



## HUMAN RIGHTS COMMISSION OF SIERRA LEONE

### Position of the Human Rights Commission of Sierra Leone on the Bill Entitled The Sexual Offences (Amendment) Act, 2019

24<sup>th</sup> June 2019

The Human Rights Commission of Sierra Leone is a statutory body responsible for the protection and promotion of human rights in Sierra Leone. The Commission is required under Section 7 (2)(c) of its Act No. 9 of 2004 to:

*‘review existing legislation and advise the government concerning compliance by such legislation with the obligation of Sierra Leone under international treaties or agreements’*

and Section 7(2)(d) which states to:

*‘advise the government concerning draft legislation, which may affect human rights’.*

HRCSL recognizes the effort made by government to address the issue of rape and other sexual offences observed to be on the increase in the country.

In view of the foregoing, HRCSL makes the following submissions on the Bill entitled the Sexual Offences (Amendment) Bill 2019, to the Legislative Committee of Parliament.

The Commission’s position in the review process is to ensure a human rights friendly Act that protects and promotes the rights of both victims and perpetrators. HRCSL took cognizance of the following national, regional and international human rights instruments:

- Section 23 (1) of the 1991 Constitution of Sierra Leone
- The Child Rights Act 2007
- Children and Young Persons Act, CAP 44
- Article 7 of the African Charter on Human and Peoples Rights (ACHPR)
- Article 5 (d) of the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol)
- Articles 17 & 27 of the African Charter on the Rights and Welfare of the Child (ACRWC)
- Article 14 of the International Convention on Civil and Political Rights (ICCPR)

Having carefully reviewed the provisions in the Bill and noting the current situation on sexual offences in the country, HRCSL makes the following observations and recommendations for consideration by the Legislative Committee.

1. **Remit:** The Bill is limited in scope as it only deals with changes to the punishment for sexual penetration of a child, adding an offence of “aggravated sexual assault”, speeding

up the prosecution process and enabling the Rules of Court Committee to make practice directions.

In reality, for this Act to really have the intended effect of providing more safeguards for women and children, there needs to be a more thorough review of the Act as promised in the President's statement wherein he said ***"My government will continue to work ... to address gaps and deficiencies in the Sexual Offences Act of 2012" and "Community engagement with communities and civil society in dialogues to eliminate the culture of compromise and silence around sexual violence"***.

At present, the FSU does not have the resources to properly investigate sexual offences. Most of the crimes listed in the current Act are not been charged against perpetrators, especially where proving penetration is difficult due to lack of forensic testing equipment. There are no government operated safe homes and no funds have been set aside to enable victims to attend court and receive other support services needed for them to recover from the trauma they have experienced.

The Bill fails to also focus on prevention and to put duties on traditional leaders and religious authorities to ensure their communities are safe. Free medical services continue to be a challenge as funding has not been allocated to the Ministry of Health specifically for medical complications arising from the sexual assault or rape.

The Ministry of Social Welfare needs funding to hire social workers to assist victims and to monitor vulnerable women and children in their communities.

**Recommendation:** That the scope of the Amendment Act be broadened to include provisions relating to crime prevention, inclusion of duties on traditional authorities and religious leaders.

2. **Section 1:** The definition of sexual act in Section 1 of the Bill is not clear as it does not identify for whose sexual gratification the sexual act is undertaken, especially when it is then used in the context of aggravated sexual assault for children.

**Recommendation:** That the definition of "sexual act" is made clear that it is for the sexual gratification of the accused person.

3. **Section 2:** Section 2 of the Bill is not drafted clearly to indicate that the minimum penalty is 15 years and the maximum is life imprisonment.

**Recommendation 1:** that it be amended to read as follows:

*"A person who intentionally commits an act of sexual penetration with another person without the consent of that other person commits the offence of rape and is liable on conviction to a term of imprisonment not less than fifteen years up to a maximum of life imprisonment".*

Further, this section has traditionally been understood to refer to non-consensual sex with an adult, but has also erroneously been used to charge a juvenile who has non-consensual

sex with an adult. But Children & Young Person's Act, Cap. 44 states that a child cannot be punished by a term of imprisonment and that juvenile courts alone can handle matters involving a child, unless they are jointly charged with an adult. In addition, a child under 14 years cannot be held criminally liable for his/her actions (Child Rights Act 2007).

**Recommendation 2:** That the Bill sets out the punishment for rape by a juvenile that is not in contravention of child rights law.

4. **Section 3:** This increases the penalty for sexual penetration to life imprisonment but is not explicit enough to show that such penalty does not apply to children (juveniles) due to the reference to section 24 of the Children and Young Person's Act. In addition section 210 of the Criminal Procedure Act explicitly states that children and young persons must be tried under the provisions of Cap. 44.

**Recommendation 1:** Section 3 of the Bill needs to be redrafted to clearly show that the section (and the life imprisonment penalty) does not apply to perpetrators who are children (i.e. under age 18 years). Also, there should be a minimum sentencing especially in cases where the offence was committed by a juvenile.

**Recommendation 2:** A further penalty needs to be stated wherein the accused is a juvenile or both minors are in a "boyfriend/ girlfriend relationship wherein both cannot consent to sex".

5. **New Section 19A:** HRCSL notes that the 'sentence' under Section 19 (A) 1) of the Bill which states 'not less than fifteen years' should be reviewed as the offence is not as grave as that of rape or sexual penetration. Furthermore, the Offences Against the Person's Act 1861 which deals with the offence of Assault only prescribes the maximum sentence of three years and therefore it is disproportionate to prescribe a minimum sentence of fifteen years for aggravated assault.

It is also unclear why the aggravated assault section is included after the proposed amended section 19. Is it purely for sexual assault against a child? If so, it needs to be clearly stated as "against a child" rather than "against a person".

Further, the alternative conviction provision should also be applicable for sexual touching of a child and also even for indecent assault.

**Recommendation 1:** that the penalty for aggravated sexual assault should be amended to read not more than 15 years

**Recommendation 2:** That section 19A be redrafted to use the term "against a child" and not "against a person".

**Recommendation 3:** That an alternative conviction proviso also be included for section 7 of the Act (indecent assault if no conviction for rape) and section 20 (sexual touching if no conviction for sexual penetration).

6. **Section 4:** Section 4 of the Bill replaces Section 42 of the original Act and changes the procedure for handling this matter in court. The right to fair trial and equal protection before the law is guaranteed in the 1991 Constitution and other regional and international instruments and includes:

- the right to be heard
- the right to examine witnesses against you
- the right to be tried without undue delay
- the right to have adequate facilities in preparation of his defence which includes the establishment of a forensic laboratory

In order for the accused to have a right to a fair trial, the proposed Section 42(4) needs to include a reasonable timeframe for the indictment to be served on the accused so s/he can adequately prepare their defence. Similarly the proposed 42(5) also needs a minimum timeframe.

Further, this section does not apply to children and therefore there must be specific provisions for cases where the accused is a child and so must be tried by the juvenile court.

**Recommendation 1:** That the proposed section 42(4) be amended to include a reasonable timeframe, no less than 7 days, for the accused to be served the indictment and summary of witness statements before the trial commences in the High Court.

**Recommendation 2:** That the proposed section 42(5) be amended to include a reasonable timeframe, no less than 48 hours, for the accused to be served additional witness statements during the trial.

**Recommendation 3:** That the procedure applicable to children offenders be clearly stated in this section so that it complies with Cap. 44 or amends that legislation, but not to the detriment of a child offender.

7. **Section 5:** The proposed new section 42A only gives the power back to the Rules of Court Committee (RCC) to make guidelines. However in many occasions the RCC has failed to act. It is therefore prudent that this Bill makes it mandatory for the RCC to develop guidelines.

**Recommendation:** That section 42A be amended to read “shall make rules” instead of “may make rules”.

## Omissions in the Amendment Bill

This is a golden opportunity to amend the failings of the current Sexual Offences Act and make it stronger. As a result these other recommendations are suggested for an overall review of the Act.

1. **Section 25 of the SOA:** Sexual abuse by a person in authority needs to be expanded to also cover adult victims and made more explicit. For example the Bill fails to include a penalty for sexual conduct by a teacher or lecturer against schoolgoing children or students (aged 18 years and above) for sex in exchange for grades. Similarly the circumstance of a Minister or other public authority using their position to obtain sex from vulnerable victims or again sexual favours for any person in a position of authority (especially bosses) in relation to the victim. Even non-governmental organisations (NGO) workers have a safeguarding policy that prevents them from exploiting vulnerable beneficiaries during humanitarian crises.

**Recommendation:** That a new section 25A be created and the categories of persons listed under current section 25 (2) be incorporated and amended to include (i) teachers and lecturers, (ii) religious and traditional leaders, (iii) Minister and other government officials, (iv) employees of organisations providing humanitarian assistance in times of crisis

2. **Sections 26 & 27:** these relate to producing and distributing child pornography and producing and accessing pornography. With the advent of social media this section needs to be expanded to include distribution via social media.

There is also need for offences that could be committed using social media i.e. Facebook, WhatsApp, and email to be incorporated.

**Recommendation:** That sections 26 and 27 be amended to include specific reference to producing/ distributing or accessing pornography on social media.

3. **Penalty for compromising sexual offence cases:** HRCSL is of the view that a penalty should be levied on those people who compromise offences of sexual nature and that the Bill should have a section which will make the above compromise an offence. This is in line with the protection of women and children's right as espoused in Article 5 of the Maputo protocol (*all other forms of abuse and intolerance*), the African Charter on the Rights and Welfare of Children and the Child Rights Act (2007).
4. **Redress for malicious prosecution:** The protection of the rights of alleged perpetrator is not guaranteed in this Act. The Bill puts much pressure on the alleged perpetrator. HRCSL believes that the right of the alleged perpetrator should also be protected. Therefore, HRCSL recommends that a new section be included in the Bill which will be geared towards prosecuting alleged victims who make false allegations.

5. **Section 36:** Under sentencing, there is provision for compensation to be ordered. However this is rarely ordered by the court. It is therefore recommended that it be made compulsory under section 36(3), rather than discretionary.

**Recommendation:** that section 36(3) of the SOA be amended to make it compulsory for the court to order compensation based on the evidence presented to it.

6. **Section 39:** This relates to free medical treatment. In the President's speech he stated that he would be "*Directing close interagency collaboration in ensuring that the full cycle of services from reporting, investigation, treatment, after-care, and prosecution is free, uncomplicated, and delivery speedily*" as well as "*Investment in training specialised Police personnel, providing adequate forensic facilities, collecting and collating comprehensive sexual violence data, delivering free medical services to survivors, and catering for safe homes and psychosocial care for survivors.*" Again the President mentioned "*A dedicated National Emergency Telephone Number for reporting Rape and Sexual Violence would be made available to the public*".

For victims to be properly cared for by the State, it is necessary for the services provided to them to be expanded and given a statutory footing. Such services should include interim care/ shelter, psychosocial counselling, assistance with court attendance and the national emergency telephone number.

**Victim & Witness protection:** the state should ensure that victims and witnesses who return to their communities be protected from intimidation, discrimination and forceful eviction.

**Recommendation 1:** That either section 39 be amended to provide extra services to victims such as access to an interim care centre or shelter psychosocial counselling, assistance with court attendance, National emergency telephone number or a new section 39A be drafted to include those services and requiring the Ministry of Social Welfare to coordinate access to those services.

**Recommendation 2:** Traditional authorities and Local Council leaders should develop community bye laws that would ensure the safety and security of the persons when they return to their communities.

7. **Child Rights Act requirements:** The CRA also includes additional duties to duty bearers in the community and these needs to be incorporated after section 39 of the Act.

Section 38(6) of the Child Rights Act states "*Any service provider, parent and community member shall report sexual and other forms of abuse to family support units of the Sierra Leone Police who shall be required to maintain a register of child abusers and to take special measures to protect children from such persons.*"

Further section 57 of the CRA states *“The Sierra Leone Police shall maintain at each police station, a Family Support Unit that shall have responsibility to deal with alleged juvenile offenders, child victims of domestic violence and to monitor proven child abusers.*

Again section 59 of the CRA states *“Any person with information on – (a) child abuse... shall report the matter to the district council”*. And in section 62(1) it states *“If the district council has reasonable grounds to suspect child abuse...it shall direct a probation officer or social welfare officer accompanied by the police to enter and search the premises where the child is kept to investigate”*.

In addition, in his speech, the President stated that there would be *“Investment in training specialised Police personnel, providing adequate forensic facilities, collecting and collating comprehensive sexual violence data”*. This data collection is necessary for the police sex offender registry and will also inform government on the plans it should put in place to deal with the epidemic.

**Recommendation 1:** That the duty to report to report sexual abuse to the FSU under the section 38(6) of CRA and the duty of the district council under sections 59 & 62 of the CRA be incorporated into the Act. It should also specifically mention a duty for religious and traditional leaders.

**Recommendation 2:** That the FSU or other specialized department maintains and regularly updates a register of child abusers as per section 38(6) of the CRA and sexual offenders.

**Recommendation 3:** That the court maintains a register of all sexual offence matters prosecuted before it and prosecutors can use it for a background check on convicted sexual offenders prior to sentencing.

**Recommendation 4:** That social workers from the Ministry of Social Welfare monitor and support child sex offenders during proceedings and develop programmes to rehabilitate them from unlawful sexual behavior.

**Recommendation 5:** that data collection and analysis be incorporated into the Act or be included in regulations for the implementation of the Act.

8. **Section 40:** This refers to special measures for vulnerable witnesses. It is submitted that all alleged sexual abuse cases should qualify the victim to be a vulnerable witness. As such, one or more of the special measures should always apply in the prosecution of such matters. Further, the accused is presumed innocent until proven guilty and therefore should also have his reputation protected until his trial is completed. Accordingly this section needs to be revised so that it gives protection to both parties.

**Recommendation:** That section 40(1) be repealed and section 40(2) be amended to ensure that in all sexual offence cases the court shall apply one or more of the special measures for witnesses and the accused set out therein.

9. **Section 41:** This prevents publication of details of a victim of sexual offence. Is there need for a proviso for journalists who bring the plight of child victims of rape to the spotlight so that stringent action can be taken against the alleged perpetrator?
10. **Rehabilitation:** The Act is silent on this issue. Best practice would require that convicted persons have to undergo a rehabilitation treatment programme to deal with their criminal sexual behavior at the Correctional Centre or Approved School before they can be released on parole or Presidential pardon. The Correctional Centre in collaboration with the Ministry of Social Welfare should design and implement the treatment programme.

**Recommendation:** That a new section be inserted into the Act requiring the Correctional Centre in collaboration with the Ministry of Social Welfare to design and implement the treatment programmes for convicted sex offenders and that completion of the programme would be a prerequisite before the offender can be released on parole or Presidential pardon.

Signed: 

**Patricia Narsu Ndanema**

**Chairman**



## ANNEX 1

### Background

On 7<sup>th</sup> February 2019 HE President Bio declared a National Emergency on rape of young girls at State House. The declaration was in response to the high rate of sexual offences perpetrated against young girls and leading to terrible consequences for them. The Declaration was published and gazetted on 19 February 2019 and was approved in Parliament, amidst controversy, on Friday 22<sup>nd</sup> February. A Certificate of Approval on the Proclamation of a State of Emergency for rape and sexual violence was presented to the President on Monday 25<sup>th</sup> February 2019.

On the same date as the proclamation, 7<sup>th</sup> February 2019, in a Memorandum signed by the Administrative Assistant to the Chief Justice, it gave directives to all judges that they should comply with the penalty for sexual penetration for minors (17 years) and below is life imprisonment as declared by President Bio. This has taken effect with reports of men being sentenced to life imprisonment in Bo and Freetown.

By Government Gazette dated 15<sup>th</sup> May 2019 a bill entitled The Sexual Offences (Amendment) Bill 2019 was published and is currently being debated in Parliament.

There have been no enabling regulations to ensure compliance with the Declaration.

In his Declaration speech, the President said as follows:

- Each month hundreds of cases of rape and sexual assaults were being reported against women, girls and babies with some of the fatalities being as young as three months old and that 70% of survivors of the traumatic experience being under the age of 15.
  - Of nearly 3,000 reported sexual assault cases, 602 of the survivors became pregnant; 7 of them contracted HIV/AIDS; 2,404 had STDs; thousands more were scarred and traumatised by the ordeal. Only 39 of these 3,000 reported cases were successfully prosecuted whilst 2,961 of the survivors of sexual violence were denied justice.
1. My government will continue to work ... to address gaps and deficiencies in the Sexual Offences Act of 2012.
  2. Directing close interagency collaboration in ensuring that the full cycle of services from reporting, investigation, treatment, after-care, and prosecution is free, uncomplicated, and delivery speedily.
  3. Investment in training specialised Police personnel, providing adequate forensic facilities, collecting and collating comprehensive sexual violence data, delivering free medical services to survivors, and catering for safe homes and psychosocial care for survivors.
  4. Community engagement with communities and civil society in dialogues to eliminate the culture of compromise and silence around sexual violence.
  5. Special Division for Rape and Sexual Penetration of Minors be created by the Sierra Leone Police to speedily handle all cases of Rape and Sexual Penetration of Minors.
  6. That the Chief Justice considers creating a Special Division with assigned judges to deal with cases of Rape and Sexual Violence.

7. That with immediate effect, sexual penetration of Minors is punishable by LIFE IMPRISONMENT;
8. that the High Court should consider 136 Proceedings in the High Court in order to speed up prosecution and trial of ALL new cases of Rape and Sexual Violence.
9. That Law Officers Department should consider to charging all persons accused of Rape and Sexual Violence with an offence of "Aggravated Assault".
10. A dedicated National Emergency Telephone Number for reporting Rape and Sexual Violence would be made available to the public.