2019

This is much lower than figures indicated in global research. It is another area that could be considered for further research. However as in the case of violent offenses, this discrepancy could be due to the fact that the majority of interviewees were detained in the only maximum-security prison in the country which houses those who have committed serious crime.

Although the bail conditions imposed on women charged with petty offenses are usually more lenient,¹⁵² some women struggle to meet the most basic requirements such as providing ID, having never needed one before.¹⁵³ 64 per cent of the women who were in prison for petty offenses were in pre-trial detention.

Fraudulent conversion and obtaining money or goods by false pretense

The study revealed that the two most common petty offenses women are charged with are fraudulent conversion and obtaining goods/money by false pretense.¹⁵⁴ Both of which require a deliberate and fraudulent intent.¹⁵⁵ According to civil society organizations interviewed for this study, these offenses are however largely misunderstood and have been overextended to criminalize almost any instance of debt, regardless of intent.¹⁵⁶ Some of the women in prison we interviewed reported that, encouraged by the police, they admitted before a judge to owing someone money without understanding that they were pleading guilty to maliciously defrauding their accuser. A number of these women, who were mostly petty traders and the breadwinners of their households, were in prison for taking small loans for business purposes and using the money to settle unforeseen domestic obligations and pay for food, medicines or hospital bills for their children and families. While these women might not have

¹⁵⁴ AdvocAid, 2012. Women, Debt & Detention: An Exploratory Report on Fraudulent Conversion and the Criminalisation of Debt in Sierra Leone <http://advocaidsl.org/wp-content/uploads/2018/12/AdvocAid-Women-Debt-and-Detention-Report.pdf>

¹⁵⁵ Under the Larceny Act 1916, a person is guilty of committing "fraudulent conversion" if: "...being entrusted [...] with any property in order that he may retain in safe custody or apply, pay, or deliver, for any purpose or to any person, the property or any part thereof or any proceeds thereof; [...] fraudulently converts to his own use or benefit, or the use or benefit [...] the property or any part thereof or any proceeds thereof" (emphasis added). Fraudulent conversion carries a sentence of up to seven years in prison.¹⁵⁵ Similarly, a person is liable to up to five years in prison if "by any false pretense— (1) with intent to defraud, obtains from any other person any chattel, money, or valuable security [...]" (emphasis added).¹⁵⁵

¹⁵⁶ Interview with Prison Watch, 2019

intended to defraud their lenders,¹⁵⁷ when they failed to repay their debts, they were reported to the police. Many people in Sierra Leone are unaware that most of these issues can be settled through mediation or civil summonses.¹⁵⁸

“I have eight children and sometimes it was just impossible to take care of them all. So, I borrowed some money from a friend but when I couldn't pay back, she turned me in to the police. I am so worried. Who will make sure that my children go to school and are well fed?” – Woman in prison

“My friend gave me 3,100,000 Leones (\$310) to buy garri (cassava flour) by bags. But I used the money for my two children's education and their feeding as I don't have anybody to help.” – Woman in prison

According to a report published by AdvocAid in 2012¹⁵⁹ and more recent media articles,¹⁶⁰ it is also relatively common for women in Sierra Leone to be arrested for failing to repay steep microloan interest to NGO microfinance lenders. Since many women do not own land, which is usually in the name of their husbands, they often obtain repayment conditions that are less favorable than those given to men. Low levels of literacy mean that some women do not understand repayment plans. As a result, they either start missing payments or accrue more debt by attempting to pay one microloan with another.¹⁶¹ According to the formerly incarcerated women we interviewed, women in this situation are often visited and harassed by the police and forced to pay a bribe to stop the harassment and avoid being detained in police cells.¹⁶² During a focus group, a formerly incarcerated woman told us that her former cell mate was in prison because, following the death of her child, she had skipped a repayment

appointment with a microfinance lender.

Debt is the product of a civil transaction and is occasionally resolved through alternative dispute resolution (ADR) methods by the Legal Aid Board and several civil society organizations, including the Market Women's Association, trained on ADR by AdvocAid following the release of its report on petty offenses in 2012.¹⁶³ However, according to the Legal Aid Board, police are often eager to arrest people under these circumstances and hold them at police stations.¹⁶⁴ Women can sometimes be held for up to two weeks as police attempt to recover the money, return some to the lender, and keep a portion for themselves. As the interviews revealed, the police may solicit money from the lender to continue the investigation, and from debtor for not charging the matter to court.¹⁶⁵ Some cases are however directly charged to court. With police cells congested and caseloads high, the Law Officers Department does not always undertake a sufficient review of the evidence.¹⁶⁶ In these cases, those arrested may sit in pre-trial detention for so long that, by the time their case is heard, they have already served their sentence. It should be noted that with this practice, the lender does not recover the money owed, while the State spends a considerable amount of resources in detaining people who could have arguably used the time in detention to repay the debt.

Loitering

Among other petty offenses, 'loitering' carries a sentence of up to one month. Loitering is defined under the Public Order Act 1965 as idling in the street 'not having any visible means of subsistence, and not giving a good account of himself'.¹⁶⁷ This definition of loitering is arguably very vague; some civil society organizations said this leaves great discretion to the police and places marginalized groups at risk.¹⁶⁸ According to five formerly incarcerated women we interviewed, loitering is disproportionately

¹⁵⁷ Based on interviews with women in prison in Sierra Leone, 2019

¹⁵⁸ Interview with the Legal Aid Board in Freetown, 2019

¹⁵⁹ AdvocAid, 2012. Women, Debt & Detention: An Exploratory Report on Fraudulent Conversion and the Criminalisation of Debt in Sierra Leone <http://advocaidsl.org/wp-content/uploads/2018/12/AdvocAid-Women-Debt-and-Detention-Report.pdf>

¹⁶⁰ The Guardian, 2019 <https://www.theguardian.com/global-development/2019/dec/12/microfinance-lenders-in-sierra-leone-accused-of-payday-loan-interest-rates>

¹⁶¹ *ibid*

¹⁶² Focus group with formerly incarcerated women in Freetown, 2019

¹⁶³ AdvocAid, 2012. Women, Debt & Detention: An Exploratory Report on Fraudulent Conversion and the Criminalisation of Debt in Sierra Leone <http://advocaidsl.org/wp-content/uploads/2018/12/AdvocAid-Women-Debt-and-Detention-Report.pdf>

¹⁶⁴ Interview with the Legal Aid Board in Freetown, 2019

¹⁶⁵ *ibid*

¹⁶⁶ Mahtani, S., 2013. Women and the Criminalization of Poverty: Perspectives from Sierra Leone. Signs

¹⁶⁷ Public Order Act 1965, s.7

¹⁶⁸ Based on interviews with civil society organizations in Freetown, Kenema and Makeni, 2019

applied to women who do not comply with traditional gender norms and conservative customs in the way that they dress or act, particularly those suspected of engaging in sex work.¹⁶⁹ This is contrary to international standards, which place positive obligations on States to both eradicate stereotypes and practices that discriminate against women¹⁷⁰ and to protect sex workers, who are particularly vulnerable to abuse.¹⁷¹ The same formerly incarcerated women claimed that women are arrested simply for walking home alone at night.

“This is what the street does to women, they become hardcore criminals and prostitutes, they don’t care and do not attract sympathy. When a woman displays such attitude, the temptation is to treat them like any other man.” – Legal Aid Board, Kono

According to women with a lived experience of prison we spoke to, sex workers are at considerable risk of sexual violence at the hands of police, although this was not reported by those surveyed or interviewed in prison. Police officers can sometime extort payments or sex from them in return

for their release.¹⁷² This was also evidenced by a recent documentary produced by AdvocAid.¹⁷³ Abuse may therefore be one of the drivers of the high rate of arrests and persecution of sex workers.¹⁷⁴ Five formerly incarcerated women interviewed in the course of the study have reported that male police officers were known to have taken women who were being held for loitering to their homes and forced them to have sex.¹⁷⁵ A local NGO representative confirmed being aware of this happening to one woman who was detained in a police cell.¹⁷⁶

“Sexual abuse is very common towards women who are incarcerated for loitering. An officer will come in and say, “If you don’t want to sleep here, I can take you to my house, we spend the night there and tomorrow I will help you with your case.” These women don’t really have the freedom to say no. In the morning, the officer will bring the woman back. Some will actually help the woman, but others will simply disappear.” – Formerly incarcerated woman.

Box 5: Sex workers: compounded vulnerability

It is estimated that there are approximately 300,000 commercial sex workers in Sierra Leone.¹⁷⁷ Common documented causes for engaging in sex work are to meet very basic needs, pay school fees and support families.¹⁷⁸ Following the Ebola epidemic, many girls and young women have become the main earners of their households and have been forced to engage in survival sex for sometimes as little as 10,000-20,000 Leone (\$1-2) each time.¹⁷⁹ These women and girls are vulnerable to being raped, drugged, beaten and robbed. 8.5 per cent are reportedly also living with HIV.¹⁸⁰ While solicitation is illegal under the Sexual Offences Act 2012,¹⁸¹ prostitution itself is legal in Sierra Leone.¹⁸² According to the formerly incarcerated women we interviewed, it is instead under the Public Order Act 1965 that police arbitrarily arrest suspected sex workers.¹⁸³ The same interviewees said that it is common for sex workers to be asked for money or sex by the police, and to be charged to court for loitering if they do not comply.¹⁸⁴

¹⁶⁹ Focus group discussions with formerly incarcerated women in Freetown and Makeni, 2019

¹⁷⁰ CEDAW, art. 5.

¹⁷¹ CEDAW GR 19, paras. 15–16 (1992).

¹⁷² Justice Studio, AdvocAid, African Prisons Project and Defence for Children International – Sierra Leone, 2011. Justice for Girls? Girls in conflict with the law and sexual exploitation in Sierra Leone <http://advocaidsl.org/wp-content/uploads/2018/12/AdvocAid-Justice-for-Girls-Report.pdf>

¹⁷³ AdvocAid, 2018. Online launch of documentary ‘Kolonko’ showing harassment and violence faced by sex workers <https://advocaidsl.org/online-launch-of-documentary-kolonko-showing-harassment-and-violence-faced-by-sex-workers/>

¹⁷⁴ Interview with The Center for Accountability and Rule of Law, 2019

¹⁷⁵ Focus group discussion with formerly incarcerated women in Freetown, 2019

¹⁷⁶ Interview with Prison Watch, 2019

¹⁷⁷ Brighter Horizons, 2020. <https://brighterhorizonsproject.org/projects/x-prostitution/>

¹⁷⁸ *ibid*

¹⁷⁹ *ibid*

¹⁸⁰ UNAIDS, 2016, Sierra Leone. <https://www.unaids.org/en/regionscountries/countries/sierraleone>

¹⁸¹ Sexual Offences Act 2012, s.17

¹⁸² The Legal Status of Prostitution by Country. <http://chartsbin.com/view/snb>

¹⁸³ Focus group discussions with formerly incarcerated women in Freetown and Makeni, 2019

¹⁸⁴ *ibid*

Prior Experiences of Abuse

Box 6: *In summary*

According to global research, women survivors of childhood and adulthood sexual and gender-based violence are more likely to come into contact with the law. The vast majority of detained women interviewed for this study reported suffering at least one form of violence once in their lifetime – 48 per cent during their childhood, 72 as adults at the hands of their partners, and 45 per cent during adulthood from someone other than their partner. Underreporting around this issue means that the numbers could be higher. Although there are laws in place to prosecute perpetrators of SGBV, interviewees reported that many women and girls are disincentivized from reporting because of the response they receive from the police. As a result, many women turn to the informal justice system and customary law, which as the Legal Aid Board indicated, tend to protect the rights of a man over those of a woman. Since the majority of women in prison tend to have prior experiences of violence, according to international standards, they should have access to gender-sensitive and trauma-informed mental health care and rehabilitation programs while in detention. Yet, only 24 per cent of women surveyed had met with a counsellor or prison staff upon entering prison to discuss whether they had suffered abuse.

Out of 24 per cent of women who were in prison for committing a crime against their partner or spouse, 94 per cent reported that the spouse or partner beat, bullied, belittled, or sexually harmed them before they committed the crime. Of those, 69 per cent say they reacted in self-defense. The domestic legal framework provides for a defense of self-defense for those who are accused of murder but a history of abuse cannot be considered as a mitigating factor at sentencing. This is in spite of international legal standards¹⁸⁵ which provide otherwise. This is also a missed opportunity to put in place a gender-just defense for women, some of whom may have a slow-burn reaction to violence.

KEY RECOMMENDATIONS:

- To investigate thoroughly and prosecute allegations of sexual and gender-based violence;
- To recognize and consider a history of SGBV when investigating and prosecuting cases of women who come into contact with the law;
- To amend legislation and train the police, investigators and legal professionals to ensure that a history of abuse is considered where appropriate. This includes introducing gender-specific defenses and/or mitigating factors and eliminating mandatory sentencing guidelines.¹⁸⁶

¹⁸⁵ The updated Model Strategies and Practical Measures on the Elimination of Violence against Women and Girls in the Field of Crime Prevention and Criminal Justice, General Assembly resolution 65/228, annex, adopted on 21 December 2010 states in provision 15(k) that self-defense claims by women who have been victims of violence, particularly in cases of battered woman syndrome, must be taken into account during **investigations and prosecutions and at sentencing**.

¹⁸⁶ See more on this issue: UNODC, 2020. Toolkit on Gender-Responsive Non-Custodial Measures https://www.unodc.org/documents/justice-and-prison-reform/20-01528_Gender_Toolkit_complete.pdf

Research worldwide has conclusively found a strong link between childhood and adulthood sexual and gender-based violence and women's incarceration, whether prior to, during or after prison.¹⁸⁷ Unequal power relations between men and women and socially constructed gender hierarchies create a permissive space for violence against women and girls.¹⁸⁸ While Sierra Leone has positive obligations to address sexual and gender-based violence,¹⁸⁹ it remains prevalent. Women, compared to men, are trained to be submissive from a young age – girls are commonly taught that a good wife obeys her husband and prioritizes his needs over hers.¹⁹⁰ During the validation session of this study, formerly incarcerated women explained that in their view, physical abuse is understood by many as a demonstration of passion and a normal response to a wife's perceived misbehavior. Violence by a husband can therefore be perceived by the community as an indication of a wife's failure to be a 'good wife'. In the same vein, sexual abuse in marriage can be considered a natural reaction to a wife's failure to perform what are seen as her sexual duties. Although the Sexual Offenses Act 2012 provides that marriage is not a defense to rape charges,¹⁹¹ this provision conflicts with customary law under which a woman cannot deny her husband sex.¹⁹² It is important to note that according to international law, States must not invoke customs, traditions or religion to avoid their obligation to eradicate violence against women.¹⁹³

Despite the passing of the Domestic Violence Act 2007, the Sexual Offenses Act 2012 and the Sexual Offenses (Amendment) Act 2019, some of the women we interviewed reported in reality many do not feel safe reporting their abuser to the police. When they do, they are often not taken seriously. Interviews with the Legal Aid Board also indicated that women do not trust the formal criminal justice system. Women prefer to speak to

their community elders or informal courts where the problem is resolved through mediation. However, in informal courts, disputes are often resolved in a way that is skewed against women. According to some of the formerly incarcerated women we interviewed, a traditional leader will typically tell a woman who is reporting her partner for sexual or physical violence: "*Na yu man, go biaiit*" (He is your man, be patient).

"There is still no justice for women in Sierra Leone because I kept reporting my husband to the police, but they never took me seriously." – Woman in prison

Childhood Abuse

Almost half (48 per cent) of the women surveyed had experienced at least one form of abuse during their childhood. Of those, 62 per cent had experienced physical abuse, and 20 per cent sexual abuse – 13 per cent had been raped and 7 per cent were sexually exploited.¹⁹⁴

"I was physically abused by my father who always flogged me. This happened during my teenage years. Whenever I did wrong, his way of punishing me was to beat me terribly. But I always kept quiet because he is my father." – Woman in prison

¹⁸⁷ Report of the Rapporteur on violence against women, its causes and consequences, Pathways to, conditions and consequences of incarceration for women, 2013, UN doc. A/68/340

¹⁸⁸ Moyo, T., Dhlwayo, R., 2019. Achieving Gender Equality and Women's Empowerment in Sub-Saharan Africa: Lessons from the Experience of Selected Countries. *Journal of Developing Societies* 35, 256–281

¹⁸⁹ CEDAW, art. 1; Maputo Protocol, art. 3

¹⁹⁰ Denney, L., Ibrahim, A.F., 2012. Violence against women in Sierra Leone. *ODI Politics and Governance*

¹⁹¹ Sexual Offenses Act, s.5

¹⁹² Matters of land and customary marriage are adjudicated under customary law, while all other issues follow formal legislation.

Therefore, if a woman is legally married her marriage will be regulated by formal legislation but if hers is a customary marriage then it will follow customary law.

¹⁹³ Declaration on the Elimination of Violence against Women General Assembly resolution 48/104, adopted on 20 December 1993, art. 4

¹⁹⁴ It is important to note that many in Sierra Leone do not perceive a sexual relation between a child and an older man in exchange for phone credit, money or gifts as exploitative. We therefore asked women whether as a child they had had a "sugar daddy".



48%

of women experienced physical or sexual abuse as a child

Adulthood Abuse

A large majority of women reported that, prior to prison, they had suffered at least one type of abuse from their partner or spouse. Almost three-quarters (72 per cent) reported having suffered either physical (46 per cent), sexual (19 per cent), emotional (52 per cent) or financial (30 per cent) abuse at the hands of their partners or spouses. In many cases, we found that women had suffered more than one type of abuse from the same partner. One-fifth (22 per cent) reported having suffered two types, 15 per cent three types and 9 per cent four types of abuse.

"I had a boyfriend who I was living with. We were together for one month until one day he took Tramadol [opioid abused by some men in Sierra Leone¹⁹⁵] and sexually abused me. It was so painful. After that, I told him that I would take something from him like he did from me. I took a bag and saw that there was some gold. I gave it to my brothers, who sold it. I was arrested and they are now saying that the gold was worth 25,000,000 Leones (US\$2,500) and that I stole it. I am still on trial; I have been here for 1 year and 6 months."
– Woman in prison

Almost half of the women (45 per cent) reported abuse – mostly physically, emotionally and financially – by someone other than their partner, typically by a father, uncle, neighbor or a male acquaintance.

¹⁹⁵ Al-Jazeera, 2017. Opioids: Sierra Leone's newest public health emergency. <https://www.aljazeera.com/indepth/features/2017/01/opioids-sierra-leone-newest-public-health-emergency-170119093804569.html>

Under the Bangkok Rules, women should have access to gender-sensitive and trauma-informed mental health care and rehabilitation programs while in detention.¹⁹⁶ However, upon entering prison, only 24 per cent of women surveyed had met with a counsellor or prison staff to discuss whether they had suffered abuse. The counselling was mostly provided by prison staff, church initiatives, AdvocAid or Prison Watch. In describing the counselling provided by the prison staff, some women reported feeling as though they were judged and taunted, rather than advised and listened to.

"The officers kept reminding us of our mistakes, which was very bad for us." – Formerly incarcerated woman



72%

of women told us that prior to prison they had suffered at least one type of abuse from their partner or spouse



Emotional
52%



Physical
46%



Financial
30%



Sexual
19%

¹⁹⁶ Bangkok Rules, Rule 12

Box 7: Customary Law - skewed against women?

As it is the case with many post-colonial countries, in Sierra Leone, two legal systems coexist: formal justice and informal justice, which includes all matters related to customary law. In rural areas, Paramount Chiefs have a final say on all matters related to customary law.¹⁹⁷ Customary law has formal status in the domestic legislation.¹⁹⁸ It varies from one ethnic group to another and is enforced in the chiefdoms through the informal courts or the local courts. Local courts are recognized in law under the Local Courts Act 2011 and have formal jurisdiction to adjudicate on all customary law matters; these are mostly matters of land and marital affairs within customary marriages, and some very minor criminal offenses.¹⁹⁹ According to our interviews with the judiciary, customary law discriminates against women in favor of men.²⁰⁰ Notably, the Sierra Leonean Constitution allows for discriminatory practices against women and children under customary law.²⁰¹ Additionally, the vast majority of those who adjudicate on customary matters are men – from the chiefs in the informal courts to the chairpersons in the local courts.

“When you drag women to these courts the women will always be disadvantaged. When the wife drags the husband to this informal court, the court will say they cannot tell the husband that he is wrong in front of the wife. And when you drag them to this informal court under customary law, the wife cannot deny the husband sex.” – Legal Aid Board, Freetown

The reason many people prefer informal and local courts is that they are more accessible than the formal legal system. Each court speaks the local language and is less formal; matters are dealt with between two individuals and not two lawyers, and trials are relatively quick and inexpensive. However, according to the legal professionals we interviewed, often these courts exceed their mandates. The same interviewees said that while the community chiefs should adjudicate only on two matters – customary marriage and land – some abuse their power and hear a broader range of cases, including sexual and domestic violence cases. These are often dismissed as domestic matters. A key problem is that since customary law is not codified, decisions are widely inconsistent both geographically and from one ethnic group to another.

Research across various countries also shows that the majority of women who are in prison for violent offenses have generally acted in response to domestic and/or sexual abuse.²⁰² Thus the importance of taking into account a history of abuse during sentencing.²⁰³ Of the 17 women (24 per cent) we surveyed who were imprisoned for committing a violent crime against their partner or spouse, 94 per cent reported that their spouse or partner had beaten, bullied, belittled, or sexually harmed them before they committed the crime. When asked to explain why they had allegedly committed a violent crime against their partner or spouse, 69 per cent responded having acted in self-defense.

“I was a 14-year-old schoolgirl when a man who was older than me impregnated me. My family decided I should marry him in a traditional wedding so that I wouldn't give birth out of wedlock. We later moved to Freetown and I gave birth to a baby boy. My husband was financially, physically and emotionally abusive. Every time he was angry at me, he would rape me. He didn't even give me money to cook and care for our kid, so I started cooking and selling fish to support me and the boy. I reported my husband to the police, but they did nothing.

¹⁹⁷ Namati, 2013. Customary law and land in Sierra Leone: From the mouth of the paramount chiefs <https://namati.org/news-stories/customary-law-and-land-in-sierra-leone-from-the-mouth-of-the-paramount-chiefs/>

¹⁹⁸ Constitution of Sierra Leone 1991, s. 170-171

¹⁹⁹ Local Courts Act 2011, s. 15

²⁰⁰ Based on our interviews with judges in Bo and Makeni, 2019. For a more detailed discussion on this issue: CARL, 2016. Investigation: Discriminatory Laws Against Women In Sierra Leone <https://www.carl-sl.org/pres/investigation-discriminatory-laws-against-women-in-sierra-leone/>

²⁰¹ Constitution of Sierra Leone 1991, s. 27(4) (d) and (e). Please also see: <https://www.dfa.ie/media/missions/sierraleone/newsandevents/Advocacy-Brief.pdf>

²⁰² Penal Reform International and Linklaters LLP, 2016. Women who kill in response to domestic violence: How do criminal justice systems respond?

²⁰³ Report of the Rapporteur on violence against women, its causes and consequences, 2013. Pathways to, conditions and consequences of incarceration for women, *supra* note 2, para. 84

One day, my husband ate the food I was going to sell for survival and so I asked him to pay me money. He said he would not pay me, and he started beating me. I had a knife in my hand because I was cooking when he started squeezing my throat. I stabbed him on his side, and he died.” – Woman in prison

Many of the women who had committed a violent crime against their partner or spouse were either on trial for or had been convicted of murder. In Sierra Leone, capital punishment continues to be automatically imposed on anyone who is found guilty of murder, except for pregnant women and children.²⁰⁴ This kind of automatic sentencing does not take into account mitigating factors and thus falls short of international obligations.²⁰⁵ No one has been executed since 1998 and in 2011 all death sentences were commuted to life in prison under the previous government. However, the current President has yet to sign a moratorium on executions.²⁰⁶ Sierra Leone has also not yet ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty. There is no formal parole board set up in Sierra Leone. Therefore, a presidential pardon is currently the only option available for early release available for cases of murder. This underscores the importance of access to legal aid to appeal against such convictions. AdvocAid is currently the only civil society organization working on death penalty appeals in the country.²⁰⁷

Under domestic law, a woman may be allowed to explain the circumstances of her case to the court – including any history of sexual and gender-based violence – to prove self-defense. The lack of gender-responsive training for the lawyers who represent these women may nevertheless limit their ability to do so. If a woman is found guilty of murder, however, her history cannot be considered as a mitigating factor

²⁰⁴ Please note that this is not always the case, given that proving their age can be a challenge for those who were not registered at birth.

²⁰⁵ See, inter alia, Bangkok Rules, Rule 61

²⁰⁶ AdvocAid, 2019. Call for a Public Commitment to the Moratorium on Executions <https://advocaidsl.org/1783-2/>

²⁰⁷ See: <http://advocaidsl.org/project/our-stories/mks-story/>

²⁰⁸ The updated Model Strategies and Practical Measures on the Elimination of Violence against Women and Girls in the Field of Crime Prevention and Criminal Justice, General Assembly resolution 65/228, annex, adopted on 21 December 2010 states in provision 15(k) that self-defense claims by women who have been victims of violence, particularly in cases of battered woman syndrome, must be taken into account during investigations and prosecutions and at sentencing.



Of the 17 women who were imprisoned for committing a violent crime against their partner

94%

said their partner had beaten, bullied, belittled, or sexually harmed them before they committed the crime.



69%

said they acted in self-defense.

to reduce her sentence because of the death sentence. This practice goes against international legal standards.²⁰⁸ Self-defense in Sierra Leone is defined in common law as a sudden reaction to an immediate threat of violence.²⁰⁹ However, research has shown that women who are victims of long term acts of domestic violence can have ‘slow-burn’ reactions.²¹⁰ The victim may be aware that an immediate response is likely to be more dangerous.²¹¹ The ‘slow-burn’ reaction may also be due to the cumulative impact of long term abuse.²¹²

In recognition of the role of SGBV in women committing violent crimes, some countries have developed a more gender-sensitive partial defense, which considers mitigating circumstances, such as a history of SGBV, to reduce the culpability of the defendant.²¹³

²⁰⁹ See cases such as *Palmer v The Queen* [1971] AC 814, 832

²¹⁰ Penal Reform International and Linklaters LLP, 2016. Women who kill in response to domestic violence: How do criminal justice systems respond?

²¹¹ *ibid*

²¹² *ibid*

²¹³ See a more detailed discussion: UNODC, 2020. Toolkit on Gender-Responsive Non-Custodial Measures https://www.unodc.org/documents/justice-and-prison-reform/20-01528_Gender_Toolkit_complete.pdf

While the intent to kill may be established, a defendant can be found guilty of the lesser crime of voluntary manslaughter and not murder due to the mitigating circumstances under partial defenses. A gender-specific partial defense recognizes that a person may have a slower reaction to violence, which is more appropriate for victims of domestic abuse.²¹⁴ This approach arguably corrects a gendered imbalance whereby men who lose self-control in the heat of the moment are favored over women towards whom juries are generally less sympathetic under such circumstances.²¹⁵

“My husband left me for another woman. He wouldn't give me more than 2,000 Leones (\$0.20) every now and then for our child to eat. One day I was having a walk with my child tied to my back when I saw my husband. He came close to me and asked me to leave so I said that he should leave. He removed his belt and started flogging me. So, I lowered because I wanted to throw my shoe at him, but he pushed me and my child to the ground. That's when I lost my temper. I picked up a bottle and threw it at him. He died at the hospital.” - Woman in prison

Mental Health

Box 8: In summary

Women tend to suffer from mental health illnesses more frequently than men.²¹⁶ Poor mental health can be both a pathway and a consequence of imprisonment. While mental health awareness is low in Sierra Leone, almost half of women in prison interviewed reported having suffered from depression and 40 per cent from anxiety before entering prison. Mental health conditions can void the criminal responsibility of a person and is one of the factors which judges must consider when granting bail under domestic and international law. However, conducting a mental health assessment for a criminal trial in Sierra Leone is currently difficult. There are only two psychiatrists in the country. Judges and magistrates said they had not received training on this issue and admitted to hardly ever considering it during trial.

²¹⁴ *ibid*

²¹⁵ Baker, D. and Zhao, L. 'Contributory qualifying and non-qualifying triggers in the loss of control defence: a wrong turn on sexual infidelity' [2012] *Journal of Criminal Law* 259

²¹⁶ Watson, R., Stimpson, A., Hostick, T., 2004. Prison health care: a review of the literature. *International Journal of Nursing Studies* 41, 119–128

KEY RECOMMENDATIONS:

- To increase the capacity of legal professionals around mental health, and allocating resources for mental health services;
- To provide gender-sensitive and trauma-informed training for judicial and law enforcement officers;
- To conduct gender-sensitive trials and adopt sentencing guidelines that consider issues such as mental health conditions

Research shows that women's experience of mental health is different to than that of men's, while a body of literature supports the notion that women in prison are more likely to suffer from mental health issues or substance abuse than male detainees, often as a result of prior experiences of abuse.²¹⁷ The literature has also establishes a causal link between poor mental health and imprisonment.²¹⁸ Importantly, those interviewed for this study said that, in Sierra Leone, mental health awareness is very low. Some of the imprisoned women surveyed took offense when asked about mental health. It was not uncommon for those we interviewed, including correctional center officers, to refer to those with a mental health condition as “mentally off”, “abnormal” or “deranged”. Under the Bangkok Rules correctional center officers are responsible for ensuring that the women are provided appropriate support.²¹⁹

Creating awareness of mental health presents considerable challenges. For example, in the local languages there are no words to describe mental health, other than “crase” (crazy) and “de hed no de” (they are not there with their head). In Krio, one would describe anxiety as “stress” but would use the same word to describe depression. Women would thus say they were “stressed” for their children, which could mean they were sad or anxious. For this reason, we translated the questions into the local languages by describing the conditions rather than naming them. We described anxiety as “persistently worrying and being afraid without

²¹⁷ WHO Regional Office for Europe, 2007. Health in Prisons: a WHO Guide to the Essentials in Prison Health, EUR/07/5063925

²¹⁸ Watson, R., Stimpson, A., Hostick, T., 2004. Prison health care: a review of the literature. *International Journal of Nursing Studies* 41, 119–128

²¹⁹ Bangkok Rules, Rule 13

imminent threat or reason” and depression as “persistently being sad, hopeless and not feeling like doing much”. Keeping in mind that the research team did not include mental health experts, we relied on self-reporting on the part of the women interviewed.

“I was called so many names because of my abnormal behavior, [members of my community] said I had a demon.” - Woman in prison

Almost half of the women surveyed reported having suffered from depression. Forty per cent reported having suffered from anxiety before going to prison.



40%

of women said they had suffered from anxiety before their imprisonment.

only **3** were diagnosed with a condition.

A history of poor mental health is likely to play a significant part in a woman committing a crime and may be a mitigating factor at the sentencing stage. Indeed, it might void the criminal responsibility of a person altogether. As already mentioned, under the new bail regulations, a judge must consider mental disabilities in deciding whether to grant bail. It is debatable whether this is feasible given the current approach to mental health in Sierra Leone and the lack of facilities available to provide care and diagnosis.

A country’s penal code should include provisions on how the law should treat those who are accused of a crime and suffer from mental illness. Provisions must be made around, for example, criminal responsibility and the ability of an accused to stand trial.²²⁰ Criminal responsibility may not be possible to prove in the case of someone with a serious recognized mental health disorder. In cases of homicide, for example, proof of serious mental illness can be the basis for an insanity defense.²²¹ The insanity defense means that the defendant could not, because of her mental health condition, understand that what she was doing was wrong.²²² If the defendant is found to not be criminally responsible, she would be referred to a mental health institution rather than being sent to prison.²²³ However, conducting a mental health assessment for a criminal trial in Sierra Leone is extremely difficult. There are only two psychiatrists able to undertake the kind of mental health assessment that would be admissible in court. A history of poor mental health is therefore mostly overlooked at trial. This study also found that the judiciary in Sierra Leone has little knowledge of mental health issues.²²⁴ A history of poor mental health therefore rarely affects a judge’s decision. It can be argued that this lack of knowledge and awareness of mental health issues impacts women not only differently but also disproportionately. Further study into this issue is warranted.

“We lack data [on mental health] in this part of the world. Unless you visibly can tell a woman is mentally off, this plays less of a role in my decision. If I see that this person cannot articulate well, cannot make consistent statement, then it occurs to me that there are some mental issues then I can direct medical assessment.” – Judge

²²⁰ World Health Organization, 2003. Mental health legislation and human rights. Geneva. (Mental Health Policy and Service Guidance Package)

²²¹ Criminal Procedures Act 1965, s. 73

²²² *ibid*

²²³ Mandela Rules, Rule 109

²²⁴ Based on interviews conducted with the judiciary in Freetown, Makeni, Kenema and Bo, 2019.

Box 9: Mental health - women who kill their children

Among the women interviewed who had been convicted of infanticide, it was clear that some had severe mental health issues. Given the scarcity of mental health services in Sierra Leone, many women do not receive appropriate treatment for postpartum depression, from which one author suggests infanticides could stem.²²⁵ This study confirmed that since there is a lot of stigma associated with post-partum depression and other mental health conditions in Sierra Leone, many women do not feel like they can talk to anyone. The study also revealed that since mental health is largely misunderstood by the courts, women who commit infanticide and suffer from poor mental health are rarely referred for treatment in the country's only mental health hospital in Freetown and are at risk of being automatically sentenced to death instead.

"I have felt unsafe in my house before because of the things I was seeing. I saw snakes, and always thought that something would hit me on my head without me seeing it. I was always falling down and this made me feel unsafe.

When all this happened, I was not allowed to explain myself. The police officers said since it was only three of us that were at the scene, it must have been me who killed the baby. The younger baby was found stabbed by a knife and I was having this abnormal behavior, so they were sure it was me who killed the baby. When I was at the police station, they were just giving me papers to thumb print without asking me to explain further and I don't really know what they had me thumb print. At trial, I pleaded guilty because the officers say I should do so.

I was sleeping one night with my son and my daughter. My husband and the other children were not around. In the middle of the night, my daughter took my phone, called her dad and screamed that her mom and her brother were dead. But I wasn't dead. With her screaming, the neighbors came and broke into the house and I was taken to the police station. I don't know anything that happened unto this date. Although I have this unusual habit of falling on the ground and this abnormal behavior, I don't know, the only thing I could see was sores on my skin." - Woman in prison

Limited Education and Legal Literacy

Box 10: In summary

Our study revealed that many women in prison in Sierra Leone have low levels of education and legal literacy and do not understand the criminal justice process. For example, some were unable to say whether they have been offered bail, or what crime they had been charged with. In addition, many women have been brought up to unquestioningly respect male authority and may therefore plead to charges they do not understand. These factors, combined with the fact that most women do not receive professional legal advice at the police stations, puts them in a particular situation of vulnerability. Some women reported having been "tricked" by the police into signing confessions or thumbprinting a written confession they could not read or understand.

Many of the women interviewed for this study reported having trouble understanding the court process. Others told us that they feel "tricked" by the justice system either because they had not been able to explain themselves in court or because they pleaded guilty at the direction of the police who allegedly led them to believe they would be discharged if they did so. Some civil society organizations expressed concern that juries discriminate against women since members are mostly retired male civil servants.

²²⁵ Mahtani, S., 2013. Women and the Criminalization of Poverty: Perspectives from Sierra Leone. Signs

KEY RECOMMENDATIONS:

- To provide information to people suspected or charged of a crime in a criminal justice process on their rights, in a language that she can understand and in a manner that is accessible to illiterate persons, minorities and persons with disabilities;
- To provide appropriate funding to legal empowerment initiatives such as paralegals/ lawyers;
To carry out gender-responsive training for the police and strengthen police accountability mechanisms.

This report has discussed how structural inequality in Sierra Leone, as in many sub-Saharan African countries, excludes women from education.²²⁶ According to data from the study, this situation, combined with very limited legal awareness, has serious implications on women's chances of being imprisoned.

Interviews with women in prison and formerly incarcerated women strongly indicated that many, especially those who are illiterate and from rural communities, do not understand the criminal justice system. As a result, they are not aware of and unable to assert their rights. International standards demand that all States ensure that people who are arrested are immediately informed of their right to be assisted by a lawyer (free of charge if needed).²²⁷ However, most of the women we interviewed reported that they were not offered legal advice at the police station. AdvocAid's paralegals monitor police stations and are able to offer legal advice where funding allows. There are however no official duty lawyers on call at the police station once a person is arrested.

Women reported that when they were arrested the police told them that they would be able to go home if they signed a confession. However, once they signed the confession, they were charged to court instead.²²⁸ Others told us that they were read a statement in English when they only speak

their ethnic group's language. In some cases, women were presented with a written statement even though they were illiterate and were forced to thumbprint a confession they could not understand.²²⁹ Research on gender analysis has suggested that women in strong patriarchal cultures may lack the skills necessary to bring a complaint and enforce their rights because they have been taught to have an unquestioning respect for male authority and to operate more commonly in the domestic sphere.²³⁰ This situation, combined with low levels of legal literacy, mean that many women plead to charges they do not comprehend.²³¹

"When I was at the police station, they were just giving me papers to thumbprint without asking me to explain further and I don't really know what they had me thumb print." - Woman in prison

Once a case is charged to court, much of the court process is in English. None of the women interviewed said English was their first language. International standards provide that everyone has a right to the free assistance of an interpreter if they cannot understand the language used in court.²³² However, there are no trained and qualified court interpreters in Sierra Leone. Voluntary translators are often police officers who only speak Krio; a language not always understood by those from rural communities. In addition, according to the Center for Accountability and

²²⁶ Ackermann, M., 2015. Women in detention in Africa: A review of the literature. *Agenda* 29, 80–91

²²⁷ Basic Principles on the Role of Lawyers Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3, annex

²²⁸ The Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners, Economic and Social Council resolution 1984/47, annex, adopted on 25 May 1984, Principle 21 states that authorities must not use methods of interrogation which impair the capacity of decision or judgement of a person under arrest or in detention.

²²⁹ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, General Assembly resolution 67/187, annex, adopted on 20 December 2012, Guideline 2(d): "Information on the rights of a person suspected or charged of a crime in a criminal justice process ... should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children; and such information should be in a language that those persons understand."

²³⁰ Baker, J., 2015. Conditions For Women In Detention In Zambia

²³¹ Mahtani, S., 2013. Women and the Criminalization of Poverty: Perspectives from Sierra Leone. *Signs*

²³² ICCPR, art. 14(f)

Rule of Law, these interpreters are not impartial given that they are mostly police officers, who are often also part of the prosecution's team. Many of the women we interviewed said they felt tricked by the criminal justice system because of their very limited understanding of the court process. They told us that they had not been allowed to explain the circumstances of their cases in court. Some women also told us that they pleaded guilty following advice from the police, who assured them they would be discharged if they did so.²³³

"I was allowed to explain myself very well, but it was like a way to get me to plead guilty. It wasn't until after I was sentenced that I realized the mistake I made." - Woman in prison

To help mitigate this issue, some magistrates or judges adjourn cases while they search for an interpreter. This approach slows down the court process and may result in the defendant spending more time in pre-trial detention. Many of the women in pre-trial detention we interviewed told us they were frustrated with the court process because they were taken to court very often, but their cases kept being adjourned either because there was no interpreter or jurors. In other cases, the judge or magistrate was not available, or the court ran out of time before their cases could be heard.

"We keep going to court but no judgement. It's exhausting." – Woman in prison

Box 11: Are juries in Sierra Leone biased against women?

In Sierra Leone, all serious criminal cases require a trial by jury at the High Court.²³⁴ Those who serve as jurors are mostly retired civil servants.²³⁵ This is a very limited number of people – especially in smaller districts – and they rotate from one trial to the next. Juries are usually formed of 12 people (sometimes 10 with the consent of both parties). According to judges and magistrates we interviewed, there are no more than 30 civil servants per district that the Registrar can contact to serve as jurors.²³⁶ For each trial, the same jurors are reshuffled to form a new combination and constitute a jury panel. Juries are not remunerated for their service and many cannot afford to pay for transport. This means that in reality there are even fewer potential jurors. Forming a jury often takes a long time and causes repeated adjournment of a case.

According to interviewees, the vast majority of jurors are men.²³⁷ (Male) legal professionals did not think that the fact that most jurors are men means that juries could be biased against women. Members of the Legal Aid Board and civil society organizations however expressed concerns over this gender imbalance. Many pointed to the fact that the criminal justice system is male dominated, not only the juries but also the judiciary, law enforcement and legislators. Such gender imbalance is likely to hinder a woman's right to a fair trial²³⁸ and to be treated equally at all stages of the legal process.²³⁹

"I think the justice system has not been fair to women, to start with the patriarchal nature and the setup of the justice system. The composition dictates what happens – we have around 80 per cent of heads of the justice system who are men. Judges, magistrates, lawyers, clerks. That alone dictates how they think, the judicial system is male dominant." – AdvocAid Kenema

"It's important because the way men can perceive things differs from women. We need to ensure that there is some kind of proportion in juries and as judges. We need more women doing the prosecution and investigating. We need more women in power." – Legal Aid Board, Freetown

²³³ Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners, Economic and Social Council resolution 1984/47, annex, adopted on 25 May 1984, Principle 21

²³⁴ Constitution of Sierra Leone 1991, s. 131 (2) (b)

²³⁵ Based on interviews carried out with the judiciary in Freetown, Kenema, Makeni and Bo.

²³⁶ *ibid*

²³⁷ *ibid*

²³⁸ ICCPR, art. 14; African Charter, art. 7

²³⁹ CEDAW, art 15

Due to their very limited levels of education and legal literacy, some of the women we interviewed could not say whether they had been offered bail, nor the crime they had been charged with. While anyone who is arrested must be informed of the reasons for their arrest and the charges against them,²⁴⁰ some of the women we spoke to could only describe the events that led to their imprisonment. A number of women told us they had been convicted of murder and sentenced to between 10 and 20 years in prison. This is not possible given that murder carries an automatic death sentence.

Table 4: Legal Representation of Women in Pre-Trial Detention

	Count	Percentage
Private lawyer	3	7%
Legal Aid Board lawyer	5	12%
AdvocAid lawyer	7	28%
Does not have a lawyer	20	48%

A prosecutor explained that often women are initially arrested for murder and either successfully argue self-defense or accept a plea bargain reducing the sentence to manslaughter. However, because of low levels of legal literacy, women do not understand the charges they were arrested for and do not receive legal assistance to understand the difference between murder and manslaughter. These women therefore remember the crime they were initially arrested for and do not know what they were ultimately convicted of.

Table 5: Legal Representation of Convicted Women

	Count	Percentage
Private lawyer	3	12%
Legal Aid Board lawyer	6	24%
AdvocAid lawyer	14	33%
Did not have a lawyer	9	36%

Box 12: Access to justice – an uphill battle?

Since so many women do not understand the court process, it is important that they have a paralegal and a lawyer they can trust to defend them well. International standards expressly provides that everyone has a right to free legal representation.²⁴¹ However, the majority of the women surveyed said they did not have access to a lawyer during their trial. Following years of lobbying by local civil society organizations, the Legal Aid Act was passed in 2012. One of the most progressive legal aid acts in Africa,²⁴² it recognizes the vital role of paralegals, civil society organizations and law school clinics alongside qualified lawyers in the provision of legal aid. The Act created a hybrid model of criminal and civil legal aid and introduced a partnership between government, private sector and civil society to provide free legal representation and advice to all indigents in Sierra Leone.²⁴³

Under both international standards and Sierra Leone’s own Legal Aid Act, every person appearing in court should have a lawyer. However, both the Legal Aid Board and civil society organizations are severely underfunded and understaffed. They are therefore unable to represent the tens of thousands of people who would qualify for legal aid every year. It is worth noting that, according to international standards, governments must ensure sufficient funding for legal services to the poor and other disadvantaged persons.²⁴⁴

“To be honest not in all cases do we manage to represent everyone. It’s not that it’s our fault but it’s just the status quo. I am one lawyer covering Makeni, Kalabala, Magburka, Mile 91. I cannot be here and be in Magburka at the same time.” – Legal Aid Board Makeni

²⁴⁰ ICCPR, art 9(2)

²⁴¹ ICCPR, 14(d); African Charter, art. 7(c)

²⁴² Open Society Justice Initiative, 2012. New Legal Aid Law in Sierra Leone Embraces the Role of Paralegals. <https://www.justiceinitiative.org/voices/new-legal-aid-law-sierra-leone-embraces-role-paralegals>

²⁴³ *ibid*

²⁴⁴ Basic Principles on the Role of Lawyers Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1990, 3



3. Consequences of Imprisonment

This section will discuss this study's findings on the consequences of detention on women in Sierra Leone, and the ways in which social factors related to gender and inequality impact women as they re-enter society. Considering global and regional trends, we will test the hypotheses that detention commonly takes a long-term toll on women's physical and mental health, housing, employment, and relationship with their families in ways that are different or disproportionate to men.²⁴⁵ We will also consider the role of economic disadvantage and stigma on women's reintegration into society.

The effects of prison on a woman's physical and mental health

Box 13: *In summary*

The health of both men and women can deteriorate while in prison due to prison conditions such as overcrowding, poor health provision and lack of hygiene. There are also health needs specific to women which are often not met by penitentiary systems designed with men in mind. While under international standards women in prison are entitled to at least the same level of healthcare that is available to the general population and should receive gender-specific healthcare services, this is rarely the case. These deficiencies in healthcare and gender-specific health services can have long-lasting effects on women.

In Sierra Leone, the correctional center in the capital, Freetown, is severely overcrowded – it commonly houses more than 60 women in a facility that was designed for 18. Overcrowding can contribute to the spread of diseases and poorer sanitation. This is all the more concerning following the COVID-19 outbreak. Even in correctional centers that are rarely overcrowded, water supply and sanitation are very poor. The women we spoke to said that it is mostly non-governmental organizations that provide support with hygiene. This poses a challenge to the hygiene of women, especially during menstruation or pregnancy. Staff at some of

the correctional centers expressed concern that the lack of adequate private transport endangers women's lives because when a pregnant woman needs to give birth there is no transport system in place to take her to the hospital. This study also found that prison authorities do not adequately provide for women's specific health services, including gynecological care and cervical and breast cancer screenings. These specific health services are not available in any of the correctional centers.

54 per cent of women in prison surveyed reported a mental health condition starting or deteriorating during their detention. The most common conditions reported by women were depression and anxiety. Almost 5 per cent of women in prison said they had either self-harmed or attempted to commit suicide while in detention. This number is likely higher given that many incidents go unreported. It was reported that in one correctional center mosquito nets were banned after a number of women used them to attempt suicide. According to the families of formerly incarcerated women, the mental health impact of detention on women continue in the long term. Some women with a lived experience of prison reported having suicidal thoughts following their release. Mental health support services are scarcer in more rural and remote areas of the country.

KEY RECOMMENDATIONS:

- To develop alternatives to incarceration and use detention as a measure of last resort given the harmful impact it can have on women's health;
- To provide for women's specific health services, including gynecological, antenatal and postnatal care and cervical and breast cancer screenings;
- To put in place gender-specific and trauma-informed services such as mental health support and other services as well as strategies to prevent suicide and self-harm.

²⁴⁵ Report of the Rapporteur on violence against women, its causes and consequences, 2013. Pathways to, conditions and consequences of incarceration for women, UN doc. A/68/340

While health in prison is a problem for both men and women in detention throughout much of the world, certain health issues affect women differently or to a greater extent. Women have different health needs which may go unnoticed and unmet in penitentiary systems largely designed by men and for men. For example, research has found that globally, women in prison are more likely than their male counterparts to suffer from various medical issues, such as respiratory and infectious diseases, and reproductive and sexually transmitted diseases including HIV.²⁴⁶ Correctional centers are often not equipped to provide adequate treatment.²⁴⁷ This is contrary to international standards which provide that women in prison are entitled to at least the same level of healthcare that is available to the general population.²⁴⁸ International standards also provide that women should receive (for free where necessary) gender-specific healthcare services related to family planning, pregnancy, post-natal care as well as adequate nutrition during pregnancy and lactation.²⁴⁹ Where such needs are not met, long-term health effects may be greater.²⁵⁰ Certain aspects of detention – anxiety due to separation from children or experiences of sexual violence – can also impact the mental health of women differently.

Hygiene

The Mandela Rules contain clear instructions on the minimum standards of accommodation,²⁵¹ living conditions²⁵² and level of hygiene²⁵³ that every prison should provide. Overcrowding in prisons is linked to the spread of diseases, and poorer sanitation, privacy, and safety. Yet, this study found that the correctional center in the capital, Freetown, is severely overcrowded. The Center houses at times more than 60 women in a facility initially designed to hold 18. According to prison staff, some women even

have to share a bed because of the lack of space.²⁵⁴ Backlogs in the courts and strict bail conditions lead to detainees being held in pre-trial detention for long periods, exacerbating congestion in the detention centers. Overcrowding and poor sanitation are increasingly a cause of concern following the COVID-19 outbreak.²⁵⁵

Even in correctional centers outside the capital, which are rarely overcrowded, water supply and sanitation are very poor.²⁵⁶ In all the prisons we visited, both the women in detention and correctional officers complained that water becomes scarce during the dry season. This poses a challenge to the hygiene and health, particularly for women menstruating or pregnant. To address this, the Bangkok Rules require female correctional centers to provide facilities and materials needed to meet women's specific hygiene needs.²⁵⁷

“There are 64 inmates in a space that was meant to hold 18. We have been using offices as cells for inmates, some even share a bed because there is no space.” – Correctional center officer

According to some of the women, during the rainy season, there are no clean drinking water leading to many becoming ill. The rain also makes it challenging to dry uniforms. As a result, during the rainy season, many women wear the same uniform for weeks or have to wear them wet.²⁵⁸

“We have been deprived of water as there is no tap and the well gets dry during the dry season. We have to manage with the limited water we have.” - Woman in prison

While women in all centers said they are provided with sufficient toiletries,

²⁴⁶ Baker, J. Rytter, T. and DIGNITY, 2014. CONDITIONS FOR WOMEN IN DETENTION Needs, vulnerabilities and good practices.

https://www.dignity.dk/wp-content/uploads/publication_series_no7.pdf

²⁴⁷ United Nations Office on Drugs and Crime, 2008. Women and HIV in Prison Settings https://www.unodc.org/documents/hiv-aids/Women_in_prisons.pdf

²⁴⁸ Bangkok Rules, Rule 10

²⁴⁹ CEDAW, Rule 12

²⁵⁰ Report of the Rapporteur on violence against women, its causes and consequences, 2013. Pathways to, conditions and consequences of incarceration for women, UN doc. A/68/340

²⁵¹ See Mandela Rules, Rules 12-13

²⁵² See Mandela Rules, Rules 14-17

²⁵³ See Mandela Rules, 18-21

²⁵⁴ Mandela Rule 21 states that each person detained should have a separate bed and clean bedding

²⁵⁵ AdvocAid, 2020. Renewing our Call on the Sierra Leone Government to Release Vulnerable, Low Risk and Pre-trial Detainees. <https://advocaidsl.org/press-release-renewing-our-call-on-the-sierra-leone-government-to-release-vulnerable-low-risk-and-pre-trial-detainees/>

²⁵⁶ Mandela Rules 15 and 16 provide for adequate, clean and decent sanitation facilities, including bathing and shower installations

²⁵⁷ Bangkok Rules, Rule 5

²⁵⁸ Mandela Rule 19 states that all those who are imprisoned and cannot wear their own clothes must be provided with clothing which is adequate for the climate and is clean and kept in proper conditions

including sanitary pads, toothpaste, soap and disinfectant, those are largely supplied by CSOs and NGOs, not the prison authorities.²⁵⁹

Medical services

Unless women are very sick when they enter prison, they are rarely screened for diseases except for HIV and other STDs. The screenings vary from one center to the other.²⁶⁰ While women have a right to be told if they are HIV positive, the study uncovered that at least one correctional center does not disclose this information.²⁶¹ The Bangkok Rules require that prison staff be trained on how to care for and support those living with HIV/AIDS in the .²⁶²

“For inmates who have HIV, we do not tell them about their condition because it will add to their depression. They only give them the treatment and tell them they are being treated for another disease that is not as bad as they see HIV.” – Correctional center officer

Health care services for those who are in prison is the responsibility of the State.²⁶³ In Sierra Leone, retroviral treatment for HIV and essential drugs to treat typhoid, malaria and other common illnesses are supplied to correctional centers every month.²⁶⁴ However, the officers we interviewed told us that since more specialized medications must be bought from outside, and many detainees cannot afford them, officers sometimes buy these medication with their own funds. As a result, some women reported only receiving treatment when they were severely sick. Others claimed that sometimes the officers ignore women’s illnesses altogether. In some of the prisons the women were very grateful for the officers’ help.

“Once I was sick and the doctor gave me a physical exam. He said

I had malaria. Then after that there was no check-up, nothing. They wouldn't have cared if I died.” - Woman in prison

*“I want to thank Mrs. ***, who is an officer here. She has been very nice to us, counselling and even buying food and medicine for us out of her pocket.” - Woman in prison*

This study found that the prison authorities do not adequately provide for women’s specific health services, including gynecological care and cervical and breast cancer screenings, in any of the correctional centers.²⁶⁵ The local NGO Breast Cancer Thinking Pink provides screenings in some centers but no cervical cancer tests are administered to women in detention.²⁶⁶ In the Freetown correctional center, a doctor is on call and visits when deemed necessary by the correctional officers. In the provinces, the prisons only employ nurses who cannot provide the same level of medical care as doctors. When a woman cannot be treated in prison, she is referred to a government hospital where treatment is not always free. Many cannot afford the procedures that are not free of charge.²⁶⁷ Family members of formerly incarcerated women we interviewed reported that their loved one’s health had worsened after their entry into prison.

“She did not have an eye problem but after her release, she now always complains about her eyes. This has affected me: I am now spending a lot of money to help her treat this eye problem.” – Fiancée of a formerly incarcerated woman

²⁵⁹ Based on interviews conducted with women in prison and Correctional Center Officers, 2019

²⁶⁰ Rule 6 of Bangkok Rules says that women should receive comprehensive medical screening on entry to determine primary healthcare needs and the ‘presence of sexually transmitted diseases or blood-borne diseases; and, depending on risk factors, women prisoners may also be offered testing for HIV, with pre- and post-test counselling’.

²⁶¹ Based on interviews conducted with Correctional Center Officers, 2019

²⁶² Bangkok Rules, Rule 34

²⁶³ Mandela Rules, Rule 24

²⁶⁴ Based on interviews conducted with Correctional Center officers, 2019

²⁶⁵ *ibid*

²⁶⁶ Rule 18 of the Bangkok Rules sets out that preventive health-care measures specific to women, such as Pap tests and screening for breast and gynecological cancer, must be offered to women in prison on an equal basis with women of the same age in the community.

²⁶⁷ Based on interviews conducted with Correctional Center Officers, 2019

Box 14: Pregnancy in prison - protecting a woman's dignity

According to our interviewees, pregnant women in prison are usually cared for by nurses in the correctional centers and taken to the hospital for antenatal care when necessary. When women give birth, they are taken to a government hospital. The women are provided plain clothes during their transportation to the hospital or pre-natal or post-natal care, to protect their dignity. In accordance with international standards,²⁶⁸ women giving birth are not shackled or restrained. They are usually escorted by several correctional center officers. In a few correctional centers, pregnant women are provided with additional food and toiletries. This is not always the case due to the limited budget.²⁶⁹ Sometimes, when the supplies provided by the government run out, correctional center officers use their own money to take care of the pregnant women.

"I gave birth while in prison. They took me to the government hospital and I was not handcuffed. I decided to keep the baby with me in prison." – Woman in prison

Staff at some of the correctional centers expressed concern that the lack of adequate logistical support, particularly private transportation, is endangering women's lives because when a pregnant woman needs to give birth there is no transportation system in place to take her to the hospital.

Mental health

Mental health issues can be both a cause and a consequence of imprisonment. As discussed above, it has been found that imprisoned women on the whole experience greater mental health issues compare to men. This is largely attributed to unmet needs – in prison and the outside world – in dealing with depression, separation anxiety, and histories of violence, among other factors. These mental health issues can be triggered or exacerbated by prison conditions where women live in unclean environments far from their communities, eat poorly, receive inadequate healthcare, and lack purposeful activity and privacy.²⁷⁰

"When I will think back at what I have been through in the correctional center and at all the time I have wasted I will not feel good." - Woman in prison

Most of the women we surveyed reported their mental health deteriorating in prison, with 82 per cent experiencing at least one condition. Loneliness, depression and anxiety were the most common conditions reported by women including trouble sleeping, aggressive thoughts, suicidal thoughts and self-harm or attempted suicide. Only one woman said that her mental health had improved in prison due to treatment she received while in prison. Three women told us that they had either self-harmed or attempted to commit suicide while in detention. Instances of self-harm or attempted suicide may however be more common than the interviews indicate. In the Kenema Correctional Center, for example, mosquito bed nets were recently banned after women used them to attempt to commit suicide.

"We don't allow them to use the nets for security purposes. They sometimes use the nets to strangle themselves." – Correctional Center Officer

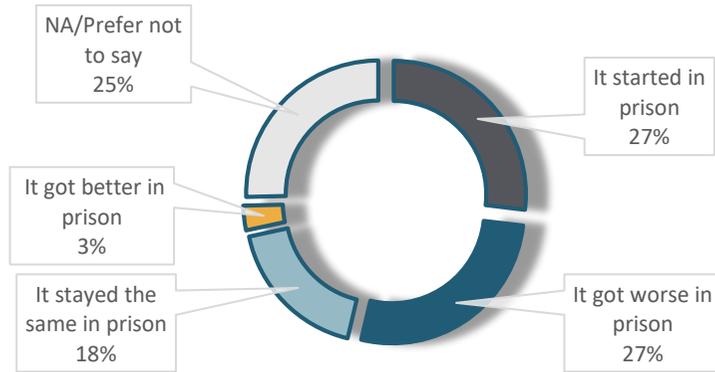
"One of my friends once told me that she wanted to harm herself by drinking caustic soda because she was really tired of the prison life. She told me during one of our discussion when I visited her. I felt so bad. But I always advised her to have hope and stay alive to support her children and I told her that there is hope after prison." – Formerly incarcerated woman

²⁶⁸ Bangkok Rules, Rule 24

²⁶⁹ Based on interviews conducted with Correctional Center Officers, 2019

²⁷⁰ WHO Regional Office for Europe, 2007. Health in Prisons: a WHO Guide to the Essentials in Prison Health, EUR/07/5063925

Chart 4: Effects of prison on mental health



The formerly incarcerated women we spoke to reported that the effects of detention on their mental health continued long after their release.²⁷¹ Many experienced depression and anxiety once outside prison.²⁷² These consequences were also felt by some of the family members we interviewed. They expressed concern over the change in behavior of their loved ones following their release.

“Her emotional and physical health were affected. Even her behavior has changed for the worse. She has a very bad temper now. I believe it is the trauma from having been to prison.” – Fiancée of a formerly incarcerated woman

“Being in prison has affected my daughter a lot. She is no longer playing or chatting with her friends like before. She always looks sad.” – Mother of a formerly incarcerated woman

Some women said that when they left prison, they felt abandoned and they

struggled to reintegrate into society. As a result, one woman told us that she thought of committing suicide after leaving prison.

“I once considered harming myself because I had no family to support me when I left prison. I was still depressed even after prison. I asked myself: “why did my family abandon me?” After prison, I once attempted to commit suicide but then I heard my child calling me for food and I didn't go through with it. Now I have faith that we will be ok... I haven't thought of committing suicide since.” – Formerly incarcerated woman

Research indicates that women who suffered from a pre-existing mental health condition or developed a condition while in prison, are more likely to self-harm after release.²⁷³ This finding demonstrates the need for trauma-informed mental health counselling in prison.²⁷⁴ Additionally, a body of literature has found that women who have suffered physical, sexual or psychological violence often develop coping mechanisms such as drug and alcohol abuse and self-harm.²⁷⁵ Given the large number of women in prison who have suffered at least one form of abuse, prisons should implement strategies to prevent suicide and self-harm. Prisons must also provide appropriate, gender-specific mental health support to those at risk.²⁷⁶

As discussed, only 24 per cent of women surveyed reported having received mental health counselling in prison. The correctional centers in Moyamba, Port Loko and Kono, which are in more rural and remote areas of the country, reported not being able to provide consistent counselling services, aside from those provided by non-governmental organizations like AdvocAid and Prison Watch.²⁷⁷ According to the correctional center officers we interviewed, the Kono prison is particularly disadvantaged because AdvocAid does not work in that center.²⁷⁸

²⁷¹ Based on the focus groups we conducted in Freetown, Makeni and Kenema

²⁷² *ibid*

²⁷³ Report of the Rapporteur on violence against women, its causes and consequences, 2013. Pathways to, conditions and consequences of incarceration for women, UN doc. A/68/340

²⁷⁴ *ibid*

²⁷⁵ MacDonald, M., 2013. Women prisoners, mental health, violence and abuse. International Journal of Law and Psychiatry, Special Issue on Prisons and Mental Health 36,

²⁷⁶ Bangkok Rules, Rule 16

²⁷⁷ Based on interviews conducted with Correctional Center Officers, 2019

²⁷⁸ The AdvocAid office in Kono closed in 2014 due to lack of funding

Recently, the Sierra Leone Correctional Service, with support from UNDP, has embarked on a new program to train officers to provide psychosocial counselling to those who are in prison.²⁷⁹

The Consequences of Detention on a Woman's Family Ties

Box 15: In summary

According to members of the judiciary, women in Sierra Leone face far worse stigma than men for having been detained; while it is seen as more acceptable for a man to commit an offense, when a woman goes to prison, she faces a greater risk of being stigmatized by her community. Many women reported losing touch with their families and children: 45 per cent had never been visited while in prison. Some said their partners abandoned their children and started new relationships when they went to prison. In some cases, the families and partners had also sold the women's property. These factors increase the risk of women having no resources or support when they are released. Many were worried about the stigma they will suffer post-release, while 52 per cent had safety concerns and feared retaliation. Stigma and lack of support also impacts on women's ability to settle back into their communities. Families of detained women also face stigma within the community. Children of women in prison in particular face hardship. Some reported having left school as a result of their poor treatment. Notwithstanding, 98 per cent of women in prison said they were optimistic about the future.

KEY RECOMMENDATIONS:

- To provide alternatives to incarceration and put in place more community interventions to ensure that women can maintain family ties;
- To take all the reasonable steps to ensure that incarcerated women have the means to maintain family ties while in detention;
- To increase post-release support and create programs such as home leave, open prisons, halfway houses and community-based programs.

²⁷⁹ Interview with the Director General of the Sierra Leone Correctional Service

²⁸⁰ Baker, J. Rytter, T. and DIGNITY, 2014. CONDITIONS FOR WOMEN IN DETENTION Needs, vulnerabilities and good practices. https://www.dignity.dk/wp-content/uploads/publication_series_no7.pdf. See also: <https://ohrh.law.ox.ac.uk/women-in-prison-the-particular-importance-of-contact-with-the-outside-world/>

In line with other studies,²⁸⁰ this research revealed that much of the distress women in prison experience is linked to their limited communication with families and friends. According to the civil society organizations we interviewed, the more women are visited in prison, the better their mental health outcomes appear to be.²⁸¹ It is notable that the Bangkok Rules stress the need for women to maintain family ties while in detention.²⁸²

Many of women we interviewed told us they had lost all contact with their families and were constantly in pain because they did not know where their children were or if they were well and taken care of. Six of the women did not know where their children were at all; a total of 14 children unaccounted for. The interviews also revealed that family members who do visit their loved one in prison sometimes prefer not to bring along the children because they worry that seeing their mother in prison will have a negative effect on the children.²⁸³

"Since I've been here, I've felt anxious about the condition of my children. I think about them all the time. I normally sit alone and talk to myself." - Woman in prison

Some of the formerly incarcerated women we interviewed reported not having been in contact with their children even after leaving prison. They believed that the children were too upset and ashamed to make contact.

²⁸¹ Interviews with Prison Watch in Freetown, CARL in Makeni and AdvocAid in Kenema, 2019

²⁸² Bangkok Rules, Rule 26

²⁸³ Rule 52 (3) of Bangkok Rules emphasizes the need for women to be given the maximum possible opportunity and facilities to meet with their children while detained.

Box 16: Children incarcerated with their mothers in Sierra Leone

Women who lived with their children in prison explained that they decided to keep their children with them because they wanted to breastfeed their infants. In Sierra Leone, the infant mortality rate is one in 13 live births,²⁸⁴ and many mothers see breastfeeding as vital to their child's survival. According to the Bangkok Rules, the decision as to whether a child should be separated from his/her mother should be based on the best interests of the child within the scope of relevant national laws.²⁸⁵ Allowing children to stay with their mothers in prison may reduce the risks associated with separation. Appropriate safeguards, infrastructure and practices must be put in place to ensure that children are not punished alongside their mothers.²⁸⁶

In Sierra Leone, children are usually allowed to stay in prison with their mothers until the age of two, after which they are entrusted to a foster home if they cannot stay with the father or a relative. This decision usually lays with the judge in accordance with the mother's wishes. Nonetheless, not all correctional centers allow women to stay with their children, out of concern that the facilities are not adequate to ensure a healthy environment for the child. A 2008 report on children living in prison with a parent in Sierra Leone found that children frequently became sick due to the conditions in prison and the spread of diseases.²⁸⁷ When a correctional center does not allow a woman to stay in prison with her child, she is either transferred to the correctional center in Freetown or is asked to leave the child with a guardian.²⁸⁸

"We don't allow babies to grow up in such an environment. It can affect the child's mental health." – Correctional center officer

"We don't have the facilities for these children, we don't want to punish them. At court we direct the judge that we don't have child friendly center and not enough food. But it is up to the mother." – Correctional center officer

The study shows that children are usually fed three times a day, although this is largely through AdvocAid's supply of formula and other food for children, rather than food provided by the authorities.²⁸⁹ It is also not uncommon for the officers to buy food for the children with their own money. Without such external help, according to the women we interviewed, infants would be fed the same food as those detained, which may not meet the dietary requirements for the healthy development of a child.

"AdvocAid are the only ones feeding my child three times a day. Without them, there would be a big problem." – Woman in prison

Childcare facilities and arrangements must be provided in prisons in order to enable women in prison to participate in prison activities.²⁹⁰ Yet, in Sierra Leone, not all centers have adequate childcare provision. The Freetown and Kenema Correctional Centers have facilities built for children and one is currently under construction in Makeni. According to the Sierra Leone Correctional Service, the construction of the child-friendly center was born out of the need to keep infants with their mothers while providing them with a designated area where they could receive basic education and play. Where there are facilities designed for children, the children spend their days playing together in a separate space. They are supervised by an officer and are reunited with their mothers in the evening. At night, the children are locked in the cell together with their mother and sleep in the same bed. Where there are no facilities, children have very limited space to play and very few educational and recreational outlets. According to the women we interviewed, in those centers, officers and other detained women help take care of the children during the day.

²⁸⁴ <https://www.statista.com/statistics/807725/infant-mortality-in-sierra-leone/>

²⁸⁵ See Bangkok Rules, Rule 52 (1)

²⁸⁶ See Bangkok Rules, Rule 51

²⁸⁷ Thompson, A & Mahtani, S, 2008. Children living in prison: insights from Sierra Leone, report prepared by AdvocAid for the United Nations Quaker Office

²⁸⁸ Based on interviews with correctional center officers

²⁸⁹ Rule 48 of the Bangkok Rules require for prisons to provide "adequate and timely food ... free of charge for pregnant women, babies, children and breastfeeding mothers."

²⁹⁰ Bangkok Rules, Rule 42

Visits

Correctional centers in Sierra Leone allow visitors three days a week. The duration of the visits varies greatly from one center to the other – between 15 minutes to two hours depending on the prison. Some of the officers admitted to threatening women with taking away their visitation rights as a form of punishment, which would breach international standards.²⁹¹ Yet none of the family members we interviewed said they were ever prevented from visiting their loved ones. 45 per cent of the women we surveyed reported having never been visited while in prison. 30 per cent told us they did not know why their families had not visited them. Others explained that they are detained in centers that are far from their families who, in most cases, cannot afford the lengthy and expensive journey. Others said that their families did not know they were in prison because they were ashamed and preferred not to tell them. Others had no way of contacting their families because they live in remote villages with no access to phones. Many women also told us that relatives had not come to see them because they were afraid of being implicated by association.

“I don't know why my sister is not coming. I am friendly and loving, but nobody has ever come to see me, not even my children.” - Woman in prison

“My brother and sister have abandoned me saying that they do not have a sister anymore because their sister is a thief.” - Woman in prison

The Bangkok Rules require special measures to be taken to counterbalance the difficulties faced by women detained far from their homes.²⁹² Because of the relatively small number of women in prison in many countries, there are fewer female detention facilities so it is more likely that women will be detained far from home. This is the case in Sierra Leone where many women are detained far from their homes making it difficult to maintain family ties. Interviews with Correctional Center Officers revealed that

²⁹¹ Bangkok Rules, Rule 23

²⁹² Bangkok Rules, Rule 26

female prisons in the country have attempted to respond to this issue by, for example, making phones available in each center. This is significant given the limited resources available. Almost half of the women we surveyed told us they were able to call their families. Some reported going weeks without being able to speak with their families because of network problems or lack of battery or credit on the mobile. At the time of the study, although there was no official policy in place, it was common practice for the Officer in Charge of each center to use her own money to buy phone credit for women detained. Calls therefore have to be very brief and phones do not always have credit. The Director General of the Sierra Leone Correctional Service told us that they are hoping to find budget to officially allocate to phone credit.

Stigma and abandonment

Among the women who had not been visited in prison, many reported having been abandoned by their partners while in detention. Some of the women explained that their partners had left them for new partners and abandoned their children after their arrest. Interviews with civil society organizations suggested that it is much less likely men would face a similar situation because their partners are more likely to continue with the relationship during the men's incarceration.²⁹³

Several women with a lived experience of prison also said that their relationship with their relatives was affected by their detention. They told us that they were abandoned by their families and that in some cases, the strain on the relationship was too great to be mended after their release. Interviews also revealed that, in some cases, the families and partners sell the women's property,²⁹⁴ meaning that when the woman leaves prison, she has no one and nothing to go back to.

“Before prison I was married to a soldier. I now have no contact; he has gotten himself married to another woman because I am in prison. I don't think that he cares about me anymore.” - Woman in

²⁹³ Interview with CARL in Makeni, AdvocAid in Kenema and Prison Watch in Freetown, 2019

²⁹⁴ Based on the focus group discussion conducted in Freetown, 2019

prison

“Knowing that your family will not be there if you do something wrong and you need them affects you even when you leave prison.”

- Formerly incarcerated woman

Among the women we surveyed, 98 per cent said they were optimistic about their lives after release, even if they knew they would face challenges and stigma after leaving prison.

“I don’t care if I will face any problem after my release because I will once again live with my children and that is what matters to me.” - Woman in prison

“I think some people will call me names and say I am a criminal, but I can tolerate that.” - Woman in prison

Our interviews indicated that women in Sierra Leone face far worse stigma than men for having gone to prison. For example, a judge explained that while it is seen as fairly normal for a man to commit a crime, when a woman goes to prison, she automatically becomes an outcast in her community.²⁹⁵ This mindset may be linked to common social norms around ‘womanhood’. Alternatives to imprisonment, community options, and a gender sensitive response to imprisonment can therefore go a long way in countering this form of discrimination. Gender-sensitive responses could include programs home leave, open prisons, halfway houses and community-based programs. These programs have the potential to ease women’s transition from prison to the outside world, reduce stigma, and help renew contact with their families.²⁹⁶ Currently in Sierra Leone, there are no measure in place to facilitate home leave and no open prisons or halfway houses.

“I am worried because being here has delayed my studies and also damaged my reputation for life. I will never have respect again.” -

²⁹⁵ Interview with a judge in Bo, 2019

²⁹⁶ Bangkok Rules, Rule 45

Woman in prison

Many women have safety concerns after leaving prison which impacts their ability to settle back into their former communities. They fear retaliation from the family of the offended party or from the community. More than half of the women we surveyed (52 per cent) told us they feared for their safety after release. Abandoned by their families and partners, and afraid they might be in danger, these women are scared of going back to their communities. They are therefore forced to find alternative housing and restart their lives elsewhere, without a social network. This is not easy, considering challenges of stigma, mockery and discrimination. Furthermore, research suggests that women who leave prison and are unable to secure accommodation are particularly at risk of falling into or returning to controlling or abusive relationships.²⁹⁷ Because of the fear of returning to their communities, some the women we interviewed had chosen instead to live with officers they met in prison, a practice interviewees indicated is not an uncommon.

“I don’t feel safe. The other day I was walking down the road and I saw the sister of the man I had the issue with, and I hid. What happens if they find out where I am?” - Formerly incarcerated woman



52%

of women said they
feared for their
safety after release

²⁹⁷ Brown, M., Bloom, B., 2009. Reentry and Renegotiating Motherhood: Maternal Identity and Success on Parole. Crime & Delinquency 55

Relatives of women who were in prison or recently released said the reputation of the entire family had suffered as a result of the detention. Some relatives reported being shunned and avoided by neighbors and other members of the community as a result of the incarceration of their loved one, which can lead to them breaking contact with the imprisoned woman. Yet children in particular bear the brunt of stigma attached to an imprisoned mother.²⁹⁸ This study found that some children have chosen to leave school after having been mocked by their classmates and within communities.

“Since [my sister] was imprisoned her son left school for the shame, stigma and mockery. He could not continue anymore.”- Sister of a woman in prison

The Economic Effects of Detention

Box 17: In summary

Women have extremely limited opportunities to earn money during their detention. As a result, women leave prison poorer than they entered. Training and education programs in prison are also scarce. Women therefore have a hard time finding initial capital to restart their business, stable employment or appropriate accommodation after leaving prison. These limitations impact women’s chances at reintegration and can lead to recidivism. Economic vulnerability may also lead women to return to abusive relationships. In most cases, women in detention were the breadwinners of their households prior to their arrests and the primary caretakers of minors. As our interviewees highlighted, the detention of women therefore has a significant impact not only on themselves but also on their children and families.

KEY RECOMMENDATIONS:

- To ensure that women in prison can work and actively participate in preparing for re-entry ;
To provide women in prison with appropriate educational and training programs which will facilitate their reintegration and economic security post-release.

Poverty is not only a pathway to prison but also a stark reality that women face after their release. As a barrier to their rehabilitation and reintegration into society, poverty can, in some cases, lead to recidivism, even though research has indicated that women generally tend to reoffend less than men.²⁹⁹

When a person is arrested in Sierra Leone, they often lose their jobs, housing and education opportunities, which affects their rehabilitation and reintegration into society. While those who have been convicted should have the chance to work and actively participate in their preparation for the outside world under international standards,³⁰⁰ there are virtually no opportunities for women to earn a wage or train while in prison. Most

²⁹⁸ Based on interviews conducted with family members of incarcerated women, 2019

²⁹⁹ Report of the Rapporteur on violence against women, its causes and consequences, 2013. Pathways to, conditions and consequences of incarceration for women, UN doc. A/68/340

³⁰⁰ Mandela Rules, Rule 96

women therefore leave prison poorer than they entered. The stigma attached to female imprisonment further deprives women of their social safety networks. The loss of social network in turn further hinders women's chances at reintegration. Many of the women we interviewed told us they were worried about their economic situation after their release. 35 per cent of the women did not think they would be able to support themselves and their families post release.

“As an old woman who is the breadwinner of a home, my whole family is crumbling down gradually. I have a lot of people that depended on me for their survival, but now that I am here and have lost everything, what is the fate of these people?” – Woman in prison

This study has already established that most of the women who are in prison in Sierra Leone are petty traders. As a result, one of the main concerns of women leaving prison is finding initial capital to restart their business. Many can no longer rely on their families and find it challenging to ask for loans or find business partners since they have lost standing within their communities. Employers are also reluctant to hire women who have been to prison. AdvocAid and Prison Watch provide start-up grants to many women. However, most women lack the vocational skills, education and connections necessary to find steady and decent employment in the long term.³⁰¹

“My sister, who has been released, has not been engaged in anything meaningful since. She is now a drunk and acts abnormal. The community considers her an ex-convict and not the best candidate for any job. This has affected me because it is very sad and because I have to support her for now until she can get a source of livelihood for herself and feel better.” – Sister of a formerly incarcerated woman

The economic vulnerability of women and their families as a result of their

detention should mean that, during their detention, women are provided with appropriate educational and training programs to empower them economically and improve their employment prospects.³⁰² This study found however, that in all the correctional centers, these programs are insufficient or unsuitable. For instance, while there are libraries in all the prisons we visited, they are largely unused because most women in detention are illiterate. According to the correctional officers we spoke to, in some of the more rural and remote centers, training and rehabilitation activities are quasi non-existent. There were almost no educational or job skills training programs available in the correctional centers in Bo, Moyamba, Kono and Port Loko. In those centers, opportunities for learning and recreation are extremely rare and the only entertainment available is a radio. 36 per cent of the women we surveyed, mostly those detained in Freetown, said they had taken part in an educational class. Many women had attended adult literacy classes and were enthusiastic about them, having learnt to read and write a little. Others reported being able to participate in adult education classes such as math, science and English. In Freetown, 15 per cent of the women surveyed reported having attended computer literacy classes.

“Being in prison has created a positive impact in my life especially now that I can spell my name and other little spelling. Education is really vital, and I wish I had the chance to study more before.”- Woman in prison.

³⁰¹ Interview with Prison Watch, Freetown, 2019

³⁰² Bangkok Rules, Rule 60



36%

of women said they had taken part in an educational class during their time in detention

In Freetown,

15%

of women surveyed reported having attended computer literacy classes.



had learnt a new skill from another woman in prison, usually hairdressing.

28%

Other training opportunities available in the prisons we visited include vocational skills stereotypically associated with women’s roles such as tailoring, hairdressing, handcrafts and bead making.³⁰³ These skills are often taught by other women in the prison. twenty-eight per cent of women reported having learned a new skill from another woman in prison, usually hairdressing. Bead-making is the most popular activity with more than half of respondents having learned this skill while in prison.

It is vital for the success of such programs that they take into account the realities of the labor market. The programs would therefore be designed in such a way as to help women find jobs upon release and would not further gender disparities and stereotyping in the job market.³⁰⁴ In that sense, the commentary to the Bangkok Rules provides a list of training activities that may help women find stable employment and reintegrate post-release.³⁰⁵ Although the women interviewed told us they need more educational and

vocational training opportunities, specifically in the provinces, most reported that the skills they learned prepared them for life outside prison. Some stated that when they left prison, they would use the tailoring, bead-making and hairdressing skills to support themselves and their families.

“I am going to open a bead shop because when I am out of here, I will be a brave business woman.” – Woman in prison

“In prison I improved my hairdressing skills because I have been practicing on the female officers’ heads. I will open a salon where I will be earning money to take care of myself and my mother, and also to enable me to further my skills in the hairdressing business by enrolling in a vocational institution.” – Woman in prison

³⁰³ The Bangkok Rules (Rule 42) require prison authorities not to offer only programs “traditionally considered as appropriate for women, due to gender stereotyping”

³⁰⁴ Penal Reform International, 2019. The rehabilitation and social reintegration of women prisoners. https://cdn.penalreform.org/wp-content/uploads/2019/05/PRI_Rehabilitation-of-women-prisoners_WEB.pdf

³⁰⁵ United Nations Office on Drugs and Crime, 2010. The Bangkok Rules: United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary, commentary to Rule 42.



CONCLUSION

This study has found that social factors such as poverty, prior experiences of violence, mental health, and limited education and legal literacy are linked to women's imprisonment in Sierra Leone. The women in prison who participated in the study fit a common pattern: they are mostly poor and often the sole caretakers of young children, survivors of violence, illiterate, and have unmet mental health needs. The majority of the women we encountered in the course of this study survived sexual and gender-based violence during childhood and/or adulthood. Already marginalized in society, many of these women are arrested and detained for economic or petty crimes. Women are commonly held in pre-trial detention for very long periods of time despite the risk this poses to their security and that of their children. In many cases, women are too poor to secure legal representation or meet bail conditions.

In a departure from global trends, the majority of women in prison in Sierra Leone are in prison for serious crimes. These women, as they have themselves explained, often commit these crimes in response to male violence and in self-defense. In other cases, poor mental health plays a role in women committed these crimes. Caught in a system that has failed them, these women are imprisoned rather than provided treatment. This study has found that women in conflict with the law in Sierra Leone face corruption and unfair practices by the police. As a result, many are led to confess to crimes without understanding the charges brought against them or the implications of their confession.

This study has also found that the stories of women in detention in Sierra Leone, much like elsewhere, are often intertwined with the unequal and patriarchal structures of society and in particular, the criminal justice system. The women who participated in the study had little educational and limited financial and social opportunities. Very few owned property, and when they did, the properties were generally in the name of their husbands or other male relatives. The vast majority of these women had

experienced sexual and gender-based violence. This experience was often dismissed by the police or the communities and, as a result, women's calls for help and justice often went unanswered. In cases of women who reacted, often violently, to protect themselves from abuse and violence, the lack of a gender-just approach in sentencing guidelines also failed them. Women's lack of awareness of their rights and their belief that they should respect male authority means that women who have been accused of violent crimes are at a particular disadvantage when facing a legal system that is skewed against them.

The experiences of the formerly incarcerated women who participated in the study showed that, even after release, women face a long and difficult road ahead. Indeed, women's experience after prison continues to be marked by discrimination and inequality. The underfunded and often genderblind penitentiary system largely neglects women's particular needs post release. Without appropriate gender-specific alternatives to incarceration, many women who do not pose a threat to public safety languish in a prison system that does not address their gender-specific needs. The lack of a gender-sensitive prison system also has a long-term effect on the physical and mental health of many women. Isolated, stigmatized and commonly abandoned by their partners and families, these women find themselves with no one to turn to, no resources after their release. As result, they have lower chances at social and economic reintegration than male prisoners.

Under international law, States are required to consider and address the disparate impact on women of programs and policies within the criminal justice system. They must also develop strategies that take into account

the special needs of women in contact with the law.³⁰⁶ Furthermore, according to international standards, States have a positive obligation to address the root causes and risk factors related to crime and victimization through social, economic, health, educational, and justice policies³⁰⁷ and to understand the characteristics of women in contact with the law.³⁰⁸ This research has shown, however, that in policy and practice, much like elsewhere, because of a lack of gender-specific policies, women in Sierra Leone who come in contact with the criminal justice system are at an increased disadvantage, both during and after their incarceration.

The study thus demonstrates the need for the State to recognize and respond to social factors, particularly those linked to discrimination and inequality, which lead women into prison. It also highlights the urgent need to develop gender-specific alternatives to incarceration to avoid the harmful consequences of custodial sentencing on women, their families and communities. Such alternatives must recognize women's common histories of poor mental health and violence, in line with international standards.³⁰⁹ Where detention is unavoidable, Sierra Leone must create a prison environment that takes into account the specific needs of women.

Finally, while global data about women in prison is emerging, further research is required to better understand and address the causes and consequences of women's detention, and to improve the conditions of their imprisonment worldwide.

³⁰⁶ Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, General Assembly resolution 55/59, annex, paras. 11 and 12.

³⁰⁷ U.N. Special Rapporteur on Violence Against Women, *Pathways to, conditions and consequences of incarceration for women*, Note by the Secretary-General, U.N. Doc. A/68/340, para. 84 (2013).

³⁰⁸ Bangkok Rules, Rule 67

³⁰⁹ See Bangkok Rules, Rule 60 and Rule 41

RECOMMENDATIONS

This study's key recommendation is for Sierra Leone to recognize in law, policy and practice that inequality is a driver, condition and consequence of women's imprisonment. Sierra Leone must also tackle discrimination at all stages of the criminal justice process, in line with its international obligations under CEDAW and other human rights instruments. Such measures are necessary if Sierra Leone is to fully protect the human rights of women in its prisons. To do so, it must eradicate policies and laws that are discriminatory in intent and in effect by, among others, ensuring that the country's Gender Equality and Women's Empowerment policy is a lived and comprehensive document.

In order to create a more just and effective criminal justice system and

- To address discrimination in law, which includes but is not limited to:

- Decriminalizing and declassifying petty offenses such as loitering, fraudulent conversion and obtaining goods or money by false pretenses, insulting conduct, and minor traffic offenses;
- Abolishing the mandatory death penalty and developing sentencing guidelines that fully take into account mitigating factors such as a history of abuse or mental health conditions;
- Training legal professionals to ensure that a history of abuse is considered where appropriate;
- Developing gender-specific defenses and/or mitigating factors that take into account slow-burning reactions of victim of violence;
- Codifying customary law and amending it to comply with the principle of non-discrimination.

- To address discrimination in the criminal justice system, as required under CEDAW and the Bangkok Rules, including but not limited to:

- Encouraging alternative dispute resolution or civil summonses to

protect the rights of women in contact with the criminal justice system, we make the following specific recommendations to the government, prison services, and the judiciary:

- To develop gender-specific alternatives to detention that take into account women's characteristics, experiences, and needs without risking exposing them to harm by the State.³¹⁰ Non-custodial measures that address the causes of women's imprisonment are not only more cost-effective but also greatly reduce some of the more devastating consequences of detention; they provide space for restoration and reintegration.³¹¹

resolve minor crime, and putting in place community-based non-custodial measures such as diversion, community service and community-based treatment;

- Providing gender-responsive training for judicial and law enforcement officers and strengthening police accountability mechanisms;
- Conducting gender-sensitive trials and adopting sentencing guidelines that consider issues such as prior experiences of abuse and poor mental health, and correcting the gender imbalance in juries;
- Ensuring that bail conditions take into account the social and economic realities of women in Sierra Leone;
- Providing information on the rights of a woman suspected or charged of a crime in a criminal justice process in a language that she can understand and in a manner that is accessible to illiterate persons, minorities and persons with disabilities;
- Greater investment in legal empowerment services such as paralegals and lawyers.

³¹⁰ UNODC, 2020. Toolkit on Gender-Responsive Non-Custodial Measures https://www.unodc.org/documents/justice-and-prison-reform/20-01528_Gender_Toolkit_complete.pdf

³¹¹ Open Society Foundations, 2011. The Socio-Economic Impact of Pre-Trial Detention <https://www.justiceinitiative.org/publications/socioeconomic-impact-pretrial-detention>

- To take steps to eliminate violence against women by:

- Thoroughly investigating and prosecuting allegations of sexual and gender-based violence;
- Recognizing and considering a history of sexual and gender-based violence when investigating and prosecuting women who commit violent crimes.

- To address discrimination in the penal system to ensure women detainees' protection and preparedness for the challenges of life after imprisonment, as laid out in the Mandela Rules and the Bangkok Rules.

This includes but is not limited to:

- Providing alternatives to incarceration to allow women to maintain family ties and reduce some of the more devastating consequences of imprisonment;
- Providing for women's specific health needs, including gynecological, antenatal and postnatal care and cervical and breast cancer

screenings;

- Providing gender-specific and trauma-informed services such as mental health support and rehabilitation services, including strategies to prevent suicide and self-harm;
- Taking all reasonable steps to ensure that women have the means to maintain family ties while in detention, developing special measures to counterbalance the difficulties of women detained far from their homes, and creating a healthy environment where the children of detained women can visit;
- Increasing post-release support and developing options such as home leave, open prisons, halfway houses and community-based programs to facilitate the transition of women from prison to the outside world and to reduce stigma;
- Ensuring that women in prison can work and actively participate in their reintegration, and providing them with appropriate educational and training programs to improve their employment prospects.

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ANNEX: A Guide to the International Framework (Prepared by Cornell University Law School)³¹²

Introduction

For decades, international and regional laws addressing the rights of people who come into contact with the criminal justice system were designed by, and for, men. Men created and implemented prison regulations. Men also constitute the overwhelming majority of the prison population. As more women enter prisons and jails, however, international and regional standards have gradually evolved to more directly address states' obligations to women who are involved in the criminal justice system.

The foundational international principle of non-discrimination underpins the obligations and protections discussed in this section. International standards relating to non-discrimination and equality protect women's rights to be treated on an equal basis with men in all of their interactions with the criminal justice system: in the application of domestic laws and policies, throughout criminal investigations, at trial, at sentencing, and in prisons. As the UN Human Rights Committee has observed, "[t]he enjoyment of rights and freedoms on an equal footing . . . does not mean identical treatment";³¹³ rather, States must "take into account and address any disparate impact of criminal justice strategies on women, must be attentive to the unique circumstances of women in conflict with the law, and must develop policies based on women's particular needs."³¹⁴

The rights to non-discrimination and equality, and states' corresponding obligation to address the causes, consequences, and conditions of

women's incarceration, are protected in a number of formal treaties to which Sierra Leone is party. These treaties include the African Charter on Human and Peoples' Rights, the Maputo Protocol on the Rights of Women in Africa, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The rights protected by these instruments have been reinforced by principles developed in the Standard Minimum Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules).

Considered together, these rules govern states' responsibilities (1) to prevent crime by addressing its root causes, (2) to eliminate unjustified incarceration and criminalization, (3) to conduct prosecutions that are attentive to gender bias, and (4) to ensure that conditions of confinement address the unique needs of women deprived of their liberty. In this section, we highlight Sierra Leone's obligations in each of these areas under international and regional law.

Prevention: Addressing the Root Causes of Women's Imprisonment

Sierra Leone has positive obligations to address the root causes of women's imprisonment. International standards compel states to investigate why women, specifically, come into conflict with the law,³¹⁵ to understand the

³¹² Researched and prepared by Oladoyin Olanrewaju and Nathalie Greenfield, under the supervision of Professors Elizabeth Brundige and Professor Sandra Lynn Babcock – Cornell University Law School

³¹³ Human Rights Committee, *General Comment 18: Non-discrimination*, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1 at 26, para. 8 (1994). See also Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 25*, para. 8 (2004); Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 28*, para. 5 (2010).

³¹⁴ U.N. Special Rapporteur on Violence Against Women, *Pathways to, conditions and consequences of incarceration for women*, Note by the Secretary-General, U.N. Doc. A/68/340, para. 81 (2013) [hereinafter *Pathways to incarceration*].

³¹⁵ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), U.N. Doc. A/RES/65/229, Rule 67 (2011) [hereinafter *Bangkok Rules*]. The Commentary accompanying Rule 67 states that: "Efforts shall be made to organise and promote comprehensive, result-oriented research on the offences committed by women, the reasons that trigger women's confrontation with the criminal justice system, . . . [and] the characteristics of women offenders[.]"

characteristics of women offenders,³¹⁶ and to develop crime prevention strategies that address the factors linking women to both crime and victimization.³¹⁷ Indeed, the UN Special Rapporteur on Violence Against Women has emphasized that “[S]tates have a duty to address the structural causes that contribute to women’s incarceration and to address root causes and risk factors related to crime and victimization through social, economic, health, educational, and justice policies.”³¹⁸ Poverty and gender-based violence are two of the biggest such risk factors that bring women into contact with the criminal justice system.

Studies of women prisoners reveal a correlation between poverty and incarceration.³¹⁹ Indeed, for some women, poverty can act as a direct pipeline to incarceration. Poverty disproportionately affects women, in part because of the multi-layered and compounding forms of discrimination and disadvantage that women face.³²⁰

First, poverty acts as a driver of women’s incarceration when women in poverty resort to extra-legal means to support themselves and their families.³²¹ In Sierra Leone, women who are poor and illiterate are especially vulnerable to being caught up in low-level criminal activity.³²² In particular, women working in the informal economy, such as petty traders, are commonly arrested for theft-related offences, such as obtaining money by false pretenses.³²³ Women are also commonly imprisoned for failure to repay small debts,³²⁴ along with other petty offences (see *infra* § C(i)). Moreover, poverty acts as a driver of women’s incarceration because bail conditions often require two property-owning guarantors.³²⁵ This requirement can be more difficult for women, who in comparison to men,

are poorer and not as well connected to property owning individuals.³²⁶ Women who cannot afford bail tend to see worse outcomes in the criminal justice process, thus spending more time in jail, and as a result, less time working—a cyclic pattern which perpetuates poverty. Furthermore, women lack equal access to justice as a result of their poverty. Sierra Leonean women in poverty cannot retain attorneys and, though Sierra Leone’s legal aid system provides indigent defendants with counsel, women cannot always access prompt, free legal services.³²⁷ Pretrial detention and lack of access to counsel inherently place them at a disadvantage when navigating the criminal justice system.

Second, gender-based violence (GBV) is a leading cause of women’s contact with the criminal justice system.³²⁸ Though numerous treaties prohibit GBV, it remains “deeply entrenched in our still predominantly patriarchal societies.”³²⁹ Many incarcerated women are survivors of domestic violence, which is a form of GBV. A recent survey of women incarcerated in Sierra Leone reported that over 60% of incarcerated women had experienced domestic violence.³³⁰ This phenomenon is not unique to Sierra Leone; throughout the world, women are imprisoned for using violence against a domestic partner who has abused them.³³¹ The Bangkok Rules recognize this pervasive reality: “violence against women has specific implications for women’s contact with the criminal justice system.”³³²

Women have a right to be free from all forms of GBV, including domestic violence.³³³ Sierra Leone has affirmative obligations to address the prevalence of domestic violence.³³⁴ To tackle domestic violence, states

³¹⁶ *Id.*

³¹⁷ Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-First Century, U.N. Doc. A/Res/55/59 (2001).

³¹⁸ U.N. Special Rapporteur on Violence Against Women, *Pathways to, conditions and consequences of incarceration for women*, Note by the Secretary-General, U.N. Doc. A/68/340, para. 84 (2013).

³¹⁹ Cornell Center for the Death Penalty Worldwide, *Judged for More Than her Crime, A Global Overview of Women Facing the Death Penalty*, CORNELL LAW SCHOOL, at 18 (September 2018).

³²⁰ UN Human Rights Council, *Guiding Principles on Extreme Poverty and Human Rights*, U.N. Doc. A/HRC/RES/21/11 para. 23 (2012).

³²¹ Women continue to be the predominant caretakers in many societies which imposes an additional economic burden on women with dependent children. See Special Rapporteur on Violence Against Women, *Pathways to, conditions and consequences of incarceration for women*, U.N. Doc. A.68.340, para. 85 (2013) (noting that “more women have dependent children than do male prisoners.”).

³²² AdvocAid Submission to the United Nations Working Group on the Issue of Discrimination Against Women in Law and Practice, *Women Deprived of Their Liberty—Sierra Leone*, ADVOCAlD, 5 (12 Oct. 2018).

³²³ *Id.*

³²⁴ *Id.* at 5-6.

³²⁵ See Prison Watch Sierra Leone, Timap for Justice, United Nations Development Programme, & Open Society Justice Initiative, *The Global Campaign for Pretrial Justice: Improving Pretrial Justice in Sierra Leone*, OPEN SOCIETY FOUNDATIONS, 40–41 (2013).

³²⁶ Woman Wahala na Prison – Causes and Consequences of Women’s Imprisonment in Sierra Leone, 2020.

³²⁷ ADVOCAlD, *Access to Justice*, available at <https://advocaidsl.org/access-to-justice/> (last accessed Mar. 6, 2020).

³²⁸ See U.N. Special Rapporteur on Violence Against Women, *Pathways to incarceration*, *supra* note 2, at para. 84.

³²⁹ Report of the Special Rapporteur on violence against women, its causes and consequences, U.N. Doc. A/HRC/35/30, para. 100 (2017).

³³⁰ AdvocAid Submission to the United Nations Working Group on the Issue of Discrimination Against Women in Law and Practice, *supra* note 10, at 4.

³³¹ See generally Cornell Center for the Death Penalty Worldwide, *supra* note 7.

³³² Bangkok Rules, preliminary observations, para. 9.

³³³ Maputo Protocol Article 23; Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 19: Violence Against Women*, U.N. Doc. CEDAW/A/47/38, para. 7 (1992) [hereinafter CEDAW GR 19].

³³⁴ Maputo Protocol Article 3; CEDAW Article 1; CEDAW GR 19, para. 7 (1992).

must address both the individual and structural aspects of violence against women.³³⁵ By the time survivors of violence come into contact with the criminal justice system as defendants, the state has already failed in its obligations to protect, respect, and fulfil women's right to be free from GBV.

To reduce the risk that women suffer criminal penalties related to their experiences of GBV, states must enforce domestic laws prohibiting violence against women in competent national tribunals and public institutions,³³⁶ provide support services for women experiencing violence³³⁷—including rural women³³⁸—and set up institutional mechanisms so that women and girls can report acts of violence against them in a safe and confidential environment, free from the fear of retaliation.³³⁹ States Parties must also provide effective legal remedies for victims of GBV,³⁴⁰ through access to judicial systems and in the form of reparations.

Decriminalization of status and petty offenses

When a state chooses to pursue prosecutions and long sentences for non-violent and petty offenses, the state is effectively punishing poverty. International standards prohibit the criminalization of poverty,³⁴¹ a phenomenon that disproportionately affects women, who are more likely than men to be poor. Women experience higher rates of poverty due to limited access to education, capital, and jobs. These disadvantages put women at risk for arrest for petty crimes. In Sierra Leone, the majority of female defendants are arrested for petty crimes borne of poverty, such as loitering.³⁴² Other petty offences for which women are commonly imprisoned include fraudulent conversion and obtaining goods by false pretenses.³⁴³ These petty offenses are often the survival strategies poor

women rely upon to fend for themselves and their families.

International standards propose alternatives to criminalizing poverty. Instead of relying on the criminal law to address the repercussions of poverty, the Guiding Principles on Extreme Poverty and Human Rights (Guiding Principles) encourage states to take steps to incorporate women into the legal economy. The Guiding Principles recognize that respect for people living in poverty must inform all public policies.³⁴⁴ In line with these values, the Guiding Principles call upon states to preserve the dignity of all people, avoid stigmatization, and support initiatives that improve the lives of those living in poverty.³⁴⁵

Specifically, international standards require states to take action to address poverty and its disproportionate effects on women. The Guiding Principles make clear that no policy, in any area, should worsen poverty or have a disproportionate negative impact on people living in poverty.³⁴⁶ States must adopt measures that promote women's equal access to work, education, and training, and that provide adequate standards of living.³⁴⁷ Doing so not only eradicates poverty, but also reduces women's exposure to incarceration.

As such, Sierra Leone must take steps to ensure that the state's laws and practices do not criminalize women simply for being poor. The criminalization of women living in poverty is clearly at odds with the priorities outlined in the Guiding Principles and the values of equality enshrined in the Maputo Protocol, CEDAW, and other treaties binding on Sierra Leone.

Just as states should not criminalize poverty, states must not punish

³³⁵ Report of the Special Rapporteur on violence against women, its causes and consequences, U.N. Doc. A/HRC/23/49, paras 69–71 (2013) (clarifying that state actors have due diligence obligations to individual victims of GBV to prevent harm to them as victims, to protect them, and to provide remedies to them, while also having systemic due diligence obligations to implement holistic and sustained models of prevention, protection, and reparations for acts of GBV).

³³⁶ Maputo Protocol Article 4.

³³⁷ CEDAW, *General Recommendation No. 12: Violence Against Women*, para. 3 (1989).

³³⁸ CEDAW GR 19, para. 24 (1992).

³³⁹ UN Women, *Beijing Declaration and Platform for Action, Beijing +5 Political Declaration and Outcome*, § D1 para. I (1995).

³⁴⁰ African Commission on Human and Peoples' Rights, *Resolution on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence*, Resolution 111 (2007); CEDAW GR 19, para. 24 (1992).

³⁴¹ See, e.g., U.N. Special Rapporteur on Extreme Poverty and Human Rights, *Report of the Special Rapporteur on Extreme Poverty and Human Rights on his Mission to the United States of America*, U.N. Doc. A/HRC/38/33/Add. 1, paras. 71–73 (4 May 2018).

³⁴² AdvocAid Submission to the United Nations Working Group on the Issue of Discrimination Against Women in Law and Practice, *supra* note 10, at 7.

³⁴³ Sierra Leone, *Larceny Act (1916)*, 6&7, GEO. 5., CH 50, §§ 20(iv)(b), 32.

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ UN Human Rights Council, *Guiding Principles on Extreme Poverty and Human Rights*, U.N. Doc. A/HRC/RES/21/11 para. 17 (2012).

³⁴⁷ See, e.g., Maputo Protocol, arts. 12, 13, 15, 19; CEDAW, Preamble, arts. 2, 3, 10, 11, 13; ICESCR, arts. 2, 3, 6, 7, 9, 11, 13; African Charter, arts. 2, 14, 15, 17, 22; Guiding Principles on Extreme Poverty and Human Rights.

behavior tied to gender norms and roles. Despite international laws protecting women from being charged and convicted for actions that appear to deviate from traditional gender norms, women in Sierra Leone are often charged and convicted for petty offenses like loitering when they do not comply with conservative customs, adopt behavior outside of traditional gender norms, or engage in “moral offenses.”³⁴⁸ CEDAW outlines states’ responsibilities to eliminate laws and policies that endorse sex role stereotyping. Article 5 of CEDAW mandates that parties must “modify the social and cultural patterns of conduct of men and women” so as to eliminate prejudice and all other practices which are “based on . . . stereotyped roles for men and women.”³⁴⁹

More specifically, international law also protects women who are sex workers.³⁵⁰ The ICESCR recognizes the right to work, which includes “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts[.]”³⁵¹ International law condemns the exploitation of prostitution, commonly in the context of human trafficking,³⁵² but does not condemn sex work itself. Indeed, CEDAW’s General Recommendation 19 recommends that states protect women engaged in sex work. The CEDAW Committee emphasized that measures to suppress the exploitation of prostitution must “include[] equal protection of prostitutes, who are especially vulnerable to violence . . . and tend to be marginalized.”³⁵³ In Sierra Leone, however, women engaged in sex work are often commonly prosecuted under anti-loitering statutes.³⁵⁴

Non-discrimination in the criminal justice process

Under international law, states also have positive duties to women who

are already in contact with the criminal justice system. Specifically, international law protects women’s right to equality before the law and access to justice.³⁵⁵ Women have the right to be free from discrimination at all stages of the criminal justice process, from initial police investigations to sentencing.³⁵⁶ As such, States must conduct gender-sensitive trials and adopt gender-sensitive sentencing proceedings.

Under the Maputo Protocol, which Sierra Leone ratified in 2015, States Parties must “combat all forms of discrimination against women,”³⁵⁷ must ensure the effective application of the principle of gender equality, and must take “corrective and positive action in those areas where discrimination against women in law and in fact continues to exist.”³⁵⁸ Moreover, States Parties must “integrate a gender perspective in their policy decisions, legislation, development plans, programs and activities in all other spheres of life.”³⁵⁹ Similarly, States Parties to CEDAW must eliminate all forms of discrimination against women by all appropriate means.³⁶⁰

International treaties also address states’ roles in recognizing the unique circumstances women face when in legal proceedings. The principle of non-discrimination holds that states must refrain from engaging in acts or practices of discrimination against women.³⁶¹ This includes practices within the criminal justice system. Expanding on this, the UN Special Rapporteur on Violence Against Women has specified that the non-discrimination principle “requires states to take into account and address any disparate impact of criminal justice strategies on women, even if they have been adopted for legitimate goals.”³⁶² CEDAW also requires all public authorities

³⁴⁸ Hannah Summers, *I Beg Them To Let Me Go: Sierra Leone’s Sex Workers Targeted by Police*, THE GUARDIAN (Dec. 17, 2018), available at: <https://www.theguardian.com/global-development/2018/dec/17/i-beg-them-to-let-me-go-sierra-leones-sex-workers-targeted-by-police>

³⁴⁹ CEDAW Article 5.

³⁵⁰ Sex workers include “female, male and transgender adults and young people who receive money or goods in exchange for sexual services, either regularly or occasionally . . .” See UNAIDS, *Guidance Note on HIV and Sex Work*, at 4 (2012) available at http://www.unaids.org/en/resources/documents/2012/20120402_UNAIDS-guidance-note-HIV-sex-work.

³⁵¹ ICESCR Article 6.

³⁵² CEDAW Article 6 (requiring States Parties to “take all appropriate measures, including legislation, to suppress all forms of . . . exploitation and prostitution of women”); Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, art. 3(a) (2000).

³⁵³ CEDAW GR 19, paras. 15–16 (1992).

³⁵⁴ AdvocAid Submission to the United Nations Working Group on the Issue of Discrimination Against Women in Law and Practice, *supra* note 10, at 5.

³⁵⁵ ICCPR Article 26; ICESCR Article 2; CEDAW Article 1, 3, 15; African Charter Article 3; Maputo Protocol Article 2, 8.

³⁵⁶ See CEDAW Article 2; ICCPR articles 2 and 3. See, e.g., K.L. v. Peru, Human Rights Committee, Comm’n No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005); L.M.R. v. Argentina, Human Rights Committee, Comm’n No. 1608/2007, U.N. Doc. CCPR/C/101/D/1608/2007 (2011); L.C. v. Peru, Committee on the Elimination of Discrimination against Women (CEDAW Committee), Comm’n No. 22/2009, U.N. Doc. CEDAW/C/50/D/22/2009 (2011); Human Rights Committee, *Concluding Observations: Ireland*, para. 9, U.N. Doc. CCPR/C/IRL/CO/4 (2014).

³⁵⁷ Maputo Protocol Article 2.

³⁵⁸ *Id.* Article 2(d).

³⁵⁹ *Id.* Article 2(c).

³⁶⁰ CEDAW; ICCPR Article 26.

³⁶¹ CEDAW Article 2.

³⁶² U.N. Special Rapporteur on Violence Against Women, *Pathways to incarceration*, *supra* note 2, at para. 81.

and institutions, including the police, the judiciary, and prison officials, to act in conformity with the non-discrimination obligation.³⁶³ As such, states have the obligation to address the disparate impact of criminal justice strategies on women, under the auspices of non-discrimination.

International law protects women from discrimination on account of their status as victims of gender-based violence. In the context of the criminal justice system, this means that the state must acknowledge the harm that women who are victims of violence have suffered, both physical and psychological, when investigating and prosecuting them as criminal defendants. Further, the State cannot judge women more harshly because they have suffered domestic violence. In some cases, courts must ascertain whether the accused woman acted in self-defense and do so in a manner that is sensitive to the unique dynamics of domestic violence.³⁶⁴ In other words, women must not suffer the double penalty of being a victim of a private harm and then a victim of state harm, if the domestic violence they endured is either ignored or weaponized against them.

These international legal obligations translate into a number of concrete actions that states must adopt to uphold women's right to non-discrimination and to meaningfully acknowledge their position as survivors of violence within the criminal justice system. First, states such as Sierra Leone must ensure that all criminal justice institutions, be they state courts, traditional courts, or state law enforcement officials, do not discriminate against women and uphold women's right to equality within the criminal justice system.

Second, states must provide gender-sensitive training for judicial and law enforcement officers. The Beijing Platform for Action commits

governments to providing police and correctional officers with this gender-sensitive training.³⁶⁵ This training must sensitize law enforcement officers and court officials to the nature of GBV and the needs of women.³⁶⁶ Finally, states have the duty to take women's experiences of GBV into account at sentencing. Once women are convicted and sentenced, they face rigid sentencing penalties that cripple their lives and those of their families.

International treaties and recommendations address sentencing guidelines for women who are convicted of crimes. States must "recognize women's histories of victimization" when making sentencing determinations and consider the intersecting forms of harm that shape women's contact with law enforcement.³⁶⁷ For women who are victims of gender-based violence, including those who are survivors of domestic violence, non-discrimination means that courts must consider histories of abuse, and weigh its mitigating value. Indeed, Bangkok Rule 61 recommends that courts have the power to consider mitigating factors, such as lack of criminal history and the relative non-severity and nature of the criminal conduct, when imposing sentences. Sierra Leone, however, has a mandatory death penalty scheme, which does not consider GBV in capital sentencing proceedings.

The Office of the High Commissioner for Human Rights (OHCHR) and Special Rapporteur for Violence Against Women have called on states to develop gender-specific sentencing alternatives to incarceration and to provide these alternatives to women offenders on an equal basis with men.³⁶⁸ For example, tools to avoid or reduce incarceration which are available to men—such as plea bargaining—must be equally available to women. In practice, when women commit low level offences such as larceny or "moral offences," they are not offered reduced sentences which

³⁶³ CEDAW Article 2(d); CEDAW, *General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19*, U.N. Doc. CEDAW/C/GC/35, para. 26(c) (2017).

³⁶⁴ See Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, Annex to GA Res. 65/228, Strengthening Crime Prevention and Criminal Justice Responses to VAW, para. 15(d) (Member states are urged to review their criminal procedures, taking into account international law, in order to ensure that "rules and principles of self-defense do not discriminate against women" and that "claims of self-defense by women who have been victims of violence, particularly in cases of battered women syndrome, are taken into account in investigations, prosecutions, and sentences against them.")

³⁶⁵ UN Women, *Beijing Declaration and Platform for Action, Beijing +5 Political Declaration and Outcome*, § D para. 121, § D1 paras. 124(g), 124(n), § 12 para 232(i). (1995).

³⁶⁶ African Commission on Human and Peoples' Rights, Resolution on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence, Article 2 (2007); CEDAW GR 19, para. 24b (1992); Maputo Protocol Article 8; UN Women, *Beijing Declaration and Platform for Action, Beijing +5 Political Declaration and Outcome*, § D para. 121, § D1 paras. 124(g), 124(n), § 12 para 232(i). (1995); UN GA Declaration on the Elimination of Violence Against Women (1993) Article 4(i); UN GA Resolution 52/86 on Crime Prevention and Criminal Justice Measures to Eliminate Violence Against Women, Annex paras. 8, 12 (1998).

³⁶⁷ U.N. Special Rapporteur on Violence Against Women, *Pathways to incarceration*, *supra* note 2, at para. 84.

³⁶⁸ UN Office of the High Commissioner for Human Rights, *Women and Detention*, at 2, available at https://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/Women_and_Detention.pdf; UN Special Rapporteur on VAW, Report on Pathways to, Conditions and Consequences of Women's Imprisonment, U.N. Doc. A/68/430, para. 84 (2013); Bangkok Rules, Rules 41 and 60.

are offered to males who commit serious offences, like murder.³⁶⁹

The Bangkok Rules go further than the OHCHR and Special Rapporteur for Violence Against Women, providing that “gender-specific options for . . . sentencing alternatives shall be developed within Member States’ legal systems, taking account of the history of victimization of many women offenders and their caretaking responsibilities.”³⁷⁰ Under the Bangkok Rules, states should facilitate women’s access to counselling, therapeutic courses, and gender-sensitive, trauma-informed, women-only substance abuse programs in the community as alternatives to incarceration.³⁷¹ Indeed, the Special Rapporteur on Violence Against Women has noted an emerging paradigm shift from incarceration to community-based sentencing for female offenders among states,³⁷² in response to the recommendations of the Bangkok Rules.

When a woman with child dependents appears before a court for sentencing, the sentencing authority has the duty to consider the best interests of the child.³⁷³ This is especially pertinent when the woman being sentenced is the child’s primary caretaker, as codified in the Bangkok Rules and the Convention on the Rights of the Child.³⁷⁴ The African Commission also alludes to this duty. In its General Comment on Article 3, the African Commission states: “The best interests of the child must be the primary consideration in relation to all actions that may affect children whose parents are in conflict with the law, whether directly or indirectly . . .”³⁷⁵

Addressing the consequences of women’s imprisonment on women and their families

States also have specific obligations to women already incarcerated and

their families. Under international law, all persons deprived of their liberty must be treated with “humanity and respect for the inherent dignity of the human person,”³⁷⁶ a fundamental principle that must be applied without discrimination on the basis of sex.³⁷⁷

The Bangkok Rules are a key source of protections for women who are incarcerated. When they were introduced in 2010, the Bangkok Rules recognized that non-discrimination required States to address the particular challenges that women confront in criminal justice systems.³⁷⁸ To guide States responding to this challenge, the Rules comprehensively supplemented existing safeguards for women prisoners with gender-specific measures.³⁷⁹ These international standards require that States understand the impact of incarceration on women,³⁸⁰ mitigate the impact of women’s imprisonment on women and their families, and provide gender-specific services in women’s prisons. Notably, detention facilities that fail to accommodate women’s specific needs and vulnerabilities violate CEDAW’s anti-discrimination provisions.³⁸¹

Some gender-specific services that the Bangkok Rules require prisons to provide include mental health support and rehabilitation services. Women in prison suffer from mental health problems at a higher rate than male prisoners.³⁸² Women prisoners are also more likely to self-harm and commit suicide than male prisoners.³⁸³ Acknowledging the particular impact that incarceration can have on women’s health—physical and mental—and the importance of ensuring access to health services that only

³⁶⁹ UN Office of the High Commissioner for Human Rights, *Women and Detention*, at 2, available at https://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/Women_and_Detention.pdf.

³⁷⁰ Bangkok Rules, Rule 57.

³⁷¹ *Id.* Rules 60 and 62.

³⁷² U.N. Special Rapporteur on Violence Against Women, *Pathways to incarceration*, *supra* note 2, at para. 84.

³⁷³ Convention on the Rights of the Child (CRC), Article 3(1); Bangkok Rules 2.2 and 64; CRC Concluding Observations (UK) UN Doc. CRC/C/GBR/CO/5, para. 54(b); CRC Concluding Observations India (CRC/C/IND/Co/3-4), CRC Concluding Observations Iraq (CRC/C/IRQ/CO/2-4), CRC Concluding Observations Kuwait (CRC/C/KWT/CO/2).

³⁷⁴ Convention on the Rights of the Child (CRC), Article 3(1); Bangkok Rules 2.2 and 64; CRC Concluding Observations (UK) UN Doc. CRC/C/GBR/CO/5, para. 54(b); CRC Concluding Observations India (CRC/C/IND/Co/3-4), CRC Concluding Observations Iraq (CRC/C/IRQ/CO/2-4), CRC Concluding Observations Kuwait (CRC/C/KWT/CO/2).

³⁷⁵ African Commission, General Comment on Article 3, (2015), para 23.

³⁷⁶ ICCPR, art. 10(1).

³⁷⁷ Human Rights Committee, General Comment No. 21 (1992).

³⁷⁸ See Bangkok Rules, Rule 1. See also UN Office of the High Commissioner for Human Rights, *Women and Detention*, at 1–2, available at https://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/Women_and_Detention.pdf.

³⁷⁹ As can be found in the ICCPR, CAT, and Mandela Rules.

³⁸⁰ The Commentary to Bangkok Rule 67 recommends that states organize and promote comprehensive research on “the impact of secondary criminalization and imprisonment on women, as well as programmes designed to reduce reoffending by women, as a basis for effective planning, programme development and policy formulation to respond to the social reintegration needs of women offenders.”

³⁸¹ *Abramova v. Belarus* ¶ 7.5; CEDAW Committee Communication No. 23/2009.

³⁸² Cornell Center for the Death Penalty Worldwide, *supra* note 7, at 16.

³⁸³ See *id.* at 17, 33.

women require,³⁸⁴ the Bangkok Rules require confidential health screening of women prisoners to determine their physical and mental health care needs, including screening for PTSD and sexual abuse.³⁸⁵ These healthcare provisions can also be found among the gender-sensitive rehabilitation services that prisons must provide, which include: sexual and reproductive health services, substance abuse support, and counselling for victims of physical and sexual abuse.³⁸⁶

States must also ensure that prison policies consider the best interests of children. Incarceration has an important impact on women and their families because of women's continued role in many societies as the primary caretaker of children.³⁸⁷ The Bangkok Rules provide that before or upon admission to prison, "women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children."³⁸⁸ The Rules also set out specific ways in which prison policies and services must take into account the needs and dignity of women and their children, including children who remain with their mothers in prison.³⁸⁹

Further, the Bangkok Rules provide that prisons must encourage and facilitate prisoners' contact with the outside world, especially women's contact with their children.³⁹⁰ Disciplinary sanctions may not include prohibitions on family contact.³⁹¹ The social stigma associated with women who are convicted and imprisoned, paired with restrictive child and family visitation rules, mean that many women on death row specifically suffer an enduring lack of family contact, which contributes to high levels of

depression. The high levels of depression hold particularly true for women who are primary caregivers or who are incarcerated far away from their families, as they experience a great reduction in the amount of contact they have with their children.³⁹²

Relatedly, international standards require states to provide women with reintegration support. Women who are incarcerated tend to be shunned by their husbands and are often rejected by their families,³⁹³ which can complicate their reintegration into the community upon release. As such, the Bangkok Rules require prison staff to address the particular barriers to social reintegration that women encounter and help to manage their rehabilitation into society safely.³⁹⁴ In particular, prison authorities must collaborate with service providers to develop comprehensive and gender-sensitive pre- and post-release reintegration programs,³⁹⁵ and use programs such as home leave, open prisons, and community-based services to facilitate the transition from prison to freedom.³⁹⁶ States must also provide released women with the psychological, medical, legal and practical help they need to ensure successful reintegration.³⁹⁷

Gaps in international legal protections for women in the criminal legal system

Although the international framework governing the causes and consequences of women's incarceration is comprehensive, there remain a number of gaps.

First, international laws and standards fail to focus on women's contact with the police prior to arrest—a major omission, given widespread

³⁸⁴ See UN Working Group on the issue of discrimination against women in law and practice, *Rep. of the Working Group on the issue of discrimination against women in law and practice*, Human Rights Council (32nd Sess.), para. 14, U.N. Doc. A/HRC/32/44 (2016) (noting that a State can violate women's rights when the State neglects women's health needs and unduly restricts access to health services that only women require). See also Human Rights Committee, *General Comment No. 28: Article 3 (The Equality of Rights between Men and Women)*, para. 10-11, 20, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2000) (noting that interference with the provision of women's healthcare violates women's right to non-discrimination).

³⁸⁵ Bangkok Rules, Rules 6, 8.

³⁸⁶ UN Office of the High Commissioner for Human Rights, *Women and Detention*, at 1, available at https://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/Women_and_Detention.pdf.

³⁸⁷ The Special Rapporteur on Violence Against Women notes that "more women have dependent children than do male prisoners." *Pathways to incarceration for women*, *supra* note 2, at para. 85.

³⁸⁸ Bangkok Rules, Rule 2 (2).

³⁸⁹ *Id.* Rule 2(1) (addressing admissions procedures for women and children); 3 (addressing the confidential recording of information about a woman inmate's children); 5 (requiring that a regular supply of water be available to women and their children); 15 (prison substance abuse treatment programs must take into account the special needs of women and their children); 21 (requirements for the searching of children); and 33(3) (where children are in prison with their mothers, awareness raising on child development and training on child health care shall be provided to prison staff).

³⁹⁰ Bangkok Rules, Rule 26; see also Rule 28 (providing that visits with children shall take place in an environment conducive to such visits, allowing open contact between mother and child and encouraging extended contact where possible).

³⁹¹ *Id.* Rule 23.

³⁹² The Cornell Center on the Death Penalty Worldwide, *supra* note 7, at 23.

³⁹³ UN Office of the High Commissioner for Human Rights, *Women and Detention*, at 1, available at https://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/Women_and_Detention.pdf.

³⁹⁴ Bangkok Rules, Rules 29, 40, 43-47.

³⁹⁵ *Id.* Rule 46.

³⁹⁶ *Id.* Rule 45.

³⁹⁷ *Id.* Rule 47.

evidence of police harassment of sex workers.³⁹⁸ Second, the international legal system needs to do more to address the criminalization of petty offenses. There are no international provisions prohibiting the criminalization of petty offenses, nor have experts adequately addressed the impact of criminalization and enforcement of petty offenses on women. Third, once women are accused, the international framework fails to comprehensively address the disparate access to justice that women experience because of poverty and gender biases. Relatedly, the international legal framework regarding the criminalization of poverty is inadequate. Fourth, international law does not explicitly require states to create programs that decrease recidivism rates for incarcerated women³⁹⁹. Post-release prison programs are recommended to ease women's transitions back into society but fail to address the systemic problems that forced women to engage in unlawful activities. Failing to address these issues can lead women to commit the same or similar transgressions that may result in renewed detention.

Fifth, international legal standards reflect a failure to mainstream gender across all aspects of the criminal justice process. In 1995, the Beijing Declaration and Platform for Action endorsed gender mainstreaming as a critical approach for achieving gender equality. In the context of incarceration, this means adopting a gender focus across all aspects of the criminal justice system and the laws governing women's places within it. The Beijing Platform for Action mandates all stakeholders, including UN organizations, to take action in this regard, but international legal frameworks have not yet fully developed to assess the implications of the law for women at all levels.⁴⁰⁰ Finally, despite the international framework addressing gender-based discrimination, there is a lack of practical implementation at the local level: the African Commission's first

Concluding Observations for Sierra Leone noted that the State Party had not yet adopted concrete measures to eliminate discrimination against women.⁴⁰¹ Until Sierra Leone begins to take seriously its international obligations to protect women from discrimination and abuse, international law will remain a toothless tiger.

³⁹⁸ See *AdvocAid, Kolonko*, produced by ADVOC AID SIERRA LEONE (13 Dec. 2018) available at <https://www.youtube.com/watch?v=0fqcnQvQadg> (showing police harassment of sex workers); Leanne Greenfield, *New Documentary Shows Harassment and Violence Faced by Sex Workers*, ADVOC AID SIERRA LEONE (7 Dec 2017) (commenting on the physical, verbal, and sexual abuse that sex workers face from the police in Sierra Leone). This issue is far from exclusive to Sierra Leone. See: *Policing Sex Work*, available at https://web.archive.org/web/20170514022243/http://www.incite-national.org/sites/default/files/incite_files/resource_docs/4668_toolkitrev-sexwork.pdf (last accessed 3 April 2020).

³⁹⁹ The Bangkok Rules call for research on programs designed to reduce reoffending by women, Rule 67, but stop short of requiring the adoption of such programs. The interpretative commentary to the Bangkok Rules links several other Rules to a goal of reducing recidivism, including Bangkok Rule 15, which addresses substance abuse treatment programs, and Bangkok Rules 45-47, which call upon States to create pre and post-release reintegration programs. UN Office of Drugs and Crime, *Bangkok Rules and their Commentary, Commentary to the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders*, 30, 40 (2009).

⁴⁰⁰ See also ECOSOC agreed conclusions on gender mainstreaming (1997) and the Commission on the Status of Women policy paper on the subject.

⁴⁰¹ African Commission on Human and Peoples' Rights, *Consideration of Reports Submitted by States Parties under Article 62 of the African Charter on Human and Peoples' Rights*, 13 (2013).



CYRUS R. VANCE CENTER
FOR INTERNATIONAL JUSTICE



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