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**Breaking the Silence on Human Rights Violations in Sierra Leone under
the International Covenant on Civil and Political Rights (ICCPR):
A Shadow Report on Discrimination and Violence Based on
Sexual Orientation and Gender Identity**

Submitted for consideration at the 110th Session of the
Human Rights Committee

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Submitted to the United Nations Human Rights Committee by:

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I. EXECUTIVE SUMMARY

This report is a joint submission by Dignity Association (Freetown, Sierra Leone), Concerned Women's Initiative (Freetown, Sierra Leone), West African Youth Network (Freetown, Sierra Leone), Action for Men's Sexual Health and Rights Network (Johannesburg, South Africa), The Initiative for Equal Rights (Lagos, Nigeria), Heartland Alliance's Global Initiative for Sexuality and Human Rights (Washington, D.C., U.S.A.), and the American University Washington College of Law International Human Rights Law Clinic (Washington D.C., U.S.A.) to the United Nations (UN) Human Rights Committee ("HRC" or "the Committee") for its consideration of the State of Sierra Leone's implementation of the *International Covenant on Civil and Political Rights* ("the Covenant" or "the ICCPR") at the 110th session taking place in Geneva on March 11-12, 2014.¹

Article 15 of the 1991 Constitution of Sierra Leone states that every person is entitled to fundamental human rights and freedoms regardless of the individual's race, tribe, political opinion, or sex.² Despite these protections, individuals are widely discriminated against on the basis of their sexual orientation and gender identity ("SOGI").³ Attacks against persons on the basis of SOGI go largely unpunished and hate crimes are rarely reported.⁴ Discrimination against the LGBTI community is deeply ingrained in society and within Sierra Leonean legislation. The 1861 Offences Against the Person Act ("1861 Act") criminalizes sexual conduct between consenting same-sex adults with a maximum punishment of life imprisonment.⁵

In 2002, Sierra Leone emerged from a decade-long civil war and the State has since taken steps to heal and rebuild the nation. As part of this process, the State of Sierra Leone has currently launched a Constitutional Review Committee to revise the 1991 Constitution.⁶ This review process offers the government of Sierra Leone an opportunity to repeal the 1861 Act and amend its constitution to ensure that Sierra Leone's laws and practices comport with human rights principles required by the ICCPR.

Article 2(1) and 26 of the ICCPR⁷ provide for the respect, equality, and nondiscrimination of all

¹ This report was authored by Diana Navas (J.D. 2014, American University Washington College of Law), and Jacqueline Zamarripa (J.D. 2014, American University Washington College of Law), under the supervision of Professor Shana Tabak of the International Human Rights Law Clinic at American University, Washington College of Law. This report was drafted with the assistance of Stefano Fabeni (Heartland Alliance, Director of the Global Initiative for Sexuality and Human Rights), Osman Kargbo (Dignity Association), and Sylvia Deen (Concerned Women's Initiative). This report was guided by the aforementioned organizations and The Initiative for Equality (TIER), West African Youth Network, and the African Men for Sexual Health and Rights (AMSHeR).

² Political Constitution of Sierra Leone (1991), Art. 15.

³ *See infra* Part IV.A. (analyzing discriminatory practices against persons on the basis of their sexual orientation and gender identity within different sectors of society).

⁴ *See infra* Part IV.C. (discussing violations against the Art. 7 right to prohibition against torture and cruel, inhuman, degrading treatment or punishment).

⁵ Offences Against the Person Act, Section 61 (1861).

⁶ *Sierra Leone: Constitutional Review Committee Launched*, All Africa, 2 August, 2013, available at: <http://allafrica.com/stories/201308020919.html>.

⁷ International Covenant on Civil and Political Rights, 16 December, 1966, 999 U.N.T.S. 171 [hereinafter "ICCPR"].

individuals on the grounds of, inter alia, race, color, and sex.⁸ In numerous concluding observations in recent years, the UN Human Rights Committee established that the criminalization of sexual conduct between same-sex adults is a violation of the ICCPR.⁹ In the landmark case, *Toonen v. Australia*,¹⁰ the Committee concluded that the reference to “sex” in the Covenant is inclusive of sexual orientation, and therefore must not be used as a basis for discrimination.¹¹

The purpose of this report is to highlight the widespread human rights violations by the State of Sierra Leone against individuals on the basis of their sexual orientation and gender identity. In particular, this report draws the attention of the Committee to the following breaches of the Covenant:

- A. The State’s refusal to repeal the 1861 Offences Against the Person Act, a law that criminalizes same-sex conduct by consenting adults.
- B. Blatant discrimination against LGBTI members by State actors.
- C. The State’s failure to investigate and prosecute incidents of violent attacks, rape, and murder of LGBTI individuals and LGBTI human rights defenders.
- D. The State’s practice of arbitrary arrest and detention of LGBTI individuals.
- E. The government’s failures to take preventative measures to protect citizens from hate crimes.

⁸ ICCPR, Arts. 2(1), 26.

⁹ *See, e.g.*, UN Human Rights Committee: Concluding Observations: Togo, 18 April 2011, CCPR/C/TGO/CO/4; UN Human Rights Committee: Concluding Observations: Uzbekistan, 7 April 2010, CCPR/C/UZB/CO/3; UN Human Rights Committee: Concluding Observations: Tanzania, 6 August 2009, CCPR/C/TZA/CO/4; UN Human Rights Committee: Concluding Observations: Chile, 30 March 1999, CCPR/C/79/Add.104; UN Human Rights Committee: Concluding Observations: United States of America, 12 February 2008, CCPR/C/USA/CO/3.

¹⁰ *Toonen v. Australia*, Communication no. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

¹¹ *Id.* at para. 8.7.

II. INTRODUCTION

The Concerned Women's Initiative of Sierra Leone and Dignity Association of Sierra Leone, with the collaboration of Heartland Alliance's Global Initiative for Sexuality and the American University Washington College of Law International Human Rights Law Clinic, have worked together to produce this report on the status of the lesbian, gay, bisexual, transgender, and intersex persons (LGBTI) in Sierra Leone. This collaborative report discusses the human rights violations against individuals on the basis of their sexual orientation and gender identity.

Sierra Leone ratified the International Covenant on Civil and Political Rights (ICCPR) on August 23, 1996.¹² All State parties are encouraged to submit an initial report to the Human Rights Committee within a year of the Covenant's entry into force.¹³ Despite Sierra Leone's November 1997 deadline to submit its initial report to the Committee, the government neglected to do so until June 4, 2012.¹⁴ The State's first report claims to abide by the ICCPR provisions even without Parliament's enactment and further credits its Constitution for safeguarding the rights enshrined within the ICCPR.¹⁵ However, the government fails to acknowledge the blatant discrimination towards the LGBTI community and the human rights violations suffered because of their sexual orientation and gender identity.

The UN Human Rights Council has adopted a resolution calling member States, including Sierra Leone, to protect the fundamental rights of persons irrespective of their sexual orientation and gender identity.¹⁶ Sierra Leone's criminalization of same-sex conducts and the resulting widespread discrimination was addressed during the State's 2011 Universal Periodic Review (UPR) Process.¹⁷ The UPR working group referred to reports of LGBTI discrimination in Sierra Leone and recommended that lesbian, gay, bisexual and transgender persons benefit from the protections of Sierra Leone's nondiscrimination clause.¹⁸ Canada, Norway, and the Netherlands issued three recommendations specifically related to sexual orientation and gender identity, but Sierra Leone rejected each one. Although Sierra Leone vows to promote the highest standards of human rights,¹⁹ as is evidenced within this report, the government has consistently failed to protect the fundamental human rights of LGBTI individuals and further denies the existence of

¹² ICCPR, *supra* note 7.

¹³ See UN Human Rights Committee, Guidelines for the Treaty-Specific Document to be Submitted by States Parties under article 40 of the International Covenant on Civil and Political Rights, para. 12, U.N. Doc. CCPR/C/2009/1.

¹⁴ See UN Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant : International Covenant on Civil and Political Rights : initial reports of States parties due in November 1997: Sierra Leone, CCPR/C/SLE/1/2013 [hereinafter "Sierra Leone's First Report"].

¹⁵ *Id.* at paras. 7, 14.

¹⁶ See UN Human Rights Council, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights, United Nations Human Rights Council, paras. 84 (d) & (e), A/HRC/19/41/2011.

¹⁷ See UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sierra Leone, Human Rights Council, U.N. Doc. A/HRC/18/10/2011 [hereinafter "Working Group Report"].

¹⁸ *Id.* at paras. 82.7-82.9 ("Bring its legislation to conformity with its commitment to equality and non discrimination for all by prohibiting discrimination based on sexual orientation or gender identity; repeal all provisions which may be applied to criminalize sexual activity between consenting adults; repeal all provisions criminalizing activity between consenting adults.").

¹⁹ Human Rights Council, Letter dated 14 August 2012 from the Permanent Representative of Sierra Leone to the United Nations addressed to the President of the General Assembly, U.N. Doc. A/67/531/2012.

discrimination on the grounds of sexual orientation and gender identity.

Furthermore, the Human Rights Commission of Sierra Leone is mandated to promote and protect human rights throughout the State, yet fails to advocate for or support LGBTI human rights. Although the Constitution of Sierra Leone guarantees equality in the enjoyment of fundamental human rights and freedoms,²⁰ the Commission has explicitly rejected these rights for the LGBTI community. It claims to lack “authority to protect or promote nondiscrimination on the basis of sexual orientation and gender identity given the national law and Constitution.”²¹ Therefore, the Commission does not investigate discrimination cases against LGBTI individuals. Accordingly, Sierra Leone’s lack of protection under national law perpetuates human rights violations against individuals on the basis of sexual orientation and gender identity, including violations of the right to protection from non-discrimination, the right to life, the right to freedom from torture, cruel, inhuman, and degrading treatment, the right to liberty, the right to security of person, the right to privacy, and the right to freedom from arbitrary interference with privacy, family, and home.

The Human Rights Committee will evaluate this report and Sierra Leone’s compliance with the ICCPR in March 2014. This will mark the first occasion Sierra Leone will be under review since ratifying the ICCPR in 1996. Sierra Leone makes no mention of issues faced by LGBTI individuals in its report to the Committee. This shadow report offers a voice to the LGBTI community in Sierra Leone by bringing to light the widespread human rights violations that take on the basis of sexual orientation and gender identity.

²⁰ See *Political Constitution of Sierra Leone*, *supra* note 2, at Art. 15.

²¹ See Global Rights: Partners for Justice, Pride Equality & Dignity Association, *Discrimination on the Basis of Sexual Orientation and Gender Identity in Access to Health Care and Violence/Bias: A Sierra Leone Case Study*, 1, 8 (2013) available at:

http://www.globalrights.org/site/DocServer/2013_LGBTI_Report_Sierra_Leone.pdf?docID=14423 [hereinafter “Global Rights Sierra Leone Case Study”]; see also Human Rights Commission of Sierra Leone Act (No. 9 of 2004).

III. BACKGROUND

Sierra Leone's attendance at the 110th Session of the U.N. Human Rights Committee is the first time the State of Sierra Leone has ever presented at the HRC. Sierra Leone's commitment to have the HRC review its compliance with the ICCPR is sincerely appreciated by the local and international community and is extremely significant for a variety of reasons. Sierra Leone's recent history is marked by a gruesome civil war characterized by atrocious human rights violations. Twelve years later, the country continues to heal and is currently working to rebuild the nation. As part of this process, a reformation of the Constitution is currently taking place. The current constitutional review process is a unique opportunity for the government of Sierra Leone to acknowledge and promote legislation that comports with the ICCPR and provide protections to the most vulnerable groups in society. This shadow report focuses on a particular vulnerable group: individuals that are discriminated against on the basis of their sexual orientation and gender identity.

A. Sexual Violence During the Civil War (1991-2002)

Throughout Sierra Leone's decade-long civil war, thousands of people, both men and women, suffered widespread systematic sexual violence at the hands of rebel forces and soldiers.²² Due to the frequent collaboration between rebel groups and soldiers, survivors were often unable to identify their perpetrators.²³ Rape was frequently used as a weapon of war in conjunction with other grave human rights abuses to further traumatize individual victims.²⁴ While many studies have been conducted on the sexual violence committed against women and girls, there has been little reported regarding the violence suffered by men.²⁵ Human Rights Watch conducted an extensive investigation and study of the sexual violence that occurred during the civil war. During their investigation, they spoke to a local organization, the Forum for African Women Educationalists (FAWE) Sierra Leone, and found that "boys and men were also raped by male rebels," however "due to the stigma attached to homosexuality in Sierra Leone, male victims of rape feared they would be perceived as homosexuals and therefore few boys were willing to report it."²⁶ FAWE asked Human Rights Watch not to interview any of the male survivors for fear of re-traumatization.²⁷

The underreporting of sexual violence against men has been studied by scholars such as Sandesh Sivakumaran who has sought to understand the international community's silence on issues involving sexual conduct between men and the stigma felt by survivors of male/male rape.²⁸ Sivakumaran analyzes the interactions that took place between FAWE and Human Rights Watch during their respective efforts in working with victims of sexual violence. He notes that there is

²² Human Rights Watch, *"We'll Kill You If You Cry" Sexual Violence in Sierra Leone Conflict, Vol. 15, No. 1(A)*, page 26 (January 2003) [hereinafter "Sexual Violence in Sierra Leone"].

²³ *Id.* at 26.

²⁴ *Id.* at 53.

²⁵ See generally Sandesh Sivakumaran, *Male/Male Rape and the 'Taint' of Homosexuality*, Vol. 27, No. 4, Human Rights Quarterly, 1294 (2005) (exploring the lack of attention and advocacy on behalf of males who are victims of sexual violence).

²⁶ See Sexual Violence in Sierra Leone, *supra* note 22 at page 42.

²⁷ *Id.*

²⁸ See Sivakumaran, *supra* note 25 at page 1294.

“an added stigma attached to victims of male/male rape that does not attach to victims of male/female rape.”²⁹ Given this stigma, he finds it surprising “that more is not being done to try and dispel this stigma and in turn encourage male victims to report being raped.”³⁰ By not reporting male/male rape, the local and international community silences victims and perpetuates the stigma attached to male/male sexual conduct.

B. Constitutional Review

In 1999 as a result of heavy international pressure to end the civil war, President Ahmad Tejan Kabbah’s government and the Revolutionary United Front (RUF), the political movement opposing the existing government, signed a ceasefire agreement, which was followed by the Lomé Peace Accord.³¹ The peace agreement provided general amnesty for crimes committed during the civil war, and created both the Truth and Reconciliation Commission (TRC) and the Sierra Leone Human Rights Commission.³² In addition to creating these key institutions, the Lomé Peace Accord included a number of commitments that were aimed at helping Sierra Leone unite as a nation after a conflict that was divisive along ethnic lines, and to assist the government as it transitioned toward peace and democracy. The nation’s current constitutional review process was also mandated under the Peace Accords, and is a major milestone in Sierra Leone’s post-conflict era.³³

The constitutional review process to revise the 1991 Constitution of Sierra Leone began last year on July 30, 2013.³⁴ Eighty committee members have been selected to be a part of the Constitutional Review Committee (CRC) and have been tasked with revising the constitution in a 24-month period.³⁵ The CRC is largely made up of members of the two largest political parties in Sierra Leone - the All People’s Congress (APC) and the Sierra Leone People’s Party (SLPP).³⁶ At the launch of the CRC, the current president of Sierra Leone, President Ernest Bai Koroma, reminded committee members that “[t]his is a nation that is renewing itself. This is a nation buoyant with energy, with youth, with novel but humane aspirations.”³⁷ At this launch, President Koroma voiced his intentions of creating a “developmental state, a democratic society and a tolerant culture.”³⁸ However, the exclusion of LGBTI representation in the constitutional reform discussions impedes the realization of creating a Constitution that is inclusive and protects the rights of all Sierra Leonean citizens.

Members of the community have questioned the lack of diversity within the CRC since its start and have advocated for a more inclusive process. Local activists and international organizations

²⁹ *Id.*

³⁰ *Id.*

³¹ See Sexual Violence in Sierra Leone, *supra* note 22 at page 12.

³² *Id.* at page 13.

³³ Lome Peace Accord, Art. 7.

³⁴ *Sierra Leone Begins Long-Awaited Constitutional Review*, All Africa, 31 July 2013, available at: <http://newskenya.co.ke/news/latest/africareview/sierra-leone-begins-long-awaited-constitutional-review/a4301.202503>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

have voiced concerns regarding the dominating number of politicians in the CRC and have voiced their desire to include civil society in the constitutional review process.³⁹ Civil society groups representing diverse interest must be included in this process to produce a document that addresses the rights of all people in Sierra Leonean society.⁴⁰ In drafting the Constitution, “people should not only consider [the approval] of the majority but also the minority . . . they will have to consult the people to get their consent.”⁴¹ Therefore, organizations representing the LGBTI minority community must be engaged in the CRC process to ensure incorporation of specific provisions that prohibits discriminatory treatment on the basis of sexual orientation and gender identity. The Chairman of the CRC, Justice Edmond Cowan, asserted, “a constitution can only be legitimate if it ha[s] the stamp of the people.”⁴² President Koroma’s aspirations for a more tolerant culture will not exist without a constitution guaranteeing equal rights for all Sierra Leonean citizens, regardless of the citizen’s sexual orientation or gender identity.

C. Sexual Orientation and Gender Identity (SOGI) in Sierra Leone

Sexual orientation refers “to the direction of an individual[s] sexual and emotional attraction, whether to individuals of a different sex (heterosexual), same sex (homosexual) or both sexes (bisexual).”⁴³ Sexual orientation encompasses individuals who identify as gay, lesbian, bisexual, or heterosexual.⁴⁴ People express their sexual orientation through their love, attachment, and intimacy with others, demonstrating a relationship with another as an essential component of defining one’s sexual orientation.⁴⁵ However, a person’s sexual and emotional attraction to another is fluid and therefore changeable over time.⁴⁶

A person’s sexual orientation is distinct from a person’s gender identity and expression.⁴⁷ Gender identity refers to “the individual’s own feeling of whether she or he is a woman or a man”⁴⁸ Gender identity is “self attribution of gender,”⁴⁹ and may or may not correspond to the person’s body or designated sex at birth. Gender expression describes “the external characteristics and behaviors that are socially defined as feminine or masculine including dress,

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Constitution Can Only Be Legitimate if the People Approve*, Awoko, 10 December 2013, available at: <http://awoko.org/2013/12/10/sierra-leone-news-constitution-can-only-be-legitimate-if-the-people-approve-justice-cowan/>.

⁴² *Id.*

⁴³ See Global Rights Sierra Leone Case Study, *supra* note 21 at page 36.

⁴⁴ *The Yogyakarta Principles: The Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, 2007, available at http://www.yogyakartaprinciples.org/principles_en.htm.

⁴⁵ *Sexual Orientation and Gender Identity*, American Psychological Association, available at: <http://www.apa.org/helpcenter/sexual-orientation.aspx>.

⁴⁶ See Global Rights: Partners for Justice, Pride Equality & Dignity Association, *Demanding credibility and sustaining activism: A guide to sexuality-based advocacy*, 1, 13, available at:

http://www.globalrights.org/site/DocServer/Guide__sexuality_based_initiative.pdf?docID=10083 [hereinafter “Guide to sexuality-based advocacy”].

⁴⁷ *Sexual Orientation and Gender Identity: Terminology and Definitions*, Human Rights Campaign, available at <http://www.hrc.org/resources/entry/sexual-orientation-and-gender-identity-terminology-and-definitions> [hereinafter “Human Rights Campaign”].

⁴⁸ See Guide to sexuality-based advocacy, *supra* note 46 at page 13.

⁴⁹ *Id.*

speech, mannerisms, and social interactions.”⁵⁰ For transgendered persons, their appearance and behaviors do not conform to the roles socially expected for their sex.⁵¹ More importantly, transgender people may be heterosexual, lesbian, gay or bisexual.

An extensive eight-month study conducted in 2012-2013 by three leading LGBTI organizations, Global Rights, Pride Equality, and Dignity Association, revealed the deeply rooted discrimination faced by the Sierra Leonean LGBTI community in nearly every facet of life.⁵² During their research phase, the organizations distributed questionnaires to members of the LGBT community to document incidents of discrimination. They found that “on the topic of violence and discrimination against LGBTI persons . . . LGBTI individuals in Sierra Leone are frequently subjected to discrimination and high levels of verbal abuse, violence and harassment by public officials, members of their communities and even their own families.”⁵³ The research also demonstrates the overwhelming silence from the LGBTI and human rights communities due to significant fear of exposure or association with the LGBTI community.⁵⁴ Without a voice, the LGBTI community in Sierra Leone is vulnerable to immense human rights violations.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See Global Rights Sierra Leone Case Study, *supra* note 21 at page 36; see also, U.S. State Department, *Sierra Leone 2012 Human Rights Report*, 2011, available at <http://www.state.gov/documents/organization/204375.pdf>.

⁵³ See Global Rights Sierra Leone Case Study, *supra* note 21 at page 4.

⁵⁴ *Id.*

IV. SUBSTANTIVE VIOLATIONS

A. Articles 2 (Non-discrimination) and 26 (Equality before the Law)

Articles 2(1) and 26 of the ICCPR protect the right of every individual to be treated with respect, equality, and nondiscrimination on the grounds of, inter alia, race, color, and sex.⁵⁵ In *Toonen v. Australia*, the Committee concluded that the reference to “sex” in Articles 2 and 26 of the Covenant includes a person’s sexual orientation.⁵⁶ The Committee found that the Tasmanian law criminalizing same-sex acts between consenting adults was a violation of the right to nondiscrimination and the right to privacy.⁵⁷ The Committee has on several occasions concluded that laws criminalizing sexual conduct by consenting same-sex adults is a violation of the ICCPR.⁵⁸ In recent Concluding Observations, the Committee also recommended that State parties take the “necessary steps to put an end to prejudice and the social stigmatization of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation,”⁵⁹ indicating that the State has a positive duty to ensure the right to non-discrimination is protected.⁶⁰

The HRC’s jurisprudence consistently condemns discrimination on the basis of sexual orientation. The Committee takes as fact that a law creating a separate status on the basis of sexual orientation is a clear violation of the ICCPR and further extends the reach of the Covenant to find that the implementation of a law is not necessary to establish the violation. Evidence that such a law has the intended discriminatory effect is sufficient to find that a State has breached Article 2 of the ICCPR. Since *Toonen* in 1994, the Committee has continued to define States’ obligation to protect individuals from discrimination on the basis of their sexual orientation.⁶¹ The Committee rejects the argument that laws criminalizing same-sex conduct are justified as “reasonable on grounds of protection of public health or morals, noting that the use of criminal law in such circumstances is neither necessary nor proportionate.”⁶² The Committee has also rejected the notion that a law criminalizing conduct by same-sex couples is not a violation of the ICCPR so long as it is not enforced. In the Concluding Observations for Togo in 2011, the Committee asserted that its “concerns [we]re not allayed by the information furnished by the

⁵⁵ ICCPR, *supra* note 7 at Arts. 2(1), 26.

⁵⁶ *Toonen v. Australia*, *supra* note 10 at para. 8.6.

⁵⁷ *Id.* at para 11.

⁵⁸ *See, e.g.*, Concluding Observations on Togo, CCPR/C/TGO/CO/4; Concluding Observations on Uzbekistan, CCPR/C/UZB/CO/3; Concluding Observations on Grenada, CCPR/C/GRC/CO/1; Concluding Observations on Tanzania, CCPR/C/TZA/CO/4; Concluding Observations on Chile, CCPR/C/79/Add.104; Concluding Observations on the United States of America, CCPR/C/USA/CO/3.

⁵⁹ *See* UN Human Rights Committee: Concluding Observations: Togo, 18 April 2011, CCPR/C/TGO/CO/4, para. 14; *see also*, UN Human Rights Committee: Concluding Observations: Mongolia, 25 March 2011, CCPR/C/MNG/CO/5, para. 9; UN Human Rights Committee: Concluding Observations: Poland, 27 October 2010, CCPR/C/POL/CO/6, para. 8.

⁶⁰ Nowak, Manfred. *U.N. Covenant on Civil and Political Rights CCPR Commentary*, 2d rev. ed., 38 (2005) (“The obligation to ensure consists of the obligation to *protect* individuals against interference by third parties.”).

⁶¹ UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, 17 November 2011, page 4.

⁶² *Id.* at page 6.

State party that the provision in question is not applied in practice.”⁶³ In *Toonen*, the Committee recognized that even if an individual has not been prosecuted under the law in question, the existence of the law itself is a threat to private life and liberty.⁶⁴

1. *De jure and De facto Discrimination*

Both *de jure* and *de facto* discrimination against the LGBTI community are prevalent in Sierra Leone. The 1861 Offences Against the Person Act criminalizes same-sex conduct by consenting adults and is a violation of Article 2 and Article 26 of the ICCPR due to the existence of the law and the impact the law has on perpetuating discriminatory practices in society. Section 61 of the 1861 Act criminalizes buggery with a penalty of “penal servitude for life or for any term not less than ten years.”⁶⁵ While the 1861 Act is not enforced in Sierra Leone it contributes significantly to the stigma and discrimination of people on the basis of their sexual orientation and gender identity. Many members of the LGBTI community hide their sexual orientation and gender identity to protect themselves against such discrimination by both State and non-State actors. The 1861 Act, like the Tasmanian law in *Toonen*, is a violation of the right to non-discrimination and equality before the law.

Sierra Leone is aware of the societal discrimination that takes place against its citizens due to their sexual orientation and gender identity. The National AIDS/HIV Secretariat of Sierra Leone has conducted several studies to understand MSM sexual minorities and develop comprehensive AIDS/HIV programs in Sierra Leone. The 2013 Population Size Estimation Study Report illustrates the experiences and rampant discrimination that exists in Sierra Leone towards MSM and transgender women. The report estimates that there are approximately 20,000 active MSM in Sierra Leone.⁶⁶ In the report, 246 MSM were interviewed and “60 reported having been excluded from a family, religious or social event . . . 96 MSM also reported experiencing insults and threats. Among these 96 respondents, threats were reported from family, community, colleagues and clients.”⁶⁷ The discriminatory treatment shown through these studies affects all aspects of the LGBTI community and violates their inherent right to equality before the law.

2. *Discrimination in the Health Sector*

Discrimination on the basis of sexual orientation and gender identity is extremely visible and highly prevalent in hospitals in Sierra Leone. The discriminatory behavior of hospital personnel prevents individuals from obtaining healthcare and is a violation of ICCPR’s Article 26 right to equality before the law. Dignity Association conducted a study to investigate the extent in which members of the LGBTI community are denied equal access to health services.⁶⁸ Medical professionals rely on real or perceived notions of the sexual orientation and/or gender identity of their patients and blatantly deny health services.⁶⁹ The data collected by Dignity Association reveals that a doctor’s knowledge of a patient’s LGBTI status increases the likelihood of the

⁶³ See Concluding Observations: Togo, *supra* note 59 at para. 14.

⁶⁴ *Toonen v. Australia*, *supra* note 10 at para. 2.3.

⁶⁵ *Offences Against the Person Act*, *supra* note 5 at Section 61.

⁶⁶ See *id.* at page 9.

⁶⁷ See *id.* at page 10.

⁶⁸ See generally, Global Rights Sierra Leone Case Study, *supra* note 21.

⁶⁹ *Id.* at page 3.

patient being denied treatment, assaulted verbally and/or embarrassed at the medical facility.⁷⁰ Out of the 80 participants in the survey, 33 percent reported not going to the doctor because of “fear of being discovered as gay”; 39 percent “self-medicated” to avoid seeing the doctor; and 28 percent were denied treatment because their ailments were linked to homosexuality.⁷¹ The report therefore indicates that a total of 90 percent of participants did not go to the hospital out of fear of being treated differently. Medical professionals denying treatment to individuals due to sexual orientation and gender identity is a violation of the right to non-discrimination and the right to equality before the law.

3. Discrimination in the Education System

Schools are one of the most discriminatory environments for members of the LGBTI community. Individuals are often entirely excluded from the ability to attend school or they are constantly ridiculed and persecuted by both teachers and students for their sexual orientation and gender identity. In June 2012, a gay student at the Government Secondary School Jimmy Gbagbo was in his third year of boarding school when a fellow student walked in on him and his partner having sex.⁷² The fellow student publicly disclosed the gay student’s sexual orientation to their classmates.⁷³ The gay student was subsequently verbally abused and beaten by his classmates.⁷⁴ The students would taunt him by calling him names such as “nasty ass fucker” and would tell him that, “homosexuals should be killed.”⁷⁵ The dormitory staff denied the gay student meals and the boarding school master later summoned him for questioning.⁷⁶ The administration eventually decided to expel the student and asserted, “homosexuals are not allowed to be in school” and maintained their position in disallowing the student to return to school.⁷⁷ The student was forced to relocate in order to continue his education.⁷⁸ The gay student’s expulsion is a blatant violation of Article 2 and Article 26. LGBTI students are bullied and harassed in schools throughout Sierra Leone and are forced to either attend school in extremely unsafe conditions or drop out of school completely. School staff and administration often enforce the rampant discrimination against LGBTI students under the guise of school policy. The government of Sierra Leone allows for violations of Article 2 and Article 26 by denying access to education and treating LGBTI students differently within the education system.

4. Hate Speech by Religious Institutions

Religious leaders play a fundamental role in perpetuating discrimination against the LGBTI community. In 2011, British Prime Minister David Cameron threatened to cut U.K. aid to countries that banned homosexuality. In response to Mr. Cameron’s announcement on tying aid to LGBTI rights, the president of the 500,000 strong Methodist Church in Sierra Leone, Reverend Arnold Temple, asserted that:

⁷⁰ *Id.*

⁷¹ *Id.* at page 15.

⁷² *Id.* at page 20.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

“The Church in Sierra Leone will do everything possible to protect democracy but our values will not accept the call from . . . Mr. Cameron for countries in the Commonwealth to accept the practice of lesbianism and gayism. We call on the government . . . to inform the British leader that such practices are unacceptable and we condemn it totally. Africa should not be seen as a continent in need to be influenced by the demonic threat as our values are totally different.”⁷⁹

Religious leaders continue to preach against homosexuality and advise their followers that God has forbidden such practices.⁸⁰ Muslim cleric, Sheikh Marrah, has led several demonstrations against government recognition of LGBTI rights in Sierra Leone.⁸¹ Osman Kargbo of Dignity Association, described an event where Sheikhs went out onto the streets in Freetown holding placards with derogatory words against LGBTI individuals.⁸² Religious institutions, both Muslim and Christian, are extremely influential in Sierra Leone and their messages constantly discriminate against LGBTI individuals. Religious hate speech portrays the lives of LGBTI individuals as inhumane, forbidden by God, and thus, immoral. Failure of the State to intervene in addressing religious hate speech sustains hatred and discrimination by religious community members within Sierra Leone.

LGBTI based discrimination is a deeply ingrained practice in Sierra Leone and permeates all aspects of a person’s life, in blatant violation of the ICCPR. Members of the LGBTI community are discriminated against by both State and non-State actors within different sectors of society, resulting in unequal access to healthcare, employment, and education. Sierra Leone’s failure to intervene and protect against discrimination aimed towards LGBTI individuals leads to significant human rights violations.

B. Article 6 (Right to Life)

Article 6 protects the inherent right to life and provides that no human being shall be arbitrarily deprived of his or her life. The expression "inherent right to life" should not be interpreted in a narrow or restrictive manner.⁸³ Moreover, this absolute right cannot be suspended or restricted, even during a declared state of emergency. The United Nations General Assembly, in a series of resolutions, has called on States “to ensure the protection of the right to life of all persons under their jurisdiction” and to investigate promptly and thoroughly all killings, including those motivated by the victim’s sexual orientation.⁸⁴ Therefore, the State is responsible for strictly controlling and limiting the circumstances that may deprive an individual from his or her life.

⁷⁹ See Global Rights Sierra Leone Case Study, *supra* note 21 at page 10; see also *Sierra Leone Says No To Gay Marriage*, News 24, 9 November 2011, available at: <http://www.news24.com/Africa/News/Sierra-Leone-says-no-to-gay-marriage-20111108>.

⁸⁰ See Global Rights Sierra Leone Case Study, *supra* note 21 at page 10.

⁸¹ *Id.*

⁸² Interview with Osman Kargbo (19 December 2013). On file with American University Washington College of Law, International Human Rights Law Clinic.

⁸³ UN Office of the High Commissioner for Human Rights, General Comment No. 6: The Rights to Life, U.N. Doc. CCPR 1982.

⁸⁴ UN Office of the High Commissioner for Human Rights, *Born Free and Equal: Sexual Orientation and Gender identity in International Human Rights Law*, page 15, HR/PUB/12/06/2012 [hereinafter “Born Free and Equal”].

Any failure of a State to exercise due diligence in this regard is a breach of its obligations under international law.⁸⁵

Sierra Leone's criminalization of same-sex conduct denies LGBTI individuals an inherent right to life. The Constitution provides that no person shall be deprived of his life except when the criminal offense under Sierra Leone laws calls for such punishment.⁸⁶ Consequently, Section 61 of Sierra Leone's 1861 Offences against the Person Act criminalizes homosexuality with a penalty of no less than ten years to life imprisonment.⁸⁷ Imposing a criminal sentence for homosexual behavior denies LGBTI persons an inherent right to life. The criminalization of gender identity and sexual orientation increases stigmatization and makes people "more vulnerable to violence and human rights abuses, including death threats and violations of the right to life, which are often committed in a climate of impunity."⁸⁸ Furthermore, The 1861 Act prevents the LGBTI community from reporting these crimes to law enforcement or the Human Rights Commission of Sierra Leone. The 1861 Act therefore allows acts of murder and violence against members of the LGBTI community to go largely unpunished. Sierra Leone has an obligation to enact legislation to prohibit discrimination by private parties, including hate crime laws that address the violence faced by the LGBTI community.

1. Hate Crimes against LGBTI Human Rights Defenders

Sierra Leone's Human Rights Commission Act of 2004 provides for the protection of human rights defenders, yet LGBTI human rights defenders continue to be victims of hate crimes and brutal murders. Thus, LGBTI activists who publicly advocate for equal rights and non-discrimination, exposing their sexual orientation or gender identity, face a higher risk of discrimination and violence in Sierra Leone.⁸⁹

Many LGBTI rights defenders have been forced into hiding to protect themselves from the constant ridicule, discrimination, and physical attacks from community members that go unaddressed by the government. Mohamed S. Kamara, an activist who organized a gay awareness campaign in 2011, came under heavy attack for advocating for gay rights. "We were constantly abused, spat on, and sometimes assaulted by people who thought we were filthy, not

⁸⁵ See *id.* at page 15; see also UN Human Rights Committee: Concluding Observations: Poland, 2 December 2004, CCPR/CO/82/POL/2004, para. 18; UN Human Rights Committee, Concluding Observations: El Salvador, 22 July 2003, CCPR/CO/78/SLV/2003, para. 16, Concluding Observations of the Committee on the Elimination of Discrimination Against Women on South Africa, 4 February 2011, CEDAW/C/ZAF/CO/4, para. 39; Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on her Mission to Mexico, 25 November 1999, E/CN.4/2000/3/Add.3, paras. 91-92; Report of the Special Rapporteur on Violence against women on her mission to El Salvador, 14 February 2011, A/HRC/17/26/Add.2, para. 28; Report of the Special Rapporteur on Human Rights Defenders on her Mission to Colombia, 4 March 2010, A/HRC/13/22/Add.3, para. 50; Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, 31 March 2010, A/HRC/14/24/Add.2, para. 74.

⁸⁶ *Political Constitution of Sierra Leone* (1991), Art. 16.

⁸⁷ *Offences Against the Person Act*, *supra* note 5.

⁸⁸ See Born Free and Equal, *supra* note 84 at page 33.

⁸⁹ Fahamu Refugee Programme, *Sierra Leone LGBTI Resources*, available at: <http://www.refugeelgalaidinformation.org/sierra-leone-lgbti-resources>; see also National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Sierra Leone, A/HRC/WG.6/11/SLE/1.

normal, and immoral. We LGBT activists in Sierra Leone had to go into hiding to save ourselves from homophobic physical and verbal attacks.”⁹⁰ The persecution he faced due to his LGBT activism was so severe that he was forced to flee Sierra Leone and is currently living outside the country. Unfortunately, Kamara’s exposure to persecution, threats, attacks, provocations and ridicule stemming from his LGBT rights advocacy is not an isolated occurrence.

Although some Sierra Leonean LGBTI activists such as Kamara are able to escape their persecutors, others are not so fortunate. FannyAnn Eddy, an activist for lesbian rights and founder of Sierra Leone’s Lesbian and Gay Association, was brutally murdered in a hate crime attack targeting her for her advocacy. FannyAnn was raped, stabbed and her neck fatally broken while working late at her organization’s office.⁹¹ The reason behind her murder was never definitively proven, but numerous international human rights groups agree that her death was undoubtedly motivated by hatred and intolerance towards the LGBTI community.⁹² The United Nations High Commissioner for Human Rights believed that FannyAnn was allegedly targeted for her “sexual orientation and outspokenness in support of gay and lesbian rights.”⁹³ The High Commissioner also notes that prior to her death, FannyAnn advocated the rights of sexual minorities in Sierra Leone before the Sub-Commission for the Protection and Promotion of Human Rights.⁹⁴ Her testimony before the UN Commission on Human Rights four months prior to her death described the denial of LGBTI existence throughout Sierra Leone and the resulting fear among many people in the LGBTI community.⁹⁵ FannyAnn discussed the constant state of fear from police, officials, family members and the community at large. We are in “fear of the police and officials with the powers to arrest and detain us simply because of our sexual orientation . . . [w]e live in fear that our families will disown us . . . [w]e live in fear within our communities, where we face constant harassment and violence from neighbors and others.” FannyAnn’s alleged murder, Emmanuel Sankoh, escaped from prison on July 11, 2005⁹⁶ and was never sentenced for this crime. Failure of the State to prosecute and the resulting fear that stemmed from FannyAnn’s brutal murder forced several activists to go into hiding. Sierra Leone has an obligation to enact legislation to prohibit discrimination by private parties, including through hate crime laws that address homophobic and transphobic violence.

⁹⁰ Brian Collins, *Sierra Leone: Spat Upon, I Still Became an LGBT Activist*, Erasing 76 Crimes, available at: <http://76crimes.com/2013/07/09/sierra-leone-spat-upon-i-still-became-an-lgbt-activist/>.

⁹¹ Human Rights Watch, *Sierra Leone: Lesbian Rights Activist Brutally Murdered*, 6 October 2004, available at: <http://www.hrw.org/news/2004/10/05/sierra-leone-lesbian-rights-activist-brutally-murdered>.

⁹² Immigration and Refugee Board of Canada, *Sierra Leone: Treatment of Homosexuals by Society and Government Authorities; Legal Recourse and Protection Available to Homosexuals who have been Subjected to Ill-Treatment (2005-2006)*, 22 February 2007, available at: <http://www.refworld.org/docid/469cd6bf1e.html>.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Human Rights Watch, *Testimony by Fannyann Eddy at the U.N. Commission on Human Rights*, 5 October 2004, available at <http://www.hrw.org/news/2004/10/04/testimony-fannyann-eddy-un-commission-human-rights> [hereinafter “Testimony by FannyAnn Eddy”].

⁹⁶ Carly Alan Johnson, *Off the Map: How HIV/AIDS Programming is Failing Same-Sex Practicing People in Africa*, International Gay and Lesbian Human Rights Commission, 2007, available at <http://iglhrc.org/sites/default/files/6-1.pdf>.

C. Article 7 (Prohibition of Torture and Cruel, Inhuman or Degrading Treatment or Punishment)

Most members of the LGBTI community in Sierra Leone hide their sexual orientation and gender identity to protect themselves from acts of cruelty and violence. Mr. Mohamed Kanneh, a human rights defender in Freetown states that “most LGBTI people in Sierra Leone are in the closet. We live in fear.”⁹⁷ The fear that has silenced the LGBTI community is due in large part to the countless violations of the right to be protected from torture and cruel, inhuman, or degrading treatment or punishment, as protected under Article 7 of the ICCPR.

1. Torture and Cruel, Inhuman or Degrading Treatment or Punishment

For the LGBTI community, suffering acts of violence and degrading treatment is a daily reality and a source of constant fear. George Freeman, founder and executive director of Pride Equality, an organization committed to promoting the human rights of LGBTI youth in Sierra Leone,⁹⁸ spoke publicly about this fear on an American radio show to an international audience.⁹⁹ Freeman spoke on behalf of himself and the LGBTI community and conveyed this message, “we face violence and exploitation at home, in our schools, communities, clubs, churches, mosques and the street. For me, violence has become a way of life.”¹⁰⁰

After appearing on the radio show, local newspapers in Sierra Leone published a story on Freeman bearing his photograph and the neighborhood in which he lived.¹⁰¹ The newspaper received a flood of hate mail and death threats directed to Mr. Freeman.¹⁰² One of the many threatening letters were published in the “Letter to the Editor” column.¹⁰³ On the day the letter was published, Freeman was attacked by two men on motorbikes.¹⁰⁴ The men punched him and cut his back with broken glass and metal.¹⁰⁵ When he returned to his car, he found notes stating, “[t]his is just the beginning,” and “[w]e know you people. We are coming after you. You bloody homosexuals.”¹⁰⁶ Freeman sought help from the government of Sierra Leone on multiple occasions.¹⁰⁷ He contacted Sierra Leone’s Human Rights Commission and did not receive a reply.¹⁰⁸ He also sought help from the Criminal Services Department and did not receive any results.¹⁰⁹ Freeman and two other LGBTI activists have since fled to Spain and have been

⁹⁷ Interview with Mohamed Kanneh (December 4, 2013). On file with American University Washington College of Law, International Human Rights Law Clinic.

⁹⁸ See Colin Stewart, *Anti-Gay Threats, Attacks Disrupt AIDS Fight in Sierra Leone*, Erasing 76 Crimes, 8 September 2013, available at: <http://76crimes.com/2013/09/08/anti-gay-threats-attacks-disrupt-aids-fight-in-sierra-leone/>.

⁹⁹ See George Freeman, *Being Gay in Sierra Leone*, *MTV Voices*, 30 July 2012, available at: <http://mtvvoices.com/en/2012/07/being-gay-in-sierra-leone/>.

¹⁰⁰ *Id.*

¹⁰¹ See Stewart, *supra* note 98.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

granted asylum.¹¹⁰

Stories like Freeman's are unfortunately commonplace in Sierra Leone. In June 2013, Mohammed Barrie was attacked by masked men after he refused to marry a woman in a marriage arranged by his father.¹¹¹ He was attacked by two men armed with machetes.¹¹² Barrie believes that his father sent the men to have him killed because of his sexual orientation.¹¹³ The degrading treatment and violence against members of the LGBTI community constitute both a physical and psychological harm that is prohibited by Article 7 of the ICCPR.¹¹⁴

2. *Lack of Protections by the Police*

The police force, as agents of the State, has a duty to protect Sierra Leonean citizens from cruel, inhuman or degrading treatment or punishment. The Committee noted in its General Comment on Article 7 that "States have a positive obligation to provide specific training for law enforcement officers and must hold responsible all those who violate the prohibition on torture."¹¹⁵ Law enforcement in Sierra Leone has not fulfilled its obligation to take measures to protect citizens against acts of violence and torture.

Not only does the police fail to protect against violations of Article 7, but these State actors are at times the perpetrators themselves. The 2010 U.S. State Department Human Rights Report found unofficial reports of police beating individuals where formal complaints were not filed due to fear of reprisal.¹¹⁶ In this report, police were found to primarily target men dressed as women.¹¹⁷ State actors violating the rights of individuals on the basis of sexual orientation and gender identity is hugely problematic because victims of violence lose trust in their government. Furthermore, when government actors commit human rights violations, it sends a message to the greater society that this behavior is tolerated and condoned. Discrimination and violence against the LGBTI community, in all forms and by any actor, constitute violations of Article 7 of the ICCPR.

The Inspector General of Police, Francis Munu, is the head of the police department and has a significant amount of influence on how the police in Sierra Leone behave with respect to the LGBTI community. Munu was appointed by the President and is both the functional and symbolic figurehead for the police department.¹¹⁸ Munu is notorious in the LGBTI community

¹¹⁰ *Id.*

¹¹¹ See Mohammed Barrie, *My Dad Sent Masked Men with Machetes to Murder Me for Being Gay, My Sierra Leone Online*, 19 June 2013, available at: http://mysierraleoneonline.com/sl_portal/site/news/detail/1284.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ See Report of the Special Rapporteur on the Question of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, para. 3, U.N. Doc. No. A/56/156, (July 3, 2001) (finding that the prohibition of torture is inclusive of "acts that cause mental suffering to the victim.").

¹¹⁵ UN Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, available at: <http://www.refworld.org/docid/453883fb0.html>

¹¹⁶ United States Department of State, 2010 Country Reports on Human Rights Practices - Sierra Leone, 8 April 2011, available at: <http://www.refworld.org/docid/4da56d8c8b.html>.

¹¹⁷ *Id.*

¹¹⁸ Interpol, *Sierra Leone*, available at: <http://www.interpol.int/Member-countries/Africa/Sierra-Leone>.

for doing little to protect individuals who have suffered violent attacks by members of the public and members of the police. After the attack on Freeman, the director of Pride Equality, Munu stated that the police “must be very careful when it comes to dealing with the issue of gays and lesbians because these are very strange phenomena in our society and we do not have any special protection for them because they are not recognized by the laws of Sierra Leone.”¹¹⁹ The Inspector General’s words of “caution” as well as the incidents in which police members attacked members of the LGBTI community, are a violation of Article 7 of the Convention. Munu, a representative of the State of Sierra Leone, has publicly stated that the laws of Sierra Leone do not protect lesbian and gay persons.¹²⁰ The exclusion of the LGBTI community from legal protections is an inherent violation of the ICCPR.

3. *Degrading Treatment of Trans Persons*

Transgender women in Sierra Leone are often insulted, harassed, physically attacked, and are portrayed negatively as being mentally unstable.¹²¹ Their appearances make them targets of discrimination by community members who view them as outcasts. Because transgender women are easy prey for attacks, they face constant discrimination in the workplace and are denied jobs by potential employers because of the way they act, talk, and dress.¹²² Sylvia Deen of the Concerned Women’s Initiative described blatant discrimination against transgender women in the workplace. She claims that despite having degrees from higher institutions, transgender women face difficulty in obtaining jobs because of the way they appear to their interviewers.¹²³ Mabinti Sumah, one of the few transgender women to come out in Sierra Leone, cannot secure a job despite her college education.¹²⁴ After two years of unsuccessful interviews, Mabinti finally asked her interviewer why she was denied the position for which she was highly qualified for. The employer told Mabinti she was rejected because her male clothing and dreadlocks did not portray her as a lady or as a reputable person. Transgender women are easily identifiable to community members, and as a result of the blatant discrimination against these individuals, many have gone into hiding.

D. Article 9 (Right to Liberty and Security of Persons)

Article 9 protects individuals from arbitrary arrests and detention and provides a detainee the right to be brought before a judge and be informed of the charges against him.¹²⁵ This provision also ensures the right to compensation for victims of unlawful arrest or detention.¹²⁶ Arbitrarily detaining LGBTI persons on the basis of their gender identity and sexual orientation is prohibited

¹¹⁹ See *Amnesty International condemns ‘homophobia’ in Africa*, BBC, June 25, 2013, available at: <http://www.bbc.co.uk/news/world-africa-23033423>.

¹²⁰ *Id.*

¹²¹ See Global Rights Sierra Leone Case Study, *supra* note 21 at page 9.

¹²² Interview with Sylvia Deen (December 19, 2013). On file with American University Washington College of Law, International Human Rights Law Clinic.

¹²³ *Id.*

¹²⁴ Interview with Mabinti Sumah (February 9, 2013). On file with American University Washington College of Law, International Human Rights Law Clinic.

¹²⁵ ICCPR, *supra* note 7, at Art. 9.

¹²⁶ *Id.* at Article 9(5).

under international law.¹²⁷ The Human Rights Committee calls on States to “ensure that anyone held solely on account of freely and mutually agreed sexual activities or sexual orientation should be released immediately and unconditionally.”¹²⁸ The Committee also noted concern with the incidents of people being attacked, or even killed, on account of their sexual orientation and at the small number of investigations.¹²⁹

Unfortunately, the 1861 Act exposes Sierra Leone’s LGBTI community to arbitrary arrests and detention because of their sexual orientation and gender identity. Police constantly subject members of the LGBTI community to threats, abuse, and detention. Sierra Leonean police are authorized under the 1861 Act to arrest and detain individuals because of their sexual orientation, and the resulting fear constrains the LGBTI community from reporting arbitrary detentions. Sierra Leone is fully aware that “[r]eporting on the deprivation of liberty is difficult to do as cases of arbitrary deprivation are seldom recorded.”¹³⁰ Without adequate police records, LGBTI individuals have no proper remedy for their arbitrary arrests and detention. Sierra Leone also admits that compensation for such detention is rare and inadequate.¹³¹

Because of the stigma associated with the 1861 Act, relatives and community members often take part in reporting individuals to the police by disclosing their sexual orientation and/or gender identity. An uncle reported his young nephew to the police after he found out he was gay.¹³² The young boy was soon arrested by the police and detained in a cell filled with feces and urine for twenty-four hours without food or water. The police did not take his statement or document his arrest and detention.¹³³ When the young boy asked why he was being detained, the female officer insisted that he was polluting the community with his bad lifestyle.¹³⁴ Similarly, a “gay man was arrested in Freetown for being dressed as a woman. He was held in detention for a full week without any charge being brought . . . most people like him would have been held indefinitely because there are very few [people] who are able to speak up.”¹³⁵ Sierra Leone’s failure to prevent, report, or adequately punish incidents of arbitrary detention on the basis of sexual orientation and gender identity violates Article 9 of the ICCPR.

¹²⁷ See Born Free and Equal, *supra* note 84 at 35; Working Group on Arbitrary Detention, Opinion No. 42/2008 para. 25; Working Group on Arbitrary Detention, Opinion No. 7/2002 on Egypt (E/CN.4/2003/8/Add.1); Working Group on Arbitrary Detention, Opinion No. 22/2006 on Cameroon (A/HRC/4/40/Add.1), para. 19; Working Group on Arbitrary Detention, Opinion No. 42/2008 on Egypt (A/HRC/13/30/Add.1); and No. 25/2009 on Egypt (A/HRC/16/47/Add.1). See also Report of the Working Group on Arbitrary Detention.

¹²⁷(A/HRC/16/47), Annex para. 8(e) (categorizing deprivations of liberty based on discrimination on the ground of sexual orientation, in violation of international law, as arbitrary).

¹²⁸ Born Free and Equal, *supra* note 89 at 36. See generally UN Human Rights Committee, Concluding observations of the Human Rights Committee: Islamic Republic of Iran, para. 10, CCPR/C/IRN/CO/3/2011, available at http://iranhrdc.org/files/pdf_en/UN_Reports/CCPR.C.IRN.CO.3.pdf.

¹²⁹ Born Free and Equal, *supra* note 89 at 36.

¹³⁰ See Sierra Leone’s First Report, *supra* note 15, Centre for Accountability and Rule of Law, *Sierra Leone: NGO Comments on the State Party Report (CCPR/C/SLE/1) Prior to the List of Issues* (2013), available at: http://www2.ohchr.org/english/bodies/hrc/docs/ngos/CentreAccountabilityRuleLaw_SierraLeone_HRC108.pdf.

¹³¹ See Sierra Leone’s First Report, *supra* note 15; see also Centre for Accountability and Rule of Law, *Sierra Leone: NGO Comments on the State Party Report (CCPR/C/SLE/1) Prior to the List of Issues*, (2013), available at http://www2.ohchr.org/english/bodies/hrc/docs/ngos/CentreAccountabilityRuleLaw_SierraLeone_HRC108.pdf.

¹³² See Global Right Sierra Leone Case Study, *supra* note 21 at 22.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Testimony by Fannyann Eddy, *supra* note 95.

E. Article 17 (Right to Freedom from Arbitrary Interference with Privacy, Family, and Home)

Laws that criminalize sexual conduct between consenting same-sex adults are an inherent violation of the right to privacy. Article 17(1) establishes that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.”¹³⁶ In *Toonen v. Australia*, the Committee established that laws criminalizing same-sex conduct expressly violate the right to privacy as protected by Article 17.¹³⁷ The 1861 Act of Sierra Leone criminalizes conduct between consenting same-sex adults with a punishment of life imprisonment and is a violation of Article 17. Since *Toonen*, the Committee has repeatedly urged States to reform or repeal laws criminalizing same-sex conduct between consenting adults.¹³⁸ In discussing similar laws which violate the right to privacy, the Committee has additionally discussed the significant impact such laws can have in increasing discrimination. In its concluding observations for Chile, the Committee expressed their serious concerns regarding the potential for continued legislation criminalizing same-sex conduct to “reinforce attitudes of discrimination between persons on the basis of sexual orientation.”¹³⁹ The 1861 Act in Sierra Leone is an inherent violation of the right to privacy and has enabled and perpetuated widespread discrimination on the basis of sexual orientation and gender identity.

1. Corrective Rape

One of the most horrific violations of the right to privacy takes place in the form of corrective rape. Corrective rape is an act of violence largely committed by men as a way to “cure” lesbians of their perceived sexual orientation and/or gender identity.¹⁴⁰ Corrective rape is highly prevalent in Sierra Leone and is a source of fear for many lesbian women. The prohibition of unlawful interference of a person’s privacy, protected by Article 17(1), is further protected in Article 17(2) by providing that all persons have a right to “protection of the law against such interference or attacks.”¹⁴¹ The high prevalence of corrective rape in Sierra Leone indicates that such protections are not provided.

¹³⁶ ICCPR, *supra* note 7 at Art. 17.

¹³⁷ See *Toonen v. Australia*, *supra* note 10 at para. 8.6.

¹³⁸ See UN Human Rights Committee: Concluding Observations: Togo, 18 April 2011, CCPR/C/TGO/CO/4, para. 14; UN Human Rights Committee: Concluding Observations: Uzbekistan, 7 April 2010, CCPR/C/UZB/CO/3, para. 22; UN Human Rights Committee: Concluding Observations: United Republic of Tanzania, 6 August 2009, CCPR/C/TZA/CO/4, para. 22; UN Human Rights Committee: Concluding Observations: Botswana, 28 March 2008, CCPR/C/BWA/CO/1, para. 22; UN Human Rights Committee: Concluding Observations: Algeria, 12 December 2007, CCPR/C/DZA/CO/3, para. 26; UN Human Rights Committee: Concluding Observations: Chile, 18 May 2007, CCPR/C/CHL/CO/5, para. 16; UN Human Rights Committee: Concluding Observations: Barbados, 2 June 2009, CCPR/C/BRB/CO/3, para. 13; UN Human Rights Committee: Concluding Observations: United States of America, 12 February 2008, CCPR/C/USA/CO/3, at para. 9; UN Human Rights Committee: Concluding Observations: Kenya, 31 August 2012, CCPR/C/KEN/CO/83, para. 8; UN Human Rights Committee: Concluding Observations: Egypt, 28 November 2002, CCPR/C/EGY/CO/76, para. 19.

¹³⁸ *Id.*

¹³⁹ See UN Human Rights Committee: Concluding Observations: Chile, 30 March 1999, CCPR/C/79/Add.104, para. 20.

¹⁴⁰ Lorenzo De Silvio, *Correcting Corrective Rape: Carmichele and Developing South Africa’s Affirmative Obligations To Prevent Violence Against Women*, 99 *Geo. L.J.* 1469, 1470 (2011).

¹⁴¹ ICCPR, *supra* note 7 at Art. 17(2).

Corrective rapes are often planned and initiated by family members in an effort to change the sexual orientation of lesbian women and girls.¹⁴² It is common rhetoric for men to propose sexual intercourse as a way to “correct” a woman sexual orientation.¹⁴³ Women are often told, “you just need to have sex with a man” or “if a man has sex with you, you will be fixed.”¹⁴⁴ For Isata Sandi, a girl from Bo, this form of harassment was and continues to be a daily occurrence.¹⁴⁵ A group of men would often gather around her home to harass Isata and tell her that she should know what it is like to be with a strong man and that they would get her soon.¹⁴⁶ One night, Isata’s girlfriend was at a family meeting and Isata was home alone.¹⁴⁷ All of a sudden, two men broke into her home and began punching her face and hitting her all over her body.¹⁴⁸ She shouted and screamed for help but nobody came to help her.¹⁴⁹ She shouted and screamed as they attempted to “correct” her sexual orientation.¹⁵⁰ She fell quiet when they left and lay there helplessly until her girlfriend returned.¹⁵¹

When Isata’s girlfriend came home, she rushed Isata to the hospital and called the police.¹⁵² The police came to the community and questioned the two men.¹⁵³ The two men told the police that Isata was a lesbian and that she was a proponent of same sex marriage.¹⁵⁴ Upon hearing this information, the police stopped their questioning and let the two men go.¹⁵⁵ The two men still live in the same neighborhood and Isata often sees them near her home.¹⁵⁶

Corrective rape is a brutal reality for the lesbian community in Sierra Leone. Lesbian women are often raped in their community by perpetrators who are known to them and victims rarely report the crime due to a fear of retaliation and a lack of action by the police department. The International Rescue Committee coordinates rape treatment centers in Freetown and has reported that only “one-half of 1 percent of the rapes it deals with in Sierra Leone lead to convictions.”¹⁵⁷ The legal mechanisms to hold perpetrators of rape accountable are not in effect and rape is viewed as a societal norm rather than a crime. Despite the recently established Sexual Offences Act of 2012,¹⁵⁸ incidents of rape have steadily increased.¹⁵⁹ The Human Rights Committee

¹⁴² Interview with Anonymous Source (January 3, 2014). On file with American University Washington College of Law, International Human Rights Law Clinic.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Interview with Isata Sandi (February 10, 2014). On file with American University Washington College of Law, International Human Rights Law Clinic.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ See Nicholas D. Kristof, *One Girl’s Courage*, The New York Times, 12 October 2011, available at: http://www.nytimes.com/2011/10/13/opinion/one-girls-courage.html?_r=0&adxnnl=1&adxnnlx=1388189035-f0vzIt1dUVE7pvn7K+c0JQ.

¹⁵⁸ See Sexual Offences Act, (2012) (making it against the law for a person to “intentionally commit(s) an act of sexual penetration with another person without the consent of that person”).

noted, in General Comment 16, that Article 17 establishes a right to privacy and “States are under an obligation to provide adequate legislation to that end. Provisions must also be made for everyone effectively to be able to protect himself against any unlawful attacks that do occur and to have an effective remedy against those responsible.”¹⁶⁰ The State of Sierra Leone does not adequately protect victims against these extreme violations of their privacy and does not hold perpetrators accountable as required by national law and Article 17 of the ICCPR.

F. Article 19 (Freedom of Opinion and Expression)

Article 19 protects the freedom of expression and opinion. The Declaration of Principles on Freedom of Expression in Africa stresses the “fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy, and as a means of ensuring respect for all human rights and freedoms.”¹⁶¹ More importantly, freedom of expression allows human rights defenders to challenge government infliction of human rights abuses. Unfortunately, LGBTI human rights activists in Sierra Leone suffer constant ridicule, threats, and violence from State and non-State actors. In 2011, Freeman promoted LGBTI human rights during an interview on Sierra Leone’s radio program, “Good Morning Sierra Leone.” Not only did Freeman personally suffer from vicious threats, but the radio program received angry responses from numerous community members. One text message read, “[y]ou should not have granted this gay man an interview, what a shame! This organization must be banned and not allowed to operate in Sierra Leonean society.”¹⁶² Activists, such as Freeman, are extremely brave for publicly discussing the violence suffered by the LGBTI community. Discrimination and violence towards individuals on the basis of gender identity and sexual orientation is highly prevalent in Sierra Leone and violates the ICCPR.

¹⁵⁹ See, Dep’t of State 2011 Country Reports, *supra* note 116 at page 20.

¹⁶⁰ U.N. Human Rights Comm, General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17), para. 11, (1988), available at: <http://www.unhchr.ch/tbs/doc.nsf/0/23378a8724595410c12563ed004aeeed?Opendocument>.

¹⁶¹ Icelandic Human Rights Center, *The Rights to Freedom of Expression and Religion*, available at <http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/humanrightsconceptsideasandfora/substantivehumanrights/therighttofreedomofexpressionandreligion/>.

¹⁶² See Global Rights Sierra Leone Case Study, *supra* note 21 at page 24.

V. CONCLUSION

Sierra Leone has a devastating history of gross human rights violations. During the violent civil war 50,000 people were killed and 2,000,000 people were displaced.¹⁶³ The civil war was extremely divisive and was rooted in significant prejudice. As this country continues to recover, the prevalence of violence must be eliminated and should not be reinforced by State sanctioned discrimination against persons on the basis of their sexual orientation or gender identity.

This report highlights the widespread human rights violations that continue to take place in Sierra Leone. The State of Sierra Leone cannot move forward in its commitment to human rights without repealing the inherently discriminatory law, the 1861 Offences Against the Person Act. The government of Sierra Leone must take responsibility to protect their citizens against acts of violence and discrimination. The LGBTI community lives in silence and fear.

Sierra Leone's participation in the 110th Session of the U.N. Human Rights Committee indicates that the government is committed to comply with all provisions of the International Covenant on Civil and Political Rights. With the ongoing constitutional reform process currently taking place in the State of Sierra Leone, the government has a unique opportunity to address the aforementioned violations of the ICCPR and expressly include the LGBTI community in the protections afforded by the Constitution. The State of Sierra Leone's laws and practices must comply with the human rights principles required by the ICCPR.

¹⁶³ See *The IRC in Sierra Leone*, International Rescue Committee, available at: http://www.rescue.org/where/sierra_leone.

VI. RECOMMENDATIONS

Based on the findings conveyed in this report, Concerned Women's Initiative for Sierra Leone and Dignity Association of Sierra Leone, Heartland Alliance's Global Initiative for Sexuality and the American University Washington College of Law International Human Rights Law Clinic request the following recommendations:

- A. Repeal Sierra Leone's 1861 Offenses against the Person's Act and other discriminatory laws that may be applied to criminalize any activity between consenting adults.
- B. Enact comprehensive anti-discrimination legislation that specifically addresses discrimination on the basis of sexual orientation and gender identity.
- C. Recognize and work to combat intersecting forms of discrimination.
- D. Refrain from arbitrary detention and arrest on grounds of perceived or actual sexual orientation and gender identity.
- E. Require that the Human Rights Commission of Sierra Leone and the national police document every case of arbitrary detention and provide adequate compensation to victims.
- F. Investigate every hate crime committed against a citizen of Sierra Leone due to their sexual orientation and gender identity.
- G. Protect LGBTI human rights and promote understanding and respect for LGBTI people in Sierra Leone. The State is responsible for campaigning against violence, hate crimes and exploitation of LGBT people in Sierra Leone to end homophobia and trans-phobia.
- H. Develop Sexual Orientation and Gender Identity training for doctors and nurses to change their homophobic and trans-phobic attitude towards LGBTI individuals to provide adequate healthcare for all individuals.
- I. Develop Sexual Orientation and Gender Identity training for police officers to change their homophobic and trans-phobic attitude towards LGBTI individuals.

VII. QUESTIONS

We encourage the State to consider the following questions with regard to its obligation to protect and ensure the human rights of LGBTI people in Sierra Leone:

- A. Does the State of Sierra Leone intend to repeal the 1861 Offences Against the Persons Act?
- B. How does the State of Sierra Leone intend to hold State actors accountable for persecution, threats, and violence against LGBTI citizens?
- C. How does the government intend to address the problem of inadequate investigation of hate crimes?
- D. How does the State plan to ensure that government officials will not arbitrarily arrest and detain individuals on grounds of their sexual orientation and gender identity?
- E. How does the Commission of Human Rights plan to promote the protection, development and attainment of human rights that are inclusive of LGBTI rights?
- F. Does the State of Sierra Leone intend to include protections for sexual orientation and gender identity in the constitutional review process?