Assessment of Legal Environment for HIV and AIDS in Sierra Leone

FINAL REPORT
16 June 2017
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We sincerely thank the key stakeholders who participated in the focus group discussions, workshop and interviews for their generosity with sharing their time, candor, knowledge and experience through fervent and engaging discussions.

We likewise extend our gratitude to the members of the key populations, medical care professions and local government who allowed us to meet with and learn from them during this assessment. The input of the key populations has balanced our views on laws, policies and practices while ensuring that we account for the realities that may not have been uncovered through previously-consulted findings, research and stakeholder groups. Naturally, we must again note the contributions of the TWG and NAS, particularly those from the NAS regional offices, for sharing their relationships with these key populations to gather their input for this assessment.

We are indebted to our numerous sources of data which made this analysis possible. Contributors to our data collection include Martina Egberda, Coordinator at the Sierra Leone Legal Information Institute, Muctarr K, Sowa, Director of Library, Research and Documentation, Parliament of the Republic of Sierra Leone, Muniru Kawa, Project Manager, Sierra Leone Record Management Project, Bridget Osho, Deputy Coordinator at the Justice Sector Coordination Office, Simitie Lavaly, Executive Director, AdvocAid, Patricia Ongpin, Strategic Information Advisor, UNAIDS, Antoine Huss of the Office of Tony Blair, Africa Governance Initiative.

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Finally, we acknowledge the generous financial support from Empire of Japan for making this LEA possible.

Limitations
The content of this report is based on a review of the existing policies, legislation, decrees and regulations related to national content as in existence as of December 2016. The analysis references international legal standards and is not intended to constitute legal advice on laws of the Republic of Sierra Leone or of any other jurisdiction.

The matters dealt with herein should not be interpreted as being applicable to any other related issues.

This report is also subject to the following specific assumptions:

- that the views of interviewees, thematic group/workshop participants and any other contributors to this LEA were true and correct representations of their views and experiences;
- that the reports from the interviewers of key stakeholders, key populations, medical care professionals and local government officials are true, correct and complete reports of the interviews that they purport to summarize;
- that the copies of the policies and laws provided by Government of the Republic of Sierra Leone (“GoSL”), the TWG and other contributors are true, correct and complete copies of the policies and laws that are purported to duplicate;
- that the policies and laws provided by GoSL, the TWG and other contributors represent the extent of the policies and laws that are relevant to the LEA in Sierra Leone as of December 2016;
- that the data represented in any reports relied upon in this LEA were true, correct and complete at the time of the publication of such report; and
- that the interviewees, interviewers, thematic group/workshop participants, TWG, NAS and UNDP contributed to the project so as to promote, to the best of their knowledge and abilities, the best interest of the LEA as set out in the terms of reference for this assessment.

The views expressed in this publication are those of the authors and do not necessarily represent those of NAS, GoSL, the United Nations Development Programme (“UNDP”) or the United Nations generally.
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National HIV and AIDS Plan  The National Strategic Plan HIV/AIDS 2016-2020

Offences Against Persons Act  English Offences Against Persons Act, 1861

Persons with Disability Act  The Persons with Disability Act, 2011 (No. 3)

Pharmacy and Drugs Act  The Pharmacy and Drugs Act, 2001 (No. 12), as amended 2007 (No. 12)

President  The head of state of the Republic of Sierra Leone appointed in accordance with Article 40 (Office of the President) of the Constitution

Prevention and Control of HIV Act  The Prevention and Control of HIV & AIDS Act of 2007 (No. 8)

Public Health Act  The Public Health Ordinance, 1960 (No. 23), as amended 2004 (No. 4) and 2014 (No. 44)

Public Order Act  The Public Order Act, 1965 (No. 45)

Sierra Leone Council for Postgraduate Health Specialties  The council established under The Sierra Leone Council for Postgraduate Colleges of Health Specialties Act, 2016 (No. 5)

Sierra Leone Health Commission  The commission established under The Sierra Leone Health Services Commission Act, 2011 (No. 5)

SierraLii  Sierra Leone Legal Information Institute

Stigma Index  January 2013 Sierra Leone People Living with HIV Stigma Index

STIs  sexually-transmitted infections

SWAASL  Sierra Leone Chapter of the Society for Women and AIDS in Africa

Teaching Hospitals Boards and Administration  The boards and administration established under The Teaching Hospitals Complex Act, 2016 (No. 8)


TRC  truth and reconciliation commission established in the Republic of Sierra Leone in 2002

TWG  the technical working group for the legal environment assessment of HIV and AIDS in Sierra Leone, members of which are set out under Appendix 4 (Members of the TWG)
<table>
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<th>Acronym</th>
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<tr>
<td>UNAIDS</td>
<td>Joint UN Programme on HIV/AIDS</td>
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<td>United Nations Development Programme</td>
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EXECUTIVE SUMMARY

The Joint UN Programme on HIV/AIDS, the Global Commission on HIV and the Law and the United Nations Development Programme, among others, have been supporting states throughout the world to reach their sustainable development goals in respect of HIV and AIDS. Through their engagements, these organisations have worked to develop standards and best practices that balance the need for human rights protections and addressing the public health concerns presented by the HIV epidemic.

It has been well-established that certain legal responses, some of which have been designed to quell the spread of HIV and other diseases, actually serve to perpetuate the spread of the epidemic. In the case of Sierra Leone, laws have been imported from the colonial era and, at times, are passed with limited vetting, an absence of legal analysis for compliance with international treaty obligations and scant provision for statutory implementation or realization.

Accordingly, as part of a global initiative, Sierra Leone has conducted this analysis of its legal environment to assess whether its laws, policies and practices reach the standards found by the Joint UN Programme on HIV/AIDS, the Global Commission on HIV and the Law, the United Nations Development Programme and others to stifle the spread of HIV, while protecting the human rights of those most vulnerable to contracting the virus.

Together with a technical working group of relevant Government of Sierra Leone stakeholders, civil society organizations and private sector players, the National AIDS Secretariat, with the support of the United Nations Development Programme, researched the laws, policies, international obligations and practices bearing on HIV and AIDS in the country. Utilizing workshops, key stakeholder and key population interviews, desk research and legal analysis, the technical working group focused on (i) access to healthcare, (ii) access to justice, (iii) access to information, (iv) access to education and (v) access to employment and how each of these subjects treat people living with HIV and key populations in terms of the standards identified by the Global Commission on HIV and the Law.

The findings of this legal environment assessment reveal that the determining factor in whether a legal provision exposes people living with HIV and key populations to discrimination and/or works to spread HIV, is not in the written law, but rather in the practices surrounding the subject. This report shows that the legal environment in Sierra Leone functions without a significant rule of law, where legislation is not implemented, laws are not enforced as written and international obligations are not transposed into domestic realities.

The report suggests that specific activities can be assumed to redress the deficiencies in human rights protections and public health related to HIV in Sierra Leone. The ensuing challenge for the National AIDS Secretariat, the technical working group and the nation will be to actualize the recommendations set forth in this report and instill an unbiased, effective, cohesive rule of law and public health response in respect of HIV.
PART I INTRODUCTION

Introduction and Background

This report was a deliverable of an assignment for the legal environment assessment ("LEA") for Sierra Leone. The purpose of the assignment is to carry out the legal environment assessment, through the review of the practices and legal and policy environment in Sierra Leone in the context of HIV and AIDS, for purposes of making recommendations for creating and strengthening an enabling environment that protects rights and promotes an effective national response to HIV and AIDS.

This assignment arose out of a national concern to create an enabling legal and regulatory framework to support the national response to HIV and AIDS. Sierra Leone’s National AIDS Strategic Plan 2016 –2020 set out the activities that the government of Sierra Leone ("GoSL") must implement in order to reach its goals for combination prevention and successful treatment of HIV. A key element of this plan rested on advocacy, the implementation of existing, good policy and policy review of elements that impede the successful management of HIV. The United Nations Development Programme ("UNDP") has supported NAS in the development of a programme for addressing any related legal impediments, and this assessment will be the first step in that process.

In the Political Declaration on HIV/AIDS, 2016, the Political Declaration on HIV/AIDS, 2011 (the “2011 Declaration”) and the Declaration of Commitment on HIV/AIDS, 2006, governments committed themselves to protecting the human rights of people living with HIV within their respective borders. The 2011 Declaration recognized that a country’s legal environment, which includes both its laws and the manner in which they are implemented and enforced, plays a critical role in the national response to HIV. Accordingly, GoSL, together with other governments, committed to review, as appropriate, laws and policies that adversely affect the successful, effective and equitable delivery of HIV prevention, treatment, care and support programmes to people living with and affected by HIV.

To support governments in the creation of legal frameworks that eliminate HIV stigma and discrimination, UNDP, on behalf of the Joint UN Programme on HIV/AIDS ("UNAIDS"), formed the Global Commission on HIV and the Law (the “Global Commission”) to develop actionable, evidence-informed and human-rights-based recommendations for effective HIV response. The Global Commission’s 2012 report focused on among others laws and practices that:
- discriminate against people living with HIV;
- criminalize those living with and most vulnerable to HIV;
- sustain or mitigate violence and discrimination against women;
- facilitate or impede access to HIV-related treatment; and
- relate to children and young people in the context of HIV.

The Global Commission concluded that stigmatization, discrimination, punitive laws, police violence and ineffective access to justice fuel the HIV epidemic while protective legal environments improve the lives of people living with HIV and reduce vulnerability to infection.
The Global Commission’s findings and recommendations encouraged governments to conduct national legal environment analyses of laws, policies and practices that affect people living with HIV, key populations, women, youth and other population groups identified as critical for the national HIV response. Sierra Leone joined this movement and has been collaborating, through NAS, with UNDP to design the framework for this LEA.

Sierra Leone has a stable HIV prevalence of 1.5 percent among its general population. The 2010 *Modes of Transmission* report identified certain populations that were at higher risk of HIV exposure. In Sierra Leone, these populations, termed “key populations” (“key populations”), included:

- sex workers, including both female sex workers and male sex workers;
- men who have sex with men;
- people who inject drugs;
- transgender individuals; and
- prisoners.

While additional key populations exist in the 2010 *Modes of Transmission* report, the technical working group (“TWG”) has agreed to limit the definition of Key Populations to those categories of people set out above.¹

A population size estimation study was conducted in Sierra Leone in 2013 to assess the number of members within each of the respective key populations. The project identified an estimate of 180,000 – 300,000 female sex workers, 20,000 men who have sex with men, and 1,500 people who inject drugs. The report of the study also advised that key populations require specific programs to prevent HIV transmission.

As the Ebola virus disease outbreak (the “EVD Outbreak”) plagued Sierra Leone and its neighbors in 2014 and 2015 and intervention efforts struggled to reduce the epidemic to a “Resilient Zero”, the national AIDS response and its partners also struggled to remain resilient in ensuring the provision of treatment and care for its beneficiaries.

Since the World Health Organization (“WHO”) declared Sierra Leone “Ebola free” in 2016, GoSL, with support from its development partners, has contextualized the fast track approach applied to combat the EVD Outbreak and aligned its national targets to the global 90—90—90 targets for testing, treatment and viral suppression of HIV. Accordingly, the national HIV response will need to bolster the treatment, care and support afforded to the estimated 55,000 people living with HIV and introduce additional measures to prevent further transmission of HIV among key populations. The newly developed National AIDS Strategic Plan 2016 –2020 articulates GoSL’s strategies for achieving these heightened targets. This LEA, therefore, is being undertaken in accordance with both the National AIDS Strategic Plan and GoSL’s commitments under the 2016 Declaration.

NAS, in collaboration with UNDP, has formed the TWG, which is charged with leading the development and review of this LEA and implementing recommendations concluded herein.

¹ Accordingly, this Assessment does not cover separately the subjects of women and youth/children.
Aim and Specific Objectives

Aim

The aim of the legal environment assessment is to improve the availability of information and evidence of laws, regulations, policies and practices in the context of HIV and AIDS, for purposes of making recommendations for creating and strengthening an enabling environment that promotes an effective national HIV response in accordance with the National Strategic Plan on HIV/AIDS 2016 – 2020 (the “National HIV and AIDS Plan”).

Specific Objectives

The specific objectives of the assessment are as follows:

- to review all international, regional and national human rights obligations and commitments, particularly those relevant in the context of HIV and AIDS;
- to review all relevant current or proposed national laws, including common law, statutory law, case law, customary law; regulations; policies and codes of conduct relevant to HIV and/ or to key populations;
- to review relevant strategies and planning documents relating to HIV, health and other key sectors and populations at higher risk of HIV exposure, including but not limited to national strategic plans on HIV, national gender strategies, national disability frameworks;
- to appreciate and learn about the experiences of key populations and people living with HIV as they seek services in key sectors;
- to gain knowledge from the experiences of key stakeholders’ work in the policy formulation and delivery of services to key populations and people living with HIV; and
- to analyze research, reports and case studies relating to HIV-related legal and human rights issues, such as:
  - stigma index studies detailing the nature and extent of HIV-related stigmatization and discrimination;
  - research, reports, submissions and case studies by civil society organizations such as in respect of knowledge, attitudes and practices of communities, service providers, lawmakers and law enforcers; stigmatization and discrimination, advocacy on HIV-related laws, access to justice and law enforcement issues within Sierra Leone;
  - reports by statutory institutions (e.g. Human Rights Commission or Law Reform Commission) on HIV and related legal and human rights issues including the implementation and enforcement of laws and policies; and
  - reports by international organizations (e.g. Human Rights Watch, United Nations organizations) on HIV, legal and human rights issues.
Key Deliverables

The following outputs are expected from the assessment:

Inception Report

The inception report built a consensus between the TWG, the UNDP team and the LEA consultant on:

- the process to be followed in the LEA;
- activities to be undertaken;
- an inventory of laws, regulations, policies and other documents to be reviewed; and
- the consultative planning stage.

Development of a Programme for Data Collection

The methodology was designed to gather relevant information from identified stakeholders on:

- the application of laws and policies related to HIV, AIDS and key populations;
- knowledge, attitudes and practices of communities, service providers, lawmakers and law enforcers;
- stigmatization of and discrimination against people living with HIV and key populations; and
- human rights issues in Sierra Leone.

The methodology included the development of:

- a list of key stakeholders and focus groups to be consulted;
- interview and focus group training, discussions, tools and questionnaires; and
- measures to protect the confidentiality of the participants in the consultations and data collection.

Report on Key Findings and Recommendations from Data Collection

The report collates the data from the stakeholder consultations and any other collection methods undertaken, as well as summarizes the key findings and recommendations from the stakeholder consultations.

Desk Review and Draft LEA

The draft consolidated LEA report includes the results from a desk review and results from the data collection. The draft LEA:

- assesses the current legal and policy environment’s response to HIV and AIDS with a specific focus on key issues, key populations and other populations of priority concern; this included reviewing laws such as: equality and discrimination laws, HIV, health laws, laws related to sexual activity, criminal laws as well as access to justice for rights violations;
- identifies strengths, weaknesses and gaps in the current legal and policy environment, including the extent to which the current environment complies with human rights obligations, correlates with practices and procedures reported by stakeholders and
addresses key issues and promotes universal access to HIV prevention, treatment, care and support;
- recommends methods for strengthening the legal and policy environment in Sierra Leone so as to ensure a response which complies with international, regional and national human rights obligations and addresses key human rights issues.

**Feedback on and Finalization of the LEA**

The draft consolidated LEA will be circulated to the UNDP team, the TWG and selected peers for review and comment. This stage will include a presentation to and discussion among the TWG as to its accuracy and comprehensiveness and to identify the priority recommendations and determine key actions going forward. The feedback will be incorporated into a final LEA for the TWG.

**Communications, Dissemination & Impact Strategy**

In order for the LEA to be impactful, it will need to be vetted by a group of stakeholders broader than those represented in the TWG. Accordingly, a communication, dissemination and impact strategy will be developed for the circulation to and acceptance of the LEA by all stakeholders. The strategy will be designed so that the TWG will present the LEA together with its prioritized recommendations and key actions with a goal of gaining commitment and input from stakeholders in the formulation and execution of an implementation plan.

**Implementation Modalities**

This is the assessment stage. The LEA consultants, in collaboration with the TWG and the UNDP team, intends to carry out the assessment in terms of the accepted methodology.

**Technical Approach**

The legal assessment is guided by a human rights-based approach. The human rights-based approach is the use of the human rights framework as the starting point for both the designing of the tools and the analysis of findings. The idea of a rights based approach to development uses human rights as a framework to guide development agendas. The main principles of the human rights-based approaches that have guided this assessment are: protection, participation and empowerment, equality and non-discrimination, promotion of vulnerable populations, transparency and accountability and access to justice.

The existing legal framework, inclusive of national statutes, customary laws and practice, international and regional commitments, proposed laws and existing policies are interrogated. These findings are measured against international best practices and standards, such as those set out, *inter alios*, by the Global Commission and the International Guidelines on HIV/AIDS and Human Rights ("the Guidelines") (as defined below) together with GoSL's international obligations under treaty instruments, experiences of those working with the relevant sectors in Sierra Leone, reports from key stakeholders and key populations and assessments of Sierra

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Leonean laws and governance conducted by donors, GoSL and other adept parties. The human rights-based approach interrogates the purported strengths and weaknesses of the current legal environment, which appropriately informs the recommendations.

The assessment is governed by the following principles:

- acknowledgement of the rights of all people to equality and non-discrimination as an overriding principle;
- recognition of the challenge of cultural sensitivity around all issues including key populations;
- ensuring that the legal and policy framework reflects the reality of the epidemic as well as the experiences of key populations and other vulnerable populations in Sierra Leone;
- ensuring that the law and policy should be an interface between operationalizing programmes at district and community level; and
- ensuring a balance between public health and human rights needs. Public health and human rights are viewed as complementary goals that seek to strengthen the development and well-being of all persons. Public health needs should not unjustifiably violate human rights.

The assessment seeks to determine the following through answering key questions:

The nature and extent of stigma, discrimination and human rights violations in the context of HIV:

- What are the key legal and human rights issues in the context of HIV and AIDS in Sierra Leone that:
  - increase vulnerability to HIV exposure?
  - create barriers to access to HIV-related health care services?
  - exacerbate the impact of HIV and AIDS?

The extent to which the legal and regulatory environment protects rights in the context of HIV and AIDS:

- Do laws and policies promote access to quality HIV-related goods, services and information such as prevention, treatment, (including traditional medicines), food and nutrition and other forms of care and support, including for vulnerable and key populations?
- Do laws and policies protect people in the context of HIV and AIDS from:
  - inequality and unfair discrimination (e.g. in relationships, in families and communities, in health care, in the working environment?)
  - violence, including sexual and gender-based violence?
- Do laws and policies promote the right to food and nutrition for people living with HIV?
- Do laws and policies promote access to and use of traditional medicines?
- Are there punitive laws (e.g. laws criminalizing HIV exposure, laws providing for mandatory HIV testing) that may discourage access to health care services?
- Are people able to access justice, for example:
  - Is there recourse for key populations and others in the event that laws are not properly enforced?
  - Do key populations and the general population have access to the courts?
Do key populations and the general population understand the law? Are laws published?

What is the attitude toward the rule of law?

Are there programmes to reduce stigma and discrimination?

Are there ‘Know Your Rights’ campaigns?

Are there organizations and institutions that provide legal support services for those whose rights have been violated?

Is the legal aid system providing access to justice for key populations?

Are there systems for investigating and enforcing rights?

Are the judiciary sensitized on HIV and human rights issues?

Are laws appropriately enforced, for example:

Do law enforcement officials apply the law as written?

Do the law enforcement officials understand the laws?

Are law enforcement officials trained on HIV and human rights issues?

Do law enforcement officials take protective action for complainants in the case of violence against women and children?

Do law enforcement officials harass key populations?

Recommendations for strengthening the legal and regulatory environment to respond to HIV:

- What are the major strengths, weaknesses, challenges and gaps within the legal and regulatory framework?
- What are the distinctions between law, policy and practices? How can implementable changes be introduced?
- What processes are currently underway to strengthen the legal and regulatory environment? What has been achieved and what are the barriers to achievement?
- What should be done to strengthen the law, increase access to justice and guarantee law enforcement?

Data Collection Methods and Tools

In light of crucial issues emanating from the literature review, data collection tools shall be designed. Both quantitative and qualitative data will be collected from the stakeholders, using different methods and tools. Key stakeholder interviews or key informant interviews shall form the main source of qualitative data. The main methods for collecting data will include the following:

- literature review;
- key stakeholder consultations using a combination of focus groups discussions, individual, in person, interviews and questionnaires;
- district visitations and discussions with key populations through civil society organizations (CSOs);
- TWG guidance; and
- one national consultative stakeholder workshop.

Literature Review
The LEA consultant, in consultation with the TWG and the UNDP team, has reviewed laws, policies, guidelines, treaties and reports to inform the LEA. A list of these documents is set out under Appendix 1 (References).

**Key Stakeholder Consultations**

Consultations with key stakeholders identified in Freetown and its surroundings took place on 8 and 9 November 2016. The participating key stakeholders included those working in targeted entities whose work relates to, arises out of, impacts or represents key populations and HIV and AIDS. A list of participating key stakeholders is set out under Appendix 2 (Organizations Represented at the Key Stakeholder Workshop) (the “key stakeholders”).

The key stakeholders attended a two-day workshop, during which training and background on LEAs and HIV and AIDS was shared before the participants divided into thematic groups for discussion. The thematic groups discussed responses to questions provided in relation to the primary issues of focus for the LEA.

On the second day of the workshop, the key stakeholders were interviewed individually by the LEA consultant and members of the TWG and UNDP teams. The interviews were guided by, but not be beholden to, the questionnaires that were prepared in advance and designed specifically for each of the thematic areas of focus under the LEA.

Members of the TWG with experience in conducting interviews lead a training session on the techniques for discussing sensitive subjects with stakeholders. The interviewees also completed evaluations of the performance of the interviewers.

**District Visitations and Interviews with Key Populations**

In addition to the key stakeholder consultations, the LEA consultant, TWG and UNDP team designed interviews with key populations in the Western Region (Freetown), the Northern Region, the Southern Region and the Eastern Region. In the Western Region, the LEA consultant worked with the TWG in the design of questionnaires, identification of key populations, medical care professionals and local government officials for interviews, conduct of interviews and collation of responses. In the Northern, Southern and Eastern Regions, the LEA consultant worked on the same matters with the NAS Regional Head Officers. A list of key populations consulted for this purpose is set out under Appendix 3 (Key Populations Consulted via Interviews).

**Oversight by the TWG**

The LEA data collection and reporting processes were overseen by a TWG made up of key stakeholders from a range of disciplines and sectors, including key government ministries, civil society organizations working on HIV and human rights issues and/or representing key populations, international organizations and UN agencies. The TWG met regularly and worked closely with the LEA consultant to guide the LEA.

This guidance included providing assistance with the development of the report methodology, research, sharing laws and policies, designing the questionnaires for the key stakeholder
thematic group discussions and the key population interviews, programme development for the key stakeholder workshop, planning and implementing supporting activities and advising on strategies based on progress and findings throughout the various stages of the project.

Members of the TWG are set out under Appendix 4 (*Members of the TWG*).

**National Stakeholder Workshop**

One nationwide stakeholder workshop will be used primarily for consensus building by participants from various related groups. The TWG will present the LEA together with its prioritized recommendations and key actions, with the goal of gaining commitment and input from stakeholders in the formulation and execution of an implementation plan.

**PART II THE SIERRA LEONEAN LEGAL FRAMEWORK**

The Sierra Leone legal framework is built upon the 1991 Constitution of Sierra Leone (*the Constitution*), common law, statutory law and customary law, with a bifurcated system of (i) common law originating under the English system and (2) local customary law rooted in the community traditions and the chieftaincy.

Article 170(1) of the Constitution states that the laws of Sierra Leone shall comprise the following:

- the Constitution;
- laws made by or under the authority of Parliament as established by the Constitution;
- any orders, rules, regulations and other statutory instruments made by any person or authority pursuant to a power conferred in that behalf by the Constitution or any other law;
- the existing law; and
- the common law.

**The Constitution**

**Current Context**

The first constitution in Sierra Leone was formed under the constitutional government in 1863, with two additional constitutions following in 1924 and 1951. The independent Republic of Sierra Leone ratified its original constitution in 1961. This was superseded, however, by the 1971 “republican constitution”, which was, in turn, replaced by the 1978 “one party constitution”. The current Constitution, Act No. 6 of 1991, serves as the supreme law of Sierra Leone, to which all other laws must conform.

In July 2013, His Excellency the President of Sierra Leone, Dr. Ernest Bai Koroma, launched a constitutional review process, which was spearheaded based on (i) Article X of the July 1999

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4 While this has been interpreted to be the case, the Constitutional Review Committee has proposed a new article 2 that would state this.
Lome Peace Accord, which provided for a review of the Constitution, (ii) the recommendation of the Truth and Reconciliation Commission established in 2002 (the “TRC”) that the Government give “serious consideration” to a “new constitution” and (iii) the agreement among Sierra Leone’s political parties that, “while contributing to the development of peace and stability in the country, [the Constitution] does not reflect the modern values of the country and requires amendment in order to facilitate the continued development of a democratic and stable country”. A committee established by President Koroma was mandated to review best practices and the Constitution before recommending amendments that promote transparency and a multi-party democracy (hereinafter, the “Constitutional Review Committee”). The recommendations are set out in document entitled “Constitutional Review Committee Abridged Draft Report” dated February 2016 (the “Constitutional Review Committee Recommendations”) and, while the advice has yet to be incorporated into the Constitution, it provides insight as to the provisions that the Government has been advised to revise.

The Branches of Government
The Constitution draws largely from a presidential system and consists of executive, legislative and judicial arms. In this system, Parliament wields supreme legislative authority, the President commands executive functions and the Chief Justice (acting through the judiciary) holds dominion over the administration of justice. While each of the branches of the government are empowered independently, the Constitution prescribes checks and balances on functional synergies among the various powers.

For example, article 53 of the Constitution sets out that all executive power in the country shall vest in the President and may be exercised by him/her directly or indirectly, through cabinet, ministers, deputy ministers or public officials subordinate to him/her. However, the Constitution and legislation may require the President to obtain Parliamentary approval (such as in the case of appointment of certain offices) or obtain the non-binding advice of Cabinet or a specified committee (such as in the case of granting a pardon) prior to executing certain powers.

The Executive Branch of the Government
Sierra Leone’s Constitution is unitary, whereby all executive power is vested in the President, as opposed to a federal Constitution through which power is distributed among states and the federal government. Executive powers include, inter alios:

- all constitutional matters concerning legislation;
- relations with foreign states;
- the appointment of cabinet, ministers, certain public officials and principal representatives of Sierra Leone abroad, subject to, in certain cases, approval by Parliament;
- execution of treaties, agreements or conventions in the name of Sierra Leone, provided that Parliament must ratify any treaty, agreement or convention executed by or under the

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5 About the Constitutional Review Committee, Constitutional Review Committee.
6 Terms of Reference of the Constitutional Review Committee.
authority of the President that (i) relates to Parliamentary legislative power\(^9\), (ii) alters the law of Sierra Leone or (iii) imposes a charge on, or authorizes any expenditure out of, the consolidated fund or any other governmental fund;

- the exercise of mercy;
- with Parliamentary ratification, the declaration of war; and
- such other matters as may be referred to the President by Parliament.\(^{10}\)

In respect of the executive, the Constitutional Review Committee Recommendations endorse a fixed date for Presidential, parliamentary and local governmental elections.\(^{11}\) This amendment is introduced to reflect best practice and may be in response to recent uncertainty as to whether the date of the March 2018 elections would be delayed due to electoral commission setbacks and, according to some, the EVD Outbreak.

The Constitutional Review Committee further advises that the Office of the Attorney General and the Ministry of Justice be separated because “there should be transparency in the administration of justice and non-interference by the [e]xecutive in the domain of the [j]udiciary”.\(^{12}\)

The Constitutional Review Committee also proposes the introduction of local government and decentralization provisions into the Constitution.\(^{13}\) Presently, local government is established by the Local Government Act and overseen by the Ministry of Local Government and Rural Development. This new chapter seeks to clarify that a local council holds the highest political authority and is responsible for general administration in each of the localities, although the meaning of a “locality” is not clarified.\(^{14}\) The relationship between the local councils and the Ministry of Local Government and Rural Development is also not set out in the Constitutional Review Committee advice. However, the Constitutional Review Committee implies that the Ministry of Local Government and Rural Development would retain certain powers, at least in respect of chiefs.\(^{15}\)

**The Legislative Branch of the Government, Delegated Authority and the Existing Law**

Parliament, which includes the President, the speaker and members of parliament, holds supreme legislative authority in the Republic of Sierra Leone.\(^{16}\) Members of Parliament include elected representatives from each district and paramount chiefs (or their appointees).\(^{17}\) Parliament operates under a unicameral system and is in charge of making laws for the peace, security,
order and good government of Sierra Leone.\textsuperscript{18} It also possesses residual power to address any matter not otherwise covered by the Constitution.\textsuperscript{19}

The Constitutional Review Committee recommends that the President and the paramount chiefs be removed from Parliament. The President should no longer serve in Parliament in order to “uphold the adoption of a separation of power”.\textsuperscript{20}

In respect of the paramount chiefs, the Constitutional Review Committee concludes that “following three detailed presentations made to the [Constitutional Review Committee] with very strong recommendations in the [p]aramount [c]hiefs’ position paper the [Constitutional Review Committee] arrived at the conclusion that a [h]ouse of [p]aramount [c]hiefs should be established and included in the revised constitution. They had made it clear that they do not want to be involved in party politics and therefore requested they be removed from the [p]arliamentary [s]ystem as they see their role as customary and traditional. Therefore[,] they want their own assembly and forum where they would discuss community matters and traditional values free from political consideration”.\textsuperscript{21} The Constitutional Review Committee goes further to recommend that the house of chiefs be removed from Parliament and that paramount chiefs and the relevant ministry and institutions consult to determine the modalities for the house of chiefs’ placement.\textsuperscript{22}

The Constitutional Review Committee considered separating Parliament into a senate and a house of representatives, whereby the paramount chiefs would sit in the senate and the elected members of Parliament from each district would constitute the house of representatives.\textsuperscript{23} The committee chose ultimately not to suggest this structure and retain the unicameral legislature because the paramount chiefs opposed strongly any participation in Parliament and position papers, public recommendations and expert opinions objected similarly.\textsuperscript{24}

Parliament is divided into various committees, each of which are required to investigate or inquire into the activities and administration of the ministries and departments assigned to it.\textsuperscript{25} While committees, members of Parliament and ministers may present bills for passage, Parliament may also delegate statutory authority to any person or authority.\textsuperscript{26} In practice, Parliament exercises its ability to delegate statutory powers most commonly to ministries for the drafting of sector-specific regulations, rules, orders or bylaws. However, the Constitutional Review Committee urges the inclusion of specific types of persons or authorities to which legislative powers can be delegated.\textsuperscript{27} Additionally, certain autonomous entities, such as the Sierra Leone Bar Association and trade unions, are entrusted to develop laws that affect their members.\textsuperscript{28}

\textsuperscript{18} Article 73(3)
\textsuperscript{19} Article 109 of the Constitution.
\textsuperscript{20} Constitutional Review Committee Recommendations, p. 62.
\textsuperscript{21} Id.
\textsuperscript{22} Id.
\textsuperscript{23} Constitutional Review Committee Recommendations, p. 61 and Tucker, Section 102.
\textsuperscript{24} Id.
\textsuperscript{25} Article 93 of the Constitution.
\textsuperscript{26} Id., Article 106(9) and Article 107 of the Constitution.
\textsuperscript{27} Constitutional Review Committee Recommendations, p. 69.
\textsuperscript{28} Kabbah.
A bill becomes an act and legally enforceable after a majority of the present and voting members of Parliament approve a bill, the President signs the bill and the text is published in the Gazette.\textsuperscript{29} If the President vetoes the bill, Parliament can override the decision if two-thirds of all members of Parliament vote to place the bill into law.\textsuperscript{30} It should be noted that complications in the acquisition of copies of bills that have been published in the Gazette are covered under the Access to Information section of Part III (\textit{Key Populations and HIV under Sierra Leonian Law}).

As noted above, the existing law, or “the written and unwritten laws of Sierra Leone as they existed immediately before the date of the coming into force of this Constitution and any statutory instrument issued or made before that date which is to come into force on or after that date”, comprise the law of Sierra Leone even though the laws were not passed by the Parliament formed in the 1991 Constitution.\textsuperscript{31}

\textbf{The Judicial Branch of the Government and the Common Law}

The Judiciary has jurisdiction over all civil and criminal matters, questions regarding the Constitution and any other disputes over which Parliament grants it oversight through an act of law.\textsuperscript{32} The Judiciary is meant to be independent of the control or direction of any other person or authority.\textsuperscript{33} For this reason, the Constitutional Review Committee encourages (i) the separation of the office of the attorney general and the Judiciary and (ii) financial autonomy for the courts.\textsuperscript{34}

Under Article 120 of the Constitution, the Judiciary consists of a supreme court, court of appeal, the high court of justice together with any other court that Parliament may form through legislation. The supreme court is the highest court of appeal in Sierra Leone and has original jurisdiction over matters (i) relating to the enforcement or interpretation of any provision of the Constitution and (ii) in which any question arises regarding whether an enactment was made in excess of the power conferred under the Constitution.\textsuperscript{35} This means that “a person who alleges that an enactment or anything contained in or done under the authority of [an] enactment is inconsistent with, or is in contravention of a provision of this Constitution, may at any time bring an action in the [s]upreme [c]ourt for a declaration to that effect”.\textsuperscript{36}

Judgments of the court of appeal are reviewable by the supreme court as a matter of right in civil proceedings and, in criminal matters, where (i) the high court issued the original decree or (ii) the court of appeal is satisfied that the case involves a substantial question of law or is of public importance.\textsuperscript{37} Appeals of judgments from the high court of justice may be filed with the court of appeal as a matter of right.\textsuperscript{38} The high court of justice is the court of first instance in civil and criminal cases.\textsuperscript{39} It also holds supervisory and appellate authority over the inferior courts, such

\textsuperscript{29} Article 91 and Article 106 of the Constitution.
\textsuperscript{30} Articles 106(7) and (8) of the Constitution.
\textsuperscript{31} Article 170(4) of the Constitution.
\textsuperscript{32} Articles 120(1) and (2) of the Constitution.
\textsuperscript{33} Article 120(3) of the Constitution.
\textsuperscript{34} Constitutional Review Committee Recommendations, p. 58, 73 and 85.
\textsuperscript{35} Article 124 of the Constitution.
\textsuperscript{36} Article 127(1) of the Constitution.
\textsuperscript{37} Article 123 of the Constitution.
\textsuperscript{38} Article 129 of the Constitution.
\textsuperscript{39} Article 132 of the Constitution.
as the magistrate’s court, which is the primary lower court, the coroner’s court, the district appeals court and the local court.\textsuperscript{40}

The courts in Sierra Leone function under the common law system, which includes “the rules of law generally known as the common law, the rules of law generally known as the doctrines of equity, and the rules of customary law including those determined by the superior court”. As is typical in common law nations, the decisions of any matters before the supreme court are binding on the courts unless the supreme court departs from a previous decision it has made.\textsuperscript{41} The common law of Sierra Leone incorporates automatically the common law, equity doctrine and statutes of general application in force in England on 1 January 1880, provided that such laws do not contravene the provisions of the Constitution or any other enactment.\textsuperscript{42}

As stated above, the common law captures customary law of Sierra Leone. Article 170(3) defines customary law as “the rules of law which by custom are applicable to particular communities in Sierra Leone”. Typically, these laws are unwritten and based on the particular norms and hierarchies of an individual community.

The Constitutional Review Committee has recommended that all courts be required to furnish parties with written decisions within three months of the conclusion of evidence and final addresses.\textsuperscript{43} This is in response to the severe backlogs reported in the court system and discussed in \textit{Access to Justice} section of Part III (\textit{Key Populations and HIV under Sierra Leonean Law}) below.

\textbf{International Treaties, Agreements and Conventions}

As set out under \textit{The Executive Branch of the Government} section of this Part II (\textit{The Constitution}), the President executes treaties and international agreements and conventions but such arrangements must be ratified by Parliament before they can be considered binding on GoSL. Once the international instrument is binding on GoSL, it is obligated to ensure that the principles and provisions of that document are met and implemented at a national level. It is also required, in most cases, to report periodically to the relevant monitoring body on its compliance with the terms of the treaty, agreement or convention.

It is well-recognized under international law that ‘“signature’ of a treaty is an act by which a state provides a preliminary endorsement of an agreement. Signing does not create a binding legal obligation but does demonstrate the state’s intent to examine the agreement and consider ratifying it. Whilst signing does not commit a state to ratification, it does oblige the state to refrain from acts that would defeat or undermine the treaty’s objective and purpose. ‘Ratification’ is an act by which a state signifies an agreement to be legally bound by the terms of a particular treaty. To ratify a treaty, the state first signs it and then fulfills its own national legislative

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{40} Courts Act, 1965 (No. 31) (as amended).
  \item \textsuperscript{41} Article 122(2) of the Constitution.
  \item \textsuperscript{42} Section 74 of the Courts Act, 1965 (No. 31) (as amended).
  \item \textsuperscript{43} Constitutional Review Committee Recommendations, p. 73.
\end{itemize}
\end{footnotesize}
requirements. Even where states have not signed or ratified conventions or treaties, these can still be binding if their principles form part of what is known as customary international law.\footnote{Ministry of Health, Seychelles, \textit{Situation Analysis of Legal and Regulatory Aspects of HIV and AIDS in Seychelles: Final Report}, June 2013.}

International treaties, agreements and conventions are not listed as a source of law under Article 170(1) of the Constitution. This is because Sierra Leone is a dualist country and, therefore, even after signature and ratification by GoSL, international treaties, agreements and conventions neither bestow a direct benefit nor impose a duty automatically upon any person or non-governmental entity within the country.

That being stated, according to the African Commission on Human and Peoples’ Rights (the “\textit{African Commission}”), an entity responsible for monitoring states’ compliance with regional human rights treaties, including those of Sierra Leone, “international treaties which are not part of domestic law and which may not be directly enforceable in the national courts, nonetheless impose obligations on State Parties.”\footnote{African Commission: Legal Resources Foundation v Zambia Communication No 211/98 (2001) at para 60.} The African Commission concluded in \textit{NGO Forum v. Zimbabwe} that these obligations include the state’s duty to prevent a human rights abuses incurred by a private party. In that matter, it wrote “human rights standards do not contain merely limitations on [the] State’s authority or organs of State. They also impose positive obligations on States to prevent and sanction private violations of human rights. Indeed, human rights law imposes obligations on States to protect citizens or individuals under their jurisdiction from the harmful acts of others. Thus, an act by a private individual and therefore not directly imputable to a State can generate responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or for not taking the necessary steps to provide the victims with reparation.”\footnote{African Commission: Zimbabwe Human Rights NGO Forum v Zimbabwe, Communication No. 245/2002 (2006).}

In Sierra Leone, where international obligations of the state have not been domesticated, provisions and interpretations of treaties, conventions and agreements to which GoSL is a party provide persuasive authority to the courts and legislators.\footnote{UNDP, \textit{The Road to Justice: A Handbook for the Media on Reporting on Sexual and Gender Based Violence (SGBV) Cases in Sierra Leone}, p. 31, 2010.} This treatment mirrors the Constitution’s stipulation that the country, through its foreign policy objectives, respect international law and treaty obligations.\footnote{Article 10(d) of the Constitution.}

In limited instances, the people of Sierra Leone may have a cause of action against GoSL for violations of certain human rights treaty commitments, even if the commitment has not been converted into national law. As Sierra Leone has ratified the \textit{International Covenant on Civil and
Political Rights: 1976 (the “ICCPR”) and the Optional Protocol to the International Covenant on Civil and Political Rights: 1976 (the “ICCPR Optional Protocol”), the United Nations Human Rights Committee may consider individual complaints from those who allege that their rights under the ICCPR and ICCPR Optional Protocol have been violated provided that they have first exhausted all domestic remedies.49

Table 1 (International Human Rights Treaties, Conventions and Agreements), lists international human rights treaties, conventions and agreements that GoSL has signed or ratified.

<table>
<thead>
<tr>
<th>International Instrument</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: 1987</td>
<td>Signature: 1985, Ratification/Accession: 2001</td>
</tr>
<tr>
<td>Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: 2006</td>
<td>Signature: 2003, Ratification/Accession: N/A</td>
</tr>
<tr>
<td>International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families: 2003</td>
<td>Signature: 2000, Ratification/Accession: N/A</td>
</tr>
<tr>
<td>International Convention for the Protection of all Persons from Enforced Disappearance: 2010</td>
<td>Signature: 2007, Ratification/Accession: N/A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Signature/Ratification/Accession</th>
</tr>
</thead>
<tbody>
<tr>
<td>Optional Protocol to the Convention on the Rights of Persons with Disabilities: 2008</td>
<td>2007, N/A</td>
</tr>
<tr>
<td>Convention Governing the Specific Aspects of Refugee Problems in Africa</td>
<td>1969, 1987</td>
</tr>
<tr>
<td>Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights</td>
<td>1998, N/A</td>
</tr>
<tr>
<td>Discrimination (Employment and Occupation) Convention</td>
<td>N/A, 1966</td>
</tr>
<tr>
<td>Equal Remuneration Convention</td>
<td>N/A, 1968</td>
</tr>
<tr>
<td>Convention concerning Forced or Compulsory Labour</td>
<td>N/A, 1961</td>
</tr>
<tr>
<td>Abolition of Forced Labour Convention</td>
<td>N/A, 1961</td>
</tr>
<tr>
<td>Freedom of Association and Protection of the Right to Organise Convention</td>
<td>N/A, 1961</td>
</tr>
<tr>
<td>Right to Organise and Collective Bargaining Convention</td>
<td>N/A, 1961</td>
</tr>
<tr>
<td>United Nations Convention against Transnational Organised Crime</td>
<td>2001, N/A</td>
</tr>
<tr>
<td>Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime</td>
<td>2001, N/A</td>
</tr>
<tr>
<td>Political Declaration on HIV and AIDS, 2016</td>
<td>General Assembly resolution</td>
</tr>
<tr>
<td>Political Declaration on HIV/AIDS, 2011</td>
<td>General Assembly resolution</td>
</tr>
<tr>
<td>Declaration of Commitments on HIV/AIDS, 2006</td>
<td>General Assembly resolution</td>
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</tbody>
</table>

The key point in respect of the international instruments binding on GoSL relates to the extent to which the obligations are implemented. The primary treaties that have bearing on HIV and key populations are those that mention specifically the right to medical care, the right to freedom of expression, the right to equal opportunity and protection under the law, the right to privacy and the right to freedom from discrimination based on disability, sexuality, illness or similar bias.
However, in Sierra Leone, as mentioned above, GoSL’s obligations under treaties conventions and protocols are distinct from the people’s right to benefit from these agreements.

**Human Rights in the Constitution**

While an international treaty may not have been transposed deliberately into domestic legislation, the Constitution affords the people of Sierra Leone many of the same protections guaranteed under human rights instruments.\(^{50}\) The key Constitutional human rights provisions are set out in Table 2 (*Selected Human Rights Provisions under the Constitution*).

**Table 2: Selected Human Rights Provisions under the Constitution**

<table>
<thead>
<tr>
<th>Article</th>
<th>Provision</th>
<th>Options for Recourse if Violated</th>
</tr>
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<tbody>
<tr>
<td>Article 5(1) &lt;br&gt; (<em>Government and the people</em>)</td>
<td>The Republic of Sierra Leone shall be a State based on the principles of Freedom, Democracy and Justice.-</td>
<td>None. Affords no legal rights to citizens and unenforceable in the courts. Duty of Parliament to apply in making laws.</td>
</tr>
</tbody>
</table>
| Article 6 <br> (*Political objectives*) | (1) The motto of the Republic of Sierra Leone shall be Unity, Freedom and Justice.  
(2) Accordingly, the State shall promote national integration and unity and encourage the elimination of discrimination on the grounds of place of origin, circumstance of birth, sex, religion, status, ethnic or linguistic association or ties.  
(3) For the purposes of promoting national integration and unity, the State shall—  
  a. provide adequate facilities for and encourage free mobility of people, goods and services throughout Sierra Leone; and  
  b. secure full rights of residence for every citizen in all parts of the State.  
  c. The State shall protect and defend the liberty of the individual, enforce the rule of law and ensure the efficient functioning of Government services.  
(4) The State shall take all steps to eradicate all corrupt practices and the abuse of power. | None. Pursuant to Article 14, the provision affords no legal rights to citizens and is unenforceable in the courts. It is the duty of Parliament to apply in making laws. |

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\(^{50}\) See GoSL, *Initial to Date following Article of the Charter Report – African Charter on Human and People’s Rights*, p. 3, 7-27,
| Article 7 (Economic objectives) | The State shall within the context of the ideals and objectives for which provisions are made in this Constitution—  
   a. harness all the natural resources of the nation to promote national prosperity and an efficient, dynamic and self-reliant economy;  
   b. manage and control the national economy in such a manner as to secure the maximum welfare and freedom of every citizen on the basis of social justice and equality of opportunity;  
   c. protect the right of any citizen to engage in any economic activity without prejudice to the rights of any other person to participate in areas of the economy;  
   d. place proper and adequate emphasis on agriculture in all its aspects so as to ensure self-sufficiency in food production; and  
   e. ensure that Government shall always give priority and encouragement to Sierra Leoneans to participate in all spheres of the economy in furtherance of these objectives. | None. Pursuant to Article 14, the provision affords no legal rights to citizens and is unenforceable in the courts. It is the duty of Parliament to apply in making laws. |
| Article 8 (Social objectives) | (1) The Social Order of the State shall be founded on the ideals of Freedom, Equality and Justice.  
(2) In furtherance of the Social Order—  
   a. every citizen shall have equality of rights, obligations, and opportunities before the law, and the State shall ensure that every citizen has an equal right and access to all opportunities and benefits based on merit;  
   b. the State shall recognise, maintain and enhance the sanctity of the human person and human dignity; and  
   c. the Government shall secure and maintain the independence, impartiality and integrity of courts of law and unfettered access thereto, and to this end shall ensure that the operation of the legal system promotes justice on the basis of equal opportunity, and that opportunities for secuirng justice are not denied any citizen by reason of economic or other disability. | None. Pursuant to Article 14, the provision affords no legal rights to citizens and is unenforceable in the courts. It is the duty of Parliament to apply in making laws. |
(3) The State shall direct its policy towards ensuring that—

a. every citizen, without discrimination on any grounds whatsoever, shall have the opportunity for securing adequate means of livelihood as well as adequate opportunities to secure suitable employment;

b. conditions of service and work are fair, just and humane and that there are adequate facilities for leisure and for social, religious and cultural life;

c. the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused, and in particular that special provisions be made for working women with children, having due regard to the resources of the State;

d. there are adequate medical and health facilities for all persons, having due regard to the resources of the State;

e. there is equal pay for equal work without discrimination on account of sex, and that adequate and satisfactory remuneration is paid to all persons in employment; and

f. the care and welfare of the aged, young and disabled shall be actively promoted and safeguarded.

<table>
<thead>
<tr>
<th>Article 9 (Educational objectives)</th>
<th>(1) The Government shall direct its policy towards ensuring that there are equal rights and adequate educational opportunities for all citizens at all levels by—</th>
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<tbody>
<tr>
<td></td>
<td>a. ensuring that every citizen is given the opportunity to be educated to the best of his ability, aptitude and inclination by providing educational facilities at all levels and aspects of education such as primary, secondary, vocational, technical, college and university;</td>
</tr>
<tr>
<td></td>
<td>b. safeguarding the rights of vulnerable groups, such as children, women and the disabled in security educational facilities; and</td>
</tr>
<tr>
<td></td>
<td>c. providing the necessary structures, finance and supportive facilities for education as and when practicable.</td>
</tr>
<tr>
<td>(2) The Government shall strive to eradicate illiteracy, and to this end, shall direct its educational policy towards achieving—</td>
<td>None. Pursuant to Article 14, the provision affords no legal rights to citizens and is unenforceable in the courts. It is the duty of Parliament to apply in making laws.</td>
</tr>
<tr>
<td>Article 11 (Obligations of the mass media)</td>
<td>The press, radio and television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Constitution and highlight the responsibility and accountability of the Government to the people.</td>
</tr>
</tbody>
</table>
| Article 13(c), (e), (g), (i) and (j) | Every citizen shall –
  
  c. protect and preserve public property and prevent the misappropriation and squandering of funds belonging to the Government, local authorities or public corporations;
  
  e. respect the dignity and religion of other individuals, and the rights and interests of others;
  
  g. work conscientiously in a lawful and chosen occupation and abstain from any activity detrimental to the general welfare of others;
  
  i. participate in and defend all democratic processes and practices; and
  
  j. render assistance to appropriate and lawful agencies in the maintenance of law and order. | None. Pursuant to Article 14, the provision affords no legal rights to citizens and is unenforceable in the courts. It is the duty of Parliament to apply in making laws. |
| Article 15 (Fundamental human rights and freedoms of the individual) | Whereas every person in Sierra Leone is entitled to the fundamental human rights and freedoms of the individual, that is to say, has the right, whatever his race, tribe, place of origin, political opinion, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following—
  
  a. life, liberty, security of person, the enjoyment of property, and the protection of law;
  
  b. freedom of conscience, of expression and of assembly and association;
  
  c. respect for private and family life, and
  
  d. protection from deprivation of property without compensation; | Under Article 28, complaints may be filed with the supreme court or handled by the court in which the question arises (unless a party requests referral to the supreme court). Parliament is to make provision to render financial assistance to certain indigent petitioners. |
the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others, or the public interest.

| Article 16 (Protection of right to life) | (1) No person shall be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the laws of Sierra Leone, of which he has been convicted. (2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case, that is to say—  
  a. for the defence of any person from unlawful violence or for the defence of property; or  
  b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or  
  c. for the purpose of suppressing a riot, insurrection or mutiny; or  
  d. in order to prevent the commission by that person of a criminal offence; or  
  e. if he dies as a result of a lawful act of war. |
| --- | --- |
| Article 17 (Protection from arbitrary arrest or detention) | (1) No person shall be deprived of his personal liberty except as may be authorised by law in any of the following cases, that is to say —  
  a. in consequence of his unfitness to plead to a criminal charge; or | Under Article 28, complaints may be filed with the supreme court or handled by the court in which the question arises (unless a party requests referral to the supreme court). Parliament is to make provision to render financial assistance to certain indigent petitioners. The rights imparted under this Article may be suspended or altered temporarily if the requisite conditions are followed under a declaration of a public emergency by the President under Article 29. |
b. in the execution of a sentence or order of a Court whether in Sierra Leone or elsewhere in respect of a criminal offence of which he has been convicted; or

c. in the execution of an order of the High Court or the Court of Appeal or the Supreme Court or such other court as may be prescribed by Parliament on the grounds of his contempt of any such court or of another court or tribunal or commission of inquiry as the case may be; or

d. in the execution of an Order of a court made in order to secure the fulfilment of any obligation imposed on him by law; or

e. for the purpose of bringing him before a court or tribunal, as the case may be, in execution of the order of a court; or

f. upon reasonable suspicion of his having committed or of being about to commit a criminal offence; or

g. in the case of a person who has not attained the age of twenty-one years, for the purpose of his education or welfare; or

h. for the purpose of preventing the spread of an infectious or contagious disease; or

i. in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community; or

j. for the purpose of preventing the unlawful entry of that person into Sierra Leone, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Sierra Leone or the taking of proceedings thereto.

(2) Any person who—

a. is arrested or detained shall be informed in writing or in a language that he understands at the time of his arrest, and in any event not later than twenty-four hours, of the facts and grounds for his arrest or detention;

b. is arrested or detained shall be informed immediately at the time of his arrest of his right of
access to a legal practitioner or any person of his choice, and shall be permitted at his own expense to instruct without delay a legal practitioner of his own choice and to communicate with him confidentially.

(3) Any person who is arrested or detained in such a case as is mentioned in paragraph (e) or (f) of subsection (1) and who is not released shall be brought before a court of law—

a. within ten days from the date of arrest in cases of capital offences, offences carrying life imprisonment and economic and environmental offences; and

b. within seventy-two hours of his arrest in case of other offences;

and if any person arrested or detained in such a case as is mentioned in the said paragraph (f) is not tried within the periods specified in paragraph (a) or (b) of this section, as the case may be, then without prejudice to any further proceedings which may be brought against him he shall be released either unconditionally or upon reasonable conditions, including in particular, such conditions as are reasonably necessary to ensure that he appears at a later date for trial or proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

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<tr>
<th>Article 18 (Protection of freedom of movement)</th>
<th>(1) No person shall be deprived of his freedom of movement, and for the purpose of this section the said freedom means the right to move freely throughout Sierra Leone, the right to reside in any part of Sierra Leone, the right to enter or leave Sierra Leone, and immunity from expulsion form Sierra Leone.</th>
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<td>(2) Any restriction on a person’s freedom of movement which is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.</td>
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<td>(3) Nothing contained in or done under authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-</td>
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<td>a. which is reasonably required in the interests of defence, public safety, public order, public morality, public health or the conservation of the natural resources, such as mineral, marine, forest and other</td>
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<td>Reviewable by an arbitral tribunal as set out under paragraph (4) and paragraph (5) of this Article.</td>
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<td></td>
<td>Under Article 28, complaints may be filed with the supreme court or handled by the court in which the question arises (unless a party requests referral to the supreme court). Parliament is to make provision to render financial</td>
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resources of Sierra Leone, except in so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

b. for the imposition of restrictions on the movement or residence within Sierra Leone of any person who is not a citizen thereof or the exclusion of expulsion from Sierra Leone of any such persons; or

c. for the imposition of restrictions on the acquisition or use by any person of land or other property in Sierra Leone; or

d. for the imposition of restrictions upon the movement or residence within Sierra Leone of public officers or members of a defence force; or

e. for the removal of a person from Sierra Leone to be tried outside Sierra Leone for a criminal offence recognised as such by the laws of Sierra Leone, or to serve a term of imprisonment outside Sierra Leone in the execution of the sentence of a court in respect of a criminal offence of which he has been convicted; or

f. for preventing the departure from Sierra Leone of a person who is reasonably suspected of having committed a crime or seeking to evade the fulfilment of an obligation imposed on him under the civil law or to evade military service:

Provided that no court or other authority shall prohibit any such person from entering into or residing in any place to which he is indigenous; or

g. for restricting vagrancy.

(4) If -

a. any person whose freedom of movement has been restricted by virtue only of such a provision as is referred to in paragraph (a) of subsection (3) so requests at any time during the period of that restriction not earlier than thirty days after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal, established by law, comprising not more than three persons from amongst persons of not less than fifteen years' standing entitled to practice in Sierra Leone as legal practitioners;

The rights imparted under this Article may be suspended or altered temporarily if the requisite conditions are followed under a declaration of a public emergency by the President under Article 29.
b. any tribunal has been set up under paragraph (a), the Chairman of that tribunal shall be appointed by the Chief Justice, and the two other members of the tribunal shall be nominated by the Sierra Leone Bar Association.

(5) On any review by a tribunal in pursuance of subsection (4) of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity of expediency of continuing that restriction to the authority by whom it was ordered, but unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with such recommendations.

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<tr>
<th>Article 23</th>
<th>(Provision to secure protection of law)</th>
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<tr>
<td>(1) Whenever any person is charged with a criminal offence he shall unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.</td>
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<td>(2) Any court or other authority prescribed by law for the determination of the existence or extent of civil rights or obligations shall be independent and impartial; and where proceedings for such determination are instituted by or against any person or authority or the Government before such court or authority, the case shall be given fair hearing within a reasonable time.</td>
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| (3) All proceedings of every court and proceedings relating to the determination of the existence or the extent of civil rights or obligations before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public: 

Provided that the court or other authority may, to such an extent as it may consider necessary or expedient in circumstances where publicity would prejudice the interest of justice or interlocutory civil proceedings or to such extent as it may be empowered or required by law so to do in the interest of defence, public safety, public order, public morality, the welfare of persons under the age of twenty-one years or the protection of the private lives of persons concerned in the proceedings, exclude from its proceedings, persons other than the parties thereto and their legal representatives. |
| (4) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved, or has pleaded guilty: 

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection, to the extent that |

Under Article 28, complaints may be filed with the supreme court or handled by the court in which the question arises (unless a party requests referral to the supreme court). Parliament is to make provision to render financial assistance to certain indigent petitioners.

The rights imparted under this Article may be suspended or altered temporarily if the requisite conditions are followed under a declaration of a public emergency by the President under Article 29.
the law in question imposes on any person charged as aforesaid the burden of proving particular facts.

(5) Every person who is charged with a criminal offence-

a. shall be informed at the time he is charged in the language which he understands and in detail, of the nature of the offence charged;

b. shall be given adequate time and facilities for the preparation of his defence;

c. shall be permitted to defend himself in person or by a legal practitioner of his own choice;

d. shall be afforded facilities to examine in person or by his legal practitioner the witnesses called by the prosecution before any court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

e. shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge:

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question prohibits legal representation in Local Court.

(6) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall if he so requires, and subject to the payment of such reasonable fee as may be prescribed by law, be given within a reasonable time, and in any event not more than three months after trial, a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(7) No person shall be held to be guilty of a criminal offence on account of any act or omission which did not, at the time it took place, constitute such an offence.

(8) No penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.
(9) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence:

Provided that nothing in any law shall be held to be inconsistent with or in contravention of this subsection by reason only that it authorises any court to try a member of a defence force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under service law; but any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under service law.

(10) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of any provisions of this section, other than subsections (7) and (8), to the extent that the law in question authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists before or during that period of public emergency.

(11) In paragraphs (c) and (d) of subsection (5), the expression "legal practitioner" means a person entitled to practise as a Barrister and Solicitor of the High Court.

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<th>Article 25 (Protection of freedom of expression and the press)</th>
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| (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purpose of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, freedom from interference with his correspondence, freedom to own, establish and operate any medium for the dissemination of information, ideas and opinions, and academic freedom in institutions of learning:

Provided that no person other than the Government or any person or body authorised by the President shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in the contravention of this section to the extent that the law in question makes provision—

Under Article 28, complaints may be filed with the supreme court or handled by the court in which the question arises (unless a party requests referral to the supreme court). Parliament is to make provision to render financial assistance to certain indigent petitioners.

The rights imparted under
(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade unions or other economic, social or professional associations, national or international, for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

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<th>Article 26 (Protection of freedom of assembly and association)</th>
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<td>a. which is reasonably required—</td>
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<td>i. in the interests of defence, public safety, public order, public morality or public health; or</td>
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<td>ii. for the purpose of protecting the rights and freedoms of other persons; or</td>
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<td>b. which imposes restrictions on the establishment of political parties, or regulates the organisation, registration, and functioning of political parties and the conduct of its members;</td>
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<td>this Article may be suspended or altered temporarily if the requisite conditions are followed under a declaration of a public emergency by the President under Article 29.</td>
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<td>and except in so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.</td>
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Under Article 28, complaints may be filed with the supreme court or handled by the court in which the question arises (unless a party requests referral to the supreme court). Parliament is to make provision to render financial assistance to certain indigent petitioners.

The rights imparted under this Article may be suspended or altered temporarily if the requisite conditions are followed under a declaration of a public emergency by the President under Article 29.
and except in so far as that provision, or as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

<table>
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<tr>
<th>Article 27 (Protection from discrimination)</th>
<th>(1) Subject to the provisions of subsection (4), (5), and (7), no law shall make provision which is discriminatory either of itself or in its effect.</th>
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<td>(2) Subject to the provisions of subsections (6), (7), and (8), no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.</td>
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<td>(3) In this section the expression &quot;discriminatory&quot; means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description.</td>
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<td>(4) Subsection (1) shall not apply to any law so far as that law makes provision-</td>
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<td>i. for the appropriation of revenues or other funds of Sierra Leone or for the imposition of taxation (including the levying of fees for the grant of licenses); or</td>
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<td>ii. with respect to persons who are not citizens of Sierra Leone; or</td>
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<td>iii. with respect to persons who acquire citizenship of Sierra Leone by registration or by naturalization, or by resolution of Parliament; or</td>
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<td>iv. with respect to adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law; or</td>
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<td>v. for the application in the case of members of a particular race or tribe or customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or</td>
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<td></td>
<td>vi. for authorising the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the</td>
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Under Article 28, complaints may be filed with the supreme court or handled by the court in which the question arises (unless a party requests referral to the supreme court. Parliament is to make provision to render financial assistance to certain indigent petitioners.

The rights imparted under this Article may be suspended or altered temporarily if the requisite conditions are followed under a declaration of a public emergency by the President under Article 29.

It should be noted that paragraphs (4), (5), (6) and (7) of this Article 27 undermines the grant of human rights protections in the remainder of this article by exempting the situations and individuals listed.
situation that exists during that period of public emergency; or

vii. whereby persons of any such description as mentioned in subsection (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society; or

viii. for the limitation of citizenship or relating to national registration or to the collection of demographic statistics.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it makes provision with respect to qualifications for service as a public officer or as a member of a defence force or for the service of a local government authority or a body corporate established directly by any law or of membership of Parliament.

(6) Subsection (2) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provisions of law as is referred to in subsection (4) or (5).

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) may be subjected to any restriction of the rights and freedoms guaranteed by sections 18, 22, 24, 25 and 26 being such a restriction as is authorised by subsection (3) of section 18, subsection (2) of section 22, subsection (5) of section 24, subsection (2) of section 25 or subsection (2) of section 26, as the case may be.

(8) The exercise of any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person under or by this Constitution or any other law shall not be enquired into by any Court on the grounds that it contravenes the provision of subsection (2).

Although not all international treaty obligations of GoSL have been covered under the Constitution or parallel domestic law, it should be noted that under the Human Rights Commission of Sierra Leone Act, 2004 (No. 9) (the “*Human Rights Commission Act*”), private citizens may file complaints for investigation and resolution by the Human Rights Commission of Sierra Leone (the
“Human Rights Commission”) for violations of a public official under a treaty obligation even if the treaty provision has not been incorporated into national law.

Article 27 (Protection from discrimination) of the Constitution prohibits discrimination under the law, effect of a law or by a public official or authority. Discrimination is defined as “affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description”.51

The protection, however, is limited severely by being made subject to a range of exceptions which allow discrimination against:

- anyone, through the imposition of taxes and assessment of fees for licenses;
- non-citizens;
- naturalized citizens;
- anyone, in respect of “adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law”;
- members of a particular race or tribe or anyone effected by customary law, with respect to any matter, so long as it is not applicable to non-members of that particular race, tribe or custom;
- anyone, to measures that are reasonably justifiable to address a public emergency;
- anyone other than persons with a disability, through certain privileges granted only to persons with a disability;
- anyone, in respect of national registration or collection of demographic information;52
- anyone, with respect to qualifications for service as a public officer, member of a defence force, service of a local government authority or a body corporate;53 and/or
- anyone, through the exercise of any legally- or Constitutionally-afforded discretion in the institution, conduct or discontinuance of a civil or criminal matter.54

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51 Article 27(3) of the Constitution.
52 Article 27(4) of the Constitution.
53 Article 27(5) of the Constitution.
54 Article 27(6) of the Constitution.
Consequently, discriminatory practices remain in the above instances and are, in fact, justified by
the Constitution. Naturally, the Constitutional
Review Committee received sundry position
papers during their review of Article 27 (Protection
from discrimination). Given the gravity of the
article, it has referred its recommendations to the
public before reaching a final resolution.
Presently, the Constitutional Review Committee
Recommendations repeal and replace Article 27
(Protection from discrimination) with the most
notable amendments including:

- the elimination of permitted discrimination
  of the following:
  - naturalized citizens;
  - anyone, in respect of “adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law”;
  - members of a particular race or tribe or anyone effected by customary law, with respect to any matter, so long as it is not applicable to non-members of that particular race, tribe or custom;
  - anyone, to measures that are reasonably justifiable to address a public emergency;
  - anyone, with respect to qualifications for service as a public officer, member of a defence force, service of a local government authority or a body corporate; and
  - anyone, through the exercise of any legally- or Constitutionally- afforded discretion in the institution, conduct or discontinuance of a civil or criminal matter.
- the addition of permitted discrimination in members’ only clubs;
- the addition of permitted discrimination “for the taking by the Government of affirmative action to remedy or ameliorate the effects of past discrimination against any [group of people whose rights are recognized and protected in Chapter 3 (The Recognition and Protection of Fundamental

Constitutional exemptions to the protection from discrimination:

- anyone, through the imposition of taxes;
- non-citizens;
- naturalized citizens;
- anyone, in respect of “adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law”;
- members of a particular race or tribe or anyone effected by customary law, in certain instances;
- anyone, under certain conditions in a public emergency;
- anyone other than persons with a disability, through certain privileges granted only to persons with a disability;
- anyone, in respect of national registration or collection of demographic information;
- anyone, with respect for certain public and corporate offices; and/or
- anyone, through the exercise of certain legally- or Constitutionally- afforded discretion.
Human Rights and Freedoms of the Individual) of the Constitution but who have been treated less favorably than others on the grounds of their race, tribe, sex, religion, place of birth, opinion, color and disability];

- clarification of who holds standing to file a claim arising out of discriminatory activity described in Article 27 (Protection from discrimination) or Chapter 3 (The Recognition and Protection of Fundamental Human Rights and Freedoms of the Individual) of the Constitution;

- clarification that the Human Rights Commission holds primary jurisdiction and that the Court of Appeals and the Supreme Court hold appellate jurisdiction for claims arising under Article 27 (Protection from discrimination) or Chapter 3 (The Recognition and Protection of Fundamental Human Rights and Freedoms of the Individual) of the Constitution;

- clarification that the freedom from discrimination is protected in the private sector as well as in the public sector;

- revision of the definition of discrimination so that it is applicable to all of rights granted under Chapter 3 (The Recognition and Protection of Fundamental Human Rights and Freedoms of the Individual) of the Constitution; and

- the addition of a direction to Parliament to enact legislation that eliminates discrimination and promotes equality in employment, education, housing and social services.\(^{55}\)

In its comments, the Constitutional Review Committee admonishes Sierra Leone to consider supplementing Article 27 (Protection from discrimination) by stating that, \textit{inter alios}:

- every person is equal before the law and has the right to equal protection and benefit of the law;

- women and men have the rights to equal treatments including the rights to equal opportunities in political, economic, cultural and social spheres; and

- the state shall take legislative and other measures to implement the principle that not more than two thirds of the members of elective or appointive bodies shall be of the same gender.\(^{56}\)

The Constitutional Review Committee Recommendations propose that the public discuss the propriety of enlisting new entitlements in the Constitution, such as the right:

- of each to:
  - an environment that is not harmful to one’s health or well-being and that is protected for future generations;
  - the highest attainable standard of health;
  - affordable housing and hygienic standards of sanitation;
  - freedom from hunger and to have food of acceptable quality;
  - clean and safe drinking water;
  - social security; and
  - education;

- of the aged population to certain facilities such as medical care, housing and transportation;

\(^{55}\) Constitutional Review Committee Recommendations, p. 43-46.

\(^{56}\) Id. at p. 48.
• to life to be construed as abolishing the death penalty;
• of persons with a disability to be treated with dignity and respect and to access housing, educational facilities, medical care, employment, transportation and other required facilities designed to overcome constraints arising from the persons’ conditions;
• of children, whose “best interest is of paramount importance”, to protection from all forms of exploitation and abuse; and
• of trade unions, employers’ organizations and employers, to collective bargaining.57

Constitutional Review Committee Recommendations also address other relevant articles in Chapter 2 (Fundamental Principles of State Policy) and Chapter 3 (The Recognition and Protection of Fundamental Human Rights and Freedoms of the Individual), suggesting modifications aimed at modernizing and/or rectifying drawbacks arising out of the Constitution. The key propositions that relate to this report are:

• opening the possibility of litigation when GoSL derogates from the core doctrine set out in Chapter 2 (Fundamental Principles of State Policy). This is in response to “many calls for the provisions contained within Chapter II to be made justiciable [during public consultations]”;  
• buttressing the national values in Chapter 2 (Fundamental Principles of State Policy) with devolution of power, integrity, transparency, accountability, sustainable development and the “imperative recommendation of the TRC” of human dignity;  
• erasing qualifications, such as “having due regard to the resources of the State” and “as and where practicable”, on provisions relating to health, safety, welfare, medical facilities and educational opportunities;  
• obliging GoSL to “prohibit” rather than merely “discourage” discrimination under Article 7 (Economic objectives);  
• redressing those held in unlawful detention to a public apology in addition to financial compensation under Article 17 (Protection from Arbitrary Arrest or Detention); and  
• shortening the time period by which an individual held in detention must be offered appearance in a court of law.58

The CRC Recommendations referenced in this section, International Treaties, Conventions and Human Rights, of Part 2 (The Sierra Leonean Legal Framework) are supported and underlined as recommendations of this report. Part III (Key Populations and HIV under Sierra Leonean Law) considers the transcription of the Sierra Leone Constitution and GoSL’s international obligations into domestic law and practices as they relate to key populations and people living with HIV.

PART III KEY POPULATIONS AND HIV UNDER SIERRA LEONEAN LAW

As aforementioned in the Introduction and Background section of Part I (Introduction), the TWG agreed to that the key populations, for the purposes of this report, shall consist of sex workers, men who have sex with men, people who inject drugs, transgender individuals and prisoners. This section considers the impact of Sierra Leone law, policy and practice on the Key Populations and on HIV transmission, prevention and treatment as a whole.

57 Id. at p. 38, 39, 42, 48 and 49.
58 Id. at p. 28, 35, 36 and 40.
After provisional review of the laws of Sierra Leone by the consultant, the TWG concluded that the core issues could be categorized into the following five themes:

- **Access to Healthcare** – Access to healthcare, treatment and support together with knowledge, attitudes and practices related to HIV and/or Key Populations in the medical field;
- **Access to Justice** – Access to justice and knowledge, attitudes and practices related to HIV and Key Populations in law enforcement and in the Judiciary;
- **Access to Information** – Access to information and free speech in Sierra Leone;
- **Access to Education** – Access to education and knowledge, attitudes and practices related to HIV and Key Populations in schools and for Key Populations; and
- **Access to Employment** – Access to employment, protections from termination in the workplace and recognition of businesses for those living with HIV and Key Populations.

As detailed under the *Implementation Modalities* section of Part I (*Introduction*), the analysis of these six themes has been developed from a combination of (i) a desk review of relevant Sierra Leonean laws, policies, treaties and reports; (ii) key stakeholder consultations using a combination of focus groups discussions, individual, in person, interviews and questionnaires; (iii) interviews with Key Populations in key districts and (iv) TWG guidance. This report evaluates each of these matters in this Part III (*Key Populations and HIV under Sierra Leonean Law*).

**Access to Healthcare**

*International Law and Standards*

It is well-settled under international law that access to healthcare is a fundamental human right. Article 12 of the ICESCR affirms “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. Sierra Leone and the other signatories agreed to take the steps necessary to prevent, treat and control diseases and to create conditions that assure health care to all of its citizens in the event of sickness.59 These activities shall be applied to every citizen “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.60 “Other status” has been interpreted by the Commission on Human Rights to include health status, including health related to HIV and AIDS.61

Article 13(2) of the African Charter on Human and Peoples’ Rights (the “African Charter”) and article 25(c) of the ICCPR also impose on GoSL the duty to ensure that every citizen accesses public services equally. As, in the case of Sierra Leone, public services include public hospitals, this obligation would extend to guaranteeing that every Sierra Leonean is treated equally when seeking public health services.

The Office of the High Commissioner on Human Rights and UNAIDS have prepared consolidated guidelines that advise nations on the application of international human rights obligations in the HIV and AIDS context. The report, entitled *International Guidelines on HIV/AIDS and Human Rights, 2006 Consolidated Version* (“The Guidelines” and each guideline, a “Guideline”),

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59 Article 12, ICESCR 1976.
60 Article 2(2), ICESCR 1976.
proffers specific direction to countries in the area of access to prevention, treatment, care and support. These include:

- States should review and reform public health laws to ensure that they adequately address public health issues raised by HIV, that their provisions applicable to casually transmitted diseases are not inappropriately applied to HIV and that they are consistent with international human rights obligations.\(^{62}\)
- States should enact legislation to provide for the regulation of HIV-related goods, services and information, so as to ensure widespread availability of quality prevention measures and services, adequate HIV prevention and care information, and safe and effective medication at an affordable price.\(^{63}\)
- States should also take measures necessary to ensure for all persons, on a sustained and equal basis, the availability and accessibility of quality goods, services and information for HIV/AIDS prevention, treatment, care and support, including antiretroviral and other safe and effective medicines, diagnostics and related technologies for preventive, curative and palliative care of HIV and related opportunistic infections and conditions.\(^{64}\)
- States should take such measures at both the domestic and international levels, with particular attention to vulnerable individuals and populations.\(^{65}\)
- Public health legislation should require that health-care workers undergo a minimum of ethics and/or human rights training in order to be licensed to practice and should encourage professional societies of health-care workers to develop and enforce codes of conduct based on human rights and ethics, including HIV-related issues such as confidentiality and the duty to provide treatment.\(^{66}\)
- Apart from surveillance testing and other unlinked testing done for epidemiological purposes, public health legislation should ensure that HIV testing of individuals should only be performed with the specific informed consent of that individual. Exceptions to voluntary testing would need specific judicial authorization, granted only after due evaluation of the important considerations involved in terms of privacy and liberty.\(^{67}\)

**National Law**

As presented under the *Human Rights in the Constitution* section of Part II (*The Sierra Leonean Legal Framework*) above, Article 27 (*Protection from discrimination*), with numerous limitations, seeks to grant Sierra Leoneans equality and freedom from discrimination under the law. Paragraph (3)(d) of Article 8 (*Social objectives*) of the Constitution instructs Parliament to formulate policies so as to assure that adequate medical and health facilities exist for all persons, in a manner commensurate with GoSL’s resources. While this may appear to satisfy Sierra Leone’s ICESCR commitment in this respect, the protection might fall short of the standard because the Constitutional provision is merely guiding Parliament in its policy objectives and no legal recourse is available for its failure to “direct its policy to ensure” the existence of medical and health facilities for all Sierra Leoneans.

Nonetheless, GoSL could be understood to translate this article into affording its citizens to a certain right to healthcare. In its compliance report to the African Charter in respect of its

\(^{62}\) Guideline 3.
\(^{63}\) Guideline 6, paragraphs 23-25.
\(^{64}\) Id.
\(^{65}\) Id.
\(^{66}\) Paragraph 20(j).
\(^{67}\) Paragraph 20(b).
undertaking to entitle each citizen to the best attainable health, it states “Section 8 (3)(d) of the Constitution provides for the provision of adequate medical and health facilities for all persons. However, such proviso is limited to the availability of the resources of the state. In addition to the constitution, Sierra Leone has other laws which protect the right to health of its citizens. The Prevention and Control of HIV & AIDS Act of 2007 [(No. 8) (the “Prevention and Control of HIV Act”)] also provides for this right.” 68 It is not mentioned in the report that the article merely instructs Parliament in its policies and that no suit can be filed if Parliament does not adhere to the instruction.

**Sierra Leone Public Health Legislation and The Guidelines**

Guideline 3 specifies the ideal public health legislative scheme for HIV. The fundamental canon states that governments “should review and reform public health laws to ensure that they adequately address public health issues raised by HIV, that their provisions applicable to casually transmitted diseases are not inappropriately applied to HIV and that they are consistent with international human rights obligations”.

While the Public Health Act contains no specific language regarding HIV, it does empower the executive branch to formulate rules governing the “treatment of persons affected with any epidemic, endemic or infectious disease and for preventing the spread of such diseases”. 69 The NAS Act and the National HIV and AIDS Plan appear to assume this role in respect of HIV.


**Table 3: The Guidelines and Public Health Legislation**

<table>
<thead>
<tr>
<th>Guideline Paragraph</th>
<th>Guideline Standard</th>
<th>Parallel Provision under the Public Health Legislation</th>
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<tbody>
<tr>
<td>20</td>
<td>Public health legislation should include the following components:</td>
<td>Under output 8.1 of the National HIV and AIDS Plan, GoSL states that it will provide an investment of a minimum of USD 50 million annually for the national HIV, EVD Outbreak and tuberculosis response and implement financial sustainability transition plans, a national HIV budget line and AIDS trust funds.</td>
</tr>
<tr>
<td>20(a)</td>
<td>Public health law should fund and empower public health authorities to provide a comprehensive range of services for the prevention and treatment of HIV and AIDS, including relevant information and education, access to voluntary testing and counselling, STI and sexual and reproductive health services for men and women, condoms and drug treatment, services and clean injection materials, as well as adequate treatment for HIV and AIDS-related illnesses, including pain prophylaxis.</td>
<td>Paragraph (2) of section 33 of the NAS Act states:</td>
</tr>
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68 At p. 20.
69 Section 34(1)(a).
The Government shall, to the maximum of its available resources, take steps necessary to ensure access to essential healthcare services including reproductive healthcare services and essential medicines, including pediatric medicines at affordable prices by persons living with HIV or AIDS and those exposed to the risk of HIV infection.

Clause 34 of the NAS Act states that:

Local councils shall provide community-based HIV prevention and care services in collaboration with governmental, non-governmental organizations, persons with HIV and groups most at risk of HIV infection.

Apart from surveillance testing and other unlinked testing done for epidemiological purposes, public health legislation should ensure that HIV testing of individuals should only be performed with the specific informed consent of that individual. Exceptions to voluntary testing would need specific judicial authorization, granted only after due evaluation of the important considerations involved in terms of privacy and liberty.

Section 28 of the NAS Act states:

(1) Subject to this Act, no person shall compel another person to undergo an HIV test.
(2) No person shall compel another person to undergo an HIV test as a precondition for or the continued enjoyment of:
   a. employment;
   b. marriage;
   c. admission into any educational institution;
   d. entry into or travel out of the country; or
e. the provision of healthcare, insurance cover or any other service.

Section 29 of the NAS Act states that:

(3) Subject to subsection (2), no person shall undertake an HIV test on another person except-

f. with the voluntary informed consent written or otherwise, of that other person;

g. if that person is a child, with the voluntary informed consent, written or otherwise, of a parent or legal guardian of the child; but a child who is pregnant, a parent or is engaged in behaviour which puts her at risk of contracting HIV may, in writing or otherwise, directly give voluntary informed consent to an HIV test;

h. if, in the opinion of the medical practitioner who wishes to undertake the HIV test, the other person has a disability by reason of which the person appears incapable of giving consent, with the consent of......

i. where that other person is required to undergo an HIV test under this Act or in any other enactment.

(4) For the purposes of subsection (1)-
| 20(c) | In view of the serious nature of HIV testing and in order to maximize prevention and care, public health legislation should ensure, whenever possible, that pre-and post-test counselling be provided in all cases. With the introduction of home-testing, States should ensure quality control, maximize counselling and referral services for those who use such tests and establish legal and support services for those who are the victims of misuse of such tests by others. | Clause 31 of the NAS Act states:
(1) Every testing centre shall provide pre-test and post-test counseling to a person undergoing an HIV test and any other person likely to be affected by the results of the test.
(2) The Minister shall enhance the capacity of testing centres by ensuring the training of competent personnel to provide the services required by this Act to be provided at the centres. |

| 20(d) | Public health legislation should ensure that people not be subjected to coercive measures such as isolation, detention or quarantine on the basis of their HIV status. Where the liberty of persons living with HIV is restricted, due process protection (e.g. notice, rights of review/appeal, fixed rather than indeterminate periods of orders and rights of representation) should be guaranteed. | Section 41 of the NAS Act states:
(1) A person’s freedom of abode, lodging or travel within or outside Sierra Leone shall not be denied or restricted on the grounds only of the person’s actual, perceived or suspected HIV status.
(2) No person shall be quarantined, placed in isolation, refused lawful |
<table>
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<tr>
<th>20(e)</th>
<th>Public health legislation should ensure that HIV and AIDS cases reported to public health authorities for epidemiological purposes are subject to strict rules of data protection and confidentiality.</th>
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<td>Section 35 of the NAS Act states:</td>
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<td></td>
<td>(1) No person shall disclose any information relating the result of an HIV test or any related assessments to any other person except-</td>
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<td></td>
<td>a. with the written consent of that person;</td>
</tr>
<tr>
<td></td>
<td>b. if that person is a child, with the written consent of a parent or legal guardian; but any child who is pregnant, married, a parent or is engaged in behaviour with a risk of contracting HIV may, in writing directly consent to the disclosure;</td>
</tr>
<tr>
<td></td>
<td>c. if that person is unable to give written consent, with the oral consent of that person or with the written consent of the person with power of attorney for that purpose;</td>
</tr>
<tr>
<td></td>
<td>d. if in the opinion of the medical practitioner who undertook the test, that person has a disability by reason of which the person appears incapable of giving the consent, with the written consent, in order, of-</td>
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Public health legislation should ensure that information relative to the HIV status of an individual be protected from unauthorized collection, use or disclosure in the health-care and other settings and that the use of HIV-related information requires informed consent.

Section 35 of the NAS Act states:

(1) No person shall disclose any information relating the result of an HIV test or any related assessments to any other person except-

a. with the written consent of that person;

b. if that person is a child, with the written consent of a parent or legal guardian; but
any child who is pregnant, married, a parent or is engaged in behaviour with a risk of contracting HIV may, in writing directly consent to the disclosure;

c. if that person is unable to give written consent, with the oral consent of that person or with the written consent of the person with power of attorney for that purpose;

d. if in the opinion of the medical practitioner who undertook the test, that person has a disability by reason of which the person appears incapable of giving the consent, with the written consent, in order, of-

e. to a healthcare provider who is directly involved in providing healthcare to that person, where knowledge of the patient's diagnosis of HIV infection or AIDS is necessary or relevant to making clinical decisions in the best interest of that person;

f. for the purpose of an epidemiological study where the release of the information cannot be expected to identify the person to whom it relates;

g. by order of a court, where the information contained in the medical records is directly relevant to the
Public health legislation should authorize, but not require, that health-care professionals decide, on the basis of each individual case and ethical considerations, whether to inform their patients’ sexual partners of the HIV status of their patient. Such a decision should only be made in accordance with the following criteria:

i. The HIV-positive person in question has been thoroughly counselled;

ii. Counselling of the HIV-positive person has failed to achieve appropriate behavioural changes;

iii. The HIV-positive person has refused to notify, or consent to the notification of his/her partner(s);

iv. A real risk of HIV transmission to the partner(s) exists;

v. The HIV-positive person is given reasonable advance notice;

vi. The identity of the HIV-positive person is concealed from the partner(s), if this is possible in practice; and

vii. Follow-up is provided to ensure support to those involved, as necessary.

Section 37 of the NAS Act states:

(3) A healthcare provider providing treatment, care or counseling service to a person with HIV may notify a sexual partner of the person living with HIV where he is requested by the person living with HIV to do so.

(4) A request under subsection (3) shall be in the prescribed form.

(5) On receipt of a request made under subsection (3), the healthcare provider shall, whenever possible, comply with the request.

Section 35 of the NAS Act states:

(1) No person shall disclose any information relating the result of an HIV test or any related assessments to any other person except-

a. with the written consent of that person;

b. if that person is a child, with the written consent of a parent or legal guardian; but any child who is pregnant, married, a parent or is engaged...
in behaviour with a risk of contracting HIV may, in writing directly consent to the disclosure;

c. if that person is unable to give written consent, with the oral consent of that person or with the written consent of the person with power of attorney for that purpose;

d. if in the opinion of the medical practitioner who undertook the test, that person has a disability by reason of which the person appears incapable of giving the consent, with the written consent, in order, of-

e. to a healthcare provider who is directly involved in providing healthcare to that person, where knowledge of the patient's diagnosis of HIV infection or AIDS is necessary or relevant to making clinical decisions in the best interest of that person;

f. for the purpose of an epidemiological study where the release of the information cannot be expected to identify the person to whom it relates;

g. by order of a court, where the information contained in the medical records is directly relevant to the proceedings before the court;
| 20(h) | Public health legislation should ensure that the blood/tissue/organ supply is free of HIV and other blood-borne diseases. | Section 24 of the NAS Act states:

1. Any person who offers to donate any tissue shall, before the donation, undergo an HIV test.
2. No health institution shall accept a donation of any tissue unless the donor has undergone an HIV test and the result is negative.
3. Notwithstanding subsections (1) and (2), the proposed recipient of donated tissue or the immediate relatives of the recipient shall have the right to demand a second HIV test on the tissue before a transplant or other use of the tissue is made and the second test shall, except in the case of emergencies or life-threatening situations, be carried out.

Section 25 of the NAS Act states:

4. All donated blood shall, as soon as practicable after donation, be

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70 Section 37 and section 35 of the NAS Act do not comply precisely with Guideline 20(g). Section 37 bars disclosure to sexual partners in all cases except those which the person with HIV has requested that a medical provider do so. Section 35 only permits disclosure without consent in certain cases of guardianship, incapacity, information to another medical provider, court order and death. Guideline 20(g) is more deferential to the judgment of medical care providers in the case of disclosures. A medical provider may divulge information about a person with HIV’s status under circumscribed conditions through a step-by-step process, whereby he or she should weigh individual cases and ethical considerations in addition to the existence of certain criteria.
subjected to two HIV tests with an interval of a minimum of six weeks between the tests.

(5) Any blood tested under subsection (1) which is found to be HIV positive shall be disposed of in accordance with the guidelines on the disposal of medical waste, as soon as reasonably practicable after the result is obtained.

<table>
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<tr>
<th>Section 26 of the NAS Act states:</th>
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<td>(1) The Minister shall, after consultation with the relevant registered professional associations of healthcare providers, prescribe guidelines on-</td>
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<td>a. precautions against HIV transmission during surgical, dental, delivery, embalming and similar procedures; and</td>
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<tr>
<td>b. the handling and disposal of cadavers, body fluids or wastes of persons with HIV to prevent transmission of HIV.</td>
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<tr>
<td>(2) The Minister shall at all times ensure the provision of protective equipment such as gloves, goggles and gowns to all healthcare providers and other personnel exposed to the risk of HIV infection.</td>
</tr>
<tr>
<td>(3) The Minister shall at all times ensure the</td>
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</table>
provision of post exposure prophylaxis to healthcare providers in public healthcare institutions and other personnel exposed to the risk of HIV infection.

20(j) Public health legislation should require that healthcare workers undergo a minimum of ethics and/or human rights training in order to be licensed to practise and should encourage professional societies of health-care workers to develop and enforce codes of conduct based on human rights and ethics, including HIV-related issues such as confidentiality and the duty to provide treatment.

Section 21 of the NAS Act states:
(1) HIV and AIDS education and information dissemination shall form part of the delivery of healthcare services by healthcare providers.
(2) The training of healthcare providers shall include education on HIV-related ethical issues such as confidentiality, informed consent and the duty to provide treatment and support.

As set out in Table 3, *The Guidelines and Public Health Legislation*, the legal framework is in place in Sierra Leone in accordance with The Guidelines. However, the existence of legislation in Sierra Leone does not guarantee compliance.

*Laws Creating Specialized Units/Indirect Access to Healthcare*

While the Prevention and Control of HIV Act is deemed to be obsolete by NAS, the law remains in force in the Republic of Sierra Leone. It appears that the National HIV and AIDS Commission Act, 200 (No. 11) (the **NAS Act**) was designed to repeal and replace the Prevention of Control of HIV Act, but this was not drafted into the NAS Act.

The Prevention and Control of HIV Act and the NAS Act address many of the public health directives from The Guidelines. The access to healthcare provisions of this legislation include:

- Article 16(1) of the Prevention and Control of HIV and AIDS Act and Article 33(1) of the National HIV and AIDS Commission Act – *Every health institution, whether public or private and every health management organization or medical insurance provider shall facilitate healthcare services to persons living with HIV without discrimination on the basis of HIV status.*
- Article 16(2) of the Prevention and Control of HIV and AIDS Act and Article 33(2)) of the National HIV and AIDS Commission Act – *The Government shall, to the maximum of its available resources, take the steps necessary to ensure the access to essential healthcare services including reproductive health services and access to essential medicines*
including reproductive health medicines, at affordable prices by persons living with HIV and those exposed to the risk of HIV infection.

- Article 28 of the Prevention and Control of HIV and AIDS Act and Article 44 of the National HIV and AIDS Commission Act – No person shall be denied access to healthcare services in any health institution or be charged a higher fee for any services, on the grounds only of the person’s actual, perceived or suspected HIV status.
- Article 17 of the Prevention and Control of HIV and AIDS Act and Article 17 of the National HIV and AIDS Commission Act – Local councils shall provide community based HIV prevention and care services in collaboration with governmental agencies, non-governmental organizations, persons with HIV and groups most at risk of HIV infection.

Additionally, GoSL has passed legislation on accessing healthcare beyond the scope of HIV. Much of this legislation establishes supervisory bodies to oversee the maintenance of healthcare standards and/or provide community services to the general population through programmes in such fields as education, the improvement of health, social welfare and the prevention of diseases. Examples of such laws include:

- The Hospital Boards Act, 2003 (No. 53), as amended 2007 (No. 13), introduces hospital boards (the “Hospital Boards”) to maintain a level of care, training, management and administration at [state] hospitals that meets or exceeds the standards of similar hospitals of international repute.\(^\text{71}\)
- The Medical Practitioners and Dental Surgeons Act, 1994 (No. 12) (the “Medical Practitioners and Dental Surgeons Act”), as amended 2008 (No. 1), creates a Medical and Dental Council of Sierra Leone (the “Medical and Dental Council”) to register and license practitioners and facilities and to inspect and monitor compliance with standards and processes.\(^\text{72}\)
- The Teaching Hospitals Complex Act, 2016 (No. 8) envisions a board and administration (the “Teaching Hospitals Boards and Administration”) that ensure that the standards of teaching, treatment and care at teaching hospitals meet or exceed international best practice.\(^\text{73}\)
- The Sierra Leone Council for Postgraduate Colleges of Health Specialties Act, 2016 (No. 5) forms a council (the “Sierra Leone Council for Postgraduate Health Specialties”) to promote professional development in the health sector and coordinate training of postgraduate health specialties.\(^\text{74}\)
- The Persons with Disability Act, 2011 (No. 3) (the “Persons with Disability Act”) installs a commission to, inter alios, (i) provide, where possible, assistive devices to persons with disabilities (ii) formulate measures that afford persons with disabilities equal access to community and social services and (iii) support and secure rehabilitation of persons with disabilities in their won communities.\(^\text{75}\)
- The Pharmacy and Drugs Act, 2001 (No. 12), as amended 2007 (No. 12) (the “Pharmacy and Drugs Act”), establishes a pharmacy board, with a disciplinary committee, a drugs and quality assurance committee and an education committee, to secure the “highest practicable standards in the practice of pharmacy in Sierra Leone”.\(^\text{76}\)
- The National Pharmaceutical Procurement Unit Act, 2012 (No. 8) outlines the duties and functions of the National Pharmaceutical Unit, an entity designed to “provide an effective,
efficient and transparent environment for the supply of essential medicines of requisite quality, efficacy, accessibility and affordability in public health institutions throughout Sierra Leone”. 77

- The Sierra Leone Red Cross Society Act, 2012 (No. 15) charges the Red Cross Society with providing humanitarian aid to civilians during crises and, inter alios, prevent and alleviate human suffering without discriminating based on “nationality, race, ethnicity, gender, language, religious beliefs, class, political opinion or any similar criteria”. 78

- The Sierra Leone Health Services Commission Act, 2011 (No. 5) institutes a commission (the “Sierra Leone Health Commission”) to assist the ministry responsible for health in the formulation of policies to deliver affordable, accessible and improved healthcare to the people of the country. 79

- the Public Health Ordinance, 1960 (No. 23), as amended 2004 (No. 4) and 2014 (No. 44) (the “Public Health Act”) delegates to the ministry responsible for health and the executive, certain authority to appoint a health authority and to, inter alios, declare health areas, prevent the spread of infectious diseases, control notifiable diseases and inspect food, housing, water supplies and sanitation. 80

The combined legislation above creates numerous organisations with a charge to ensure quality standards in healthcare. The laws essentially delegate responsibilities from the ministries responsible for health, education and justice to specialized units that focus on discrete aspects of public health. This is typical practice throughout the world.

NAS is created under the NAS Act, which reiterates many of the provisions of the Prevention and Control of HIV Act, an act that key stakeholders consider obsolete. The first Guideline of The Guidelines recommends that states introduce a public sector entity like NAS to oversee and coordinate the delivery of HIV services and development of related policies. Key populations and key stakeholders indicate that NAS and its partners have been effective at identifying and reaching key populations and policies and reports, like the National HIV and AIDS Plan and the Sierra Leone National AIDS Response Progress Report, 2015, show that NAS holds a significant role in coordinating the Sustainable Development Goals related to HIV and AIDS.

However, key populations and key stakeholders (including medical practitioners) reported that the primary concerns surrounding healthcare in Sierra Leone remain the affiliated costs, insufficient knowledge and ability of healthcare providers, scarcity of medical supplies and reliable drugs and “fear of attack” and discrimination at medical facilities. Medical practitioners have said that ethical standards are not enforced and medicine legislated to require prescriptions are made available without them.

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77 Section 2 and 4.
78 Section 4.
79 Section 9.
80 Sections 3-5, 22, 34, 38-57, 72, 88-103 and 110.
medical facilities. Medical practitioners have said that ethical standards are not enforced and medicine legislated to require prescriptions are made available without them. Medical practitioners also complain about the quality of the training for professionals in their field.

It is notable that the creation of numerous entities to oversee the delivery of healthcare services does not appear to have solved the issues surrounding access to quality healthcare in the country. The laws set out above do not create any direct responsibilities on providers but rather induct intermediary entities to develop, implement and monitor policies. A number of the entities share overlapping or duplicated responsibilities.

For example, Hospital Boards, Teaching Hospitals Boards and Administration, Sierra Leone Council for Postgraduate Health Specialties, Medical and Dental Council and Sierra Leone Health Commission each have a role in overseeing the standards of training and care in the medical profession. Each of these entities have several tiers of administration and supervision within and, in some cases, report to each other, as in the case of the Sierra Leone Health Commission supervising the Teaching Hospitals Boards. The web of bureaucracy adds significant cost to healthcare administration and cost. As discussed below where cost-free healthcare has been legislated, it is not being witnessed by key populations and therefore one must consider whether administrative costs are interfering with the free healthcare initiatives end goals.

Laws Creating Direct Access to Healthcare

Numerous articles of the Sierra Leone code convey access to healthcare to people living with HIV, those in custody, those accused of criminal activity related to illegal drug use and individuals with a disability. The flagship concessions are found under:

- The Domestic Violence Act, 2007 (No. 20), (the “Domestic Violence Act”) which ensures free medical treatment to victims of domestic violence and requires that police officers assist victims to secure such treatment, if necessary, during the course of their investigations. Medical treatment without cost applies only to those victims who are assisted by the police force.

- The Sexual Offences Act, 2012 (No. 12), which instructs:
  
  o police officers to help victims of sexual offences by “issuing a medical form to the victim and where necessary sending the victim to a medical facility [whereby the victim shall obtain treatment at no cost] and obtaining a medical report”; and
  
  o courts, in their discretion, to order sexual offenders to pay compensation to their victims for, inter alios, (i) costs incurred for medical and psychological treatment, (ii) costs incurred for physical and occupational rehabilitation and (iii) emotional distress and pain and suffering.

- The Persons with Disability Act, which grants persons with disabilities access to free healthcare.

- The National Drugs Control Act, 2008 (No. 10) (the “Drugs Control Act”), which avails suspended (and ultimately discharge of) penalties to accused drug offenders who complete a court-approved treatment and rehabilitation programme recommended by a treatment assessment panel.

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81 Paragraphs (1)(c), (2) and (3) of section 7.
82 Paragraph (3) of section 7 of the Domestic Violence Act.
83 Sections 38 and 39.
84 Section 37.
85 Section 17.
86 Sections 19 – 21.
• The Sierra Leone Correctional Service Act, 2014 (No. 5) (the “Correctional Services Act”), which orders correctional centers to:
  o station in or appoint as responsible for each correctional center, a medical officer, with knowledge of psychiatry and women’s health, who shall (i) take charge of the health of all inmates therein, (ii) medically examine each inmate, when necessary and (iii) maintain a health record of each inmate;\(^{87}\)
  o provide (i) dental services, (ii) vaccinations, (iii) support services for infants and mothers, where infants are permitted to remain in a correctional center and (iv) “public awareness and education programmes”;\(^{88}\)
  o assist each prisoner with an “unsound mind” to obtain certification under the Lunacy Act and transfer him/her to a mental hospital;\(^{89}\)
  o without prejudicing the health of the prisoner, determine whether to relocate a prisoner diagnosed with a “contagious disease” until he/she is cured;\(^{90}\)
  o without prejudicing the health of the prisoner, determine whether to remove to a hospital a prisoner suffering from a “serious illness”;\(^{91}\) and
  o unless the prisoner requests otherwise, retain in custody any prisoner who is eligible for release if release would endanger his/her health.\(^{92}\)

• The National HIV and AIDS Plan, which mandates strategic outputs that, \textit{inter alios}, increase:
  o the percentage of people living with HIV who access antiretroviral treatment (“\textit{ART}”) and complementary care and support services to 90% by 2020;
  o the percentage of people living with HIV - adults, adolescents and children - that receive an annual clinical, psychosocial and socio-economic assessment (and who obtain the appropriate care and support package) to 95% by 2020;
  o the percentage of mothers living with HIV that attain viral load suppression during pregnancy, labour and over the entire period of breastfeeding to 95% by 2020;
  o the percentage of health facilities that provide combination prevention services tailored to targeted key populations, victims of domestic violence, traders, migrant workers, individuals infected with tuberculosis and uniformed personnel to 80% by 2020;
  o the percentage of targeted key populations, victims of domestic violence, traders, migrant workers, individuals infected with tuberculosis and uniformed personnel that access relevant combination prevention services to 90% by 2020;
  o the percentage of targeted key populations, victims of domestic violence, traders, migrant workers, individuals infected with tuberculosis and uniformed personnel that have uninterrupted access and consistent and correct utilization of male and female condoms for dual benefit (contraception and disease prevention) to 90% by 2020; and
  o the number of district and city local councils (where integrated health and community systems include HIV among the priority health issues of focus in service delivery) staff training and CIS/HMIS reporting to 10 by 2020.

\textit{Equal Access to Healthcare}

\(^{87}\) Section 33.
\(^{88}\) Section 38.
\(^{89}\) Section 47.
\(^{90}\) Section 46.
\(^{91}\) Section 48.
\(^{92}\) Section 58(2).
In a 2015 speech, His Excellency, the President Ernest Bai Koroma stated that healthcare should be available to all, regardless of religion, sex, race and similar grounds. While GoSL has been unwilling or unable to restate these words in written form, or to guarantee delivery through a clear policy, key stakeholders, including NAS and UNAIDS, have interpreted the declaration to offer space for the provision of healthcare for those engaging in activities that have been criminalized, such as in the case of men who have sex with men and people who inject drugs.

A portion of the public appears to believe, to varying degrees, that they are entitled to healthcare, even though many do not witness this right being actualized. Interviewees and focus group discussion participants reported an assurance that the Constitution grants each Sierra Leonean access to medical care. In their Power Point presentation to workshop participants, a focus group wrote “Everybody is entitled and has equal access to health care (at a cost, with the exception to those who qualify for the free health care, [i.e.] Pregnant women, lactating mothers and children [under] 5 years of age). For HIV, everybody has a right to access HIV care services”. They continued to concede, however, that, in practice, the right may not be realized by all. “Because [the practices of key populations are] contrary to social norms, they are often discriminated against at the health care settings,” they reported.

Both social norms and cost, together with adequacy of services and supplies, arise as significant limitations in key populations’ and people living with HIV’s access to healthcare.

Criminal Laws, Social Norms and Access to Healthcare

In respect of social norms and access to healthcare, key populations and key stakeholders report numerous instances whereby social norms interfere with HIV prevention and treatment.

For example, both key populations and key stakeholders have revealed that condoms are not permitted to be distributed in prisons because social norms prohibit it. Some key stakeholders stated that homosexuality does not exist in Sierra Leone and, since correctional centers are required to keep male and female prisoners in separate quarters, where they cannot see or converse with each other, condoms are not needed in prisons.  

This refusal to distribute condoms not only finds its base in social norms that countervail facts about HIV, the inactivity also overlooks the Correctional Services Act’s commitment to affording inmates with healthcare and public awareness and education programmes, and negates the policy behind the requirement under section 36(e) of the Correctional Services Act, whereby correctional facilities must inform incoming inmates on the dangers related to unsafe sexual practices. Withholding condoms would also appear to defy the Sierra Leone Correctional Service Strategic Plan 2015-2017: Our journey (from penal custodial services to a correctional services) (the “Correctional Services Plan”), in which “inmates’ [sic] physical and mental health are assured through professional care equivalent to that which [sic] is provided to citizens in the community” is an expected result of modernization of the prison system. Under section 2.5 of the Correctional Services Plan, the correctional service is tasked with developing and implementing a programme for preventing and detecting infectious and contagious diseases, including sexually-transmitted diseases and HIV.

Under Article 20 (Protection from inhuman treatment) of the Constitution, no Sierra Leonean “shall be subject to any form of torture or any punishment or other treatment which is inhuman or

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93 See Section 54, Correctional Services Act.
94 Section 2.5.
95 Section 2.5.3.
degrading”. In the context of GoSL’s parallel obligations under the article 5 of the African Charter and articles 6 and 7 of the ICCPR, this right has been interpreted to protect prisoners from actions that cause physical and mental pain and suffering. The Guidelines emphasize that while imprisonment is punishment by deprivation of liberty, it should not result in the loss of human rights or dignity. In fact, GoSL and other governments owe a duty of care to prisoners that, in respect of HIV and AIDS, could require the provision of the means of prevention (such as condoms) as well as information, education, voluntary testing and counseling, confidentiality and HIV-related health care and access to and voluntary participation in treatment trials.

Social norms, in the context of denial of homosexuality, may be catalyzed by the sodomy laws that are still in place in Sierra Leone. During the focus group discussions, participants argued that condoms should not be given to male prisoners as such an act would, essentially, assist in the commission of a crime. Because sex among men is criminalized under section 61 of the English Offences Against Persons Act, 1861 (the “Offences Against Persons Act”). This section outlaws anal and oral intercourse and its corollary section 62 punishes attempts to engage in such acts. These parts of the Offences Against Persons Act remain in effect in Sierra Leone as a result of article 170(4) of the Constitution’s incorporation into the current law, all laws in effect at the date of the Constitution. Not only does criminalization of homosexuality “both cause and boost” the proliferation of HIV among men who have sex with men, it also increases the risk of HIV transmission throughout the population. The Global Commission has examined whether HIV infection is higher among men who have sex with men in countries that ban homosexual acts and found that, in their sample, 1 in 4 men who have sex with men were HIV-positive in countries where homosexuality was somehow criminalized but that 1 in 15 men who have sex with men were HIV-positive in similar nations that legalized homosexual intercourse. Their report also evidences that, in societies that stigmatize men who have sex with men, men who have sex with men’s rate of engaging in behavior that could transmit HIV and rate of recent sexual encounters with women both increase. Because of the deleterious effect of such laws on combating HIV and abiding by human rights obligations, The Guidelines admonish governments to repeal such legislation. The Guidelines state that “criminal law prohibiting sexual acts (including adultery, sodomy, fornication and commercial sexual encounters) between consenting adults in private should be reviewed, with the aim of repeal. In any event, they should not be allowed to impede provision of HIV prevention and care services”.

Syringe exchange programmes suffer from the same obstacles witnessed by condom distribution projects, namely stigmatization and the related view that

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97 The Guidelines, paragraph 152.
99 *Id.*
100 *Id.* at p. 45 and 47.
101 The Guidelines, paragraph 21(b).
the provision of syringes would abet violation of the law. Possession, usage, production, transport and supply of heroin, opium, cocaine, morphine in its various forms and other injectable recreational drugs (or aiding or abetting another in any of these activities) are outlawed under section 7 and section 15 of the Drugs Control Act and possession or distribution of a syringe without a valid prescription, as detailed under the Access to Medication and Medical Products section below, is forbidden under the Pharmacy and Drugs Act.

The Global Commission addresses this issue in their research, discovering that, globally, unsafe drug injection is the leading path to HIV infection in prisons. Both syringe exchange programmes and replacement drug therapy have diminished the transmission of HIV in prisons outside of Sierra Leone. Absent lawful authority, the method for acquisition of which is unclear, methadone is banned in Sierra Leone, a factor that could undermine any alternative drug therapy options for prisoners.

However, as stated above, the Drugs Control Act offers suspended enforcement and eventual discharge of sentences to accused drug offenders who complete a court-approved treatment and rehabilitation programme recommended by a treatment assessment panel. The Correctional Services Act contemplates an overarching rehabilitation programme for prisoners by delegating to the Sierra Leone Correctional Services Council the ability to make rules regarding early release and rehabilitation of those incarcerated. Key stakeholders and key populations revealed that these laws have not been implemented, pointing out that the only form of rehabilitation are the correctional center facilities themselves.

The corrections service has reported on its rehabilitation programming and disclosed the results of an audit that found that “eleven (11) out of the seventeen (17) prisons, that is (65%) [are] without rehabilitation facilitators and 62% of the facilitators were without the relevant skills in line with the rehabilitation programmes”. The admittedly low quality and frequency of delivery of rehabilitation programmes may explain the key stakeholders’ and key populations’ assessments that none exist. The paucity of reformative programmes in correctional institutions appears to be based on shortcomings in funding and capacity rather than on social norms and will therefore be discussed further under the Access to Justice section of this Part III (Key Populations and HIV under Sierra Leonean Law) because that analysis considers these issues in the wider access to justice context.

While laws tend to reflect societal norms and shape citizens’ behavior, it appears that, in Sierra Leone, where the rule of law is limited, this role of the law may be diminished. Here, it seems that social norms and the nature of training of medical personnel, rather than the legal framework, may be a major cause of discrimination in access to healthcare. Focus group discussions, which included representatives from, inter alios, Prison Watch, Advocaid the Sierra Leone Police Force and the Office of the Attorney General and Ministry of Justice (hereinafter the “Justice sector key stakeholders”) confirmed that those closest to the enforcement of laws had never known of a case in which someone had been charged with a violation under Section 61 of the Offences Against Persons Act. Furthermore, key populations described stigmatization when seeking healthcare, not because of the laws against them, but rather because of the societal dismay with their lifestyles.

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102 Risks, Rights and Health, p. 56.
103 Id.
104 Section 90.
105 The Correctional Services Plan, p. 3 and 4.
The Prevention and Control of HIV Act and the NAS Act criminalizes transmission of HIV in certain circumstances. Under the Prevention and Control of HIV Act, a person living with HIV is subject to up to seven years of imprisonment and/or payment of a fine of up to five million leones if he/she (i) fails to take all reasonable precautions against transmission of HIV to others, (ii) has sexual contact and/or shares needles with others without disclosing their status and/or (iii) recklessly or intentionally places others at risk of infection, without their voluntary consent. The NAS Act imposes a penalty of up to five years of imprisonment and/or payment of a fine of up to twenty million leones if a person living with HIV willfully transmits HIV to another. Both laws exempt from criminal liability a person living with HIV who is not aware of his/her status.

The Domestic Violence Act also considers sexual abuse to include “sexual contact by a person aware of being infected with human immunodeficiency virus (HIV) or any other sexually transmitted infection with another person, without that other person being given prior information the infection”. Here, violence is not required for sexual abuse to be charged where HIV is not disclosed in a domestic relationship, subject to the person being aware of his/her positive status and transmission taking place. The punishment for this offence is a fine not exceeding five million leones and/or a term of imprisonment of two years or less.

While the Justice sector key stakeholders echoed that they knew of no cases in which charges under these provisions were filed, the criminalization of transmission of HIV leads to harmful social norms and the avoidance of testing and treatment. Furthermore, the two laws conflict. In the Domestic Violence Act and the NAS Act, actual infection and intent are outlawed whereas under the Prevention and Control of HIV Act, actual transmission is not required and a person living with HIV can be convicted for reckless behavior. The fines are also inconsistent.

According to the Global Commission, laws like the Sierra Leonean statute against transmission, exposure and nondisclosure of HIV are “fundamentally unjust, morally harmful and virtually impossible to enforce with any semblance of fairness”. Such laws impose regimes of surveillance and punishment on sexually active people living with HIV, not only in their intimate relations and reproductive and maternal lives, but also in their attempts to earn a living in the case of certain medical professions. Such laws are often presented as human rights provisions (in the prevention of spreading of HIV to an unaware individual) but, in actuality, are both detrimental to human rights of people living with HIV and key populations and based on obsolete information. “There is no evidence that laws regulating the sexual conduct of people living with HIV change behavior in a positive way”, the Global Commission assesses, and continues to observe that “such laws [fail to] take into account the success of ARTs in significantly reducing transmission risk and improving the quality of life and longevity for people with HIV... the fear of prosecution isolates [people living with HIV] and discourages them from getting tested, participating in prevention or treatment programmes or disclosing their status to partners”. Indeed, despite the Justice sector key stakeholders’ assessment that the law is not enforced, it holds significant

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106 Section 21.
107 Section 37.
108 Id. and section 21 of the Prevention and Control of HIV Act.
109 Section 1, definition of “sexual abuse”.
110 Risks, Rights and Health, p. 20.
potential in undermining social norms related to HIV and discouraging people living with HIV’s and key populations’ access to healthcare.

Although no Sierra Leonean statute forbids sex work, sex workers and their attorneys explain that section 7 of The Public Order Act, 1965 (No. 45) (the “Public Order Act”) has been used to target sex workers. Section 7 states that “Any person loitering in or about any stable house or building, or under any piazza, or in the open air, and not having any visible means of subsistence, and not giving a good account of himself, shall be deemed an idle and disorderly person, and shall, on conviction thereof, be liable to imprisonment for any period, not exceeding one month”. The subjective law invites abuse and keep sex workers at the margins of society. This is discussed further under the Access to Justice section of this Part III (Key Populations and HIV under Sierra Leonean Law).

Summarizing the way criminal laws and social norms militate against effective prevention and treatment of HIV, a GoSL worker surmised, “if only we as a nation want to see HIV as…[a] success stor[y] like the Ebola disease, we need to shift from our normal traditional and cultural thinking about the way people live”. “There are laws [connecting HIV and human rights] but the authorities are not doing anything about this issue because of traditional and cultural norms,” he continued.

A medical practitioner echoed this concern by linking negative perceptions of key populations to training of healthcare workers. “Some healthcare workers discriminate [against] key populations partly because lack of knowledge of HIV”, he said. Another healthcare worker listed stigmatization and discrimination as the primary barriers to access to HIV care and a third practitioner concluded that men who have sex with men and sex workers do “not [receive] the same [medical] treatment…due to negative social perception[s]”.

Indeed, sex workers have experienced prejudice at medical facilities by being disregarded by the staff. One sex worker relayed that “it’s not easy [to access healthcare] because some of the nurses know that we are sex workers so when they see us at the hospital they do not pay attention to us”. 50% of the transgender individuals consulted for this report warned that they fear attack when seeking medical treatment. People who inject drugs have said that they are only treated equally if they refrain from disclosing the fact that they use drugs.

Accessing “Free” Healthcare

In terms of the role of costs, divergent views appear across the country. Many key populations and key stakeholders reported that, even in cases where healthcare is legislated to be provided at no cost, ability to pay remains the primary distinction between those who access healthcare and those who do not. Following are samples of response from key populations regarding whether they find healthcare to be “easily accessible”:

- “Yes, paid money for everything,” a sex worker;
- “As long as you have money they will treat you,” numerous sex workers;
- “No because of financial constraints,” a sex worker;
- “No. If you have no money you would not be treated,” a sex worker;
- “I find it difficult to access because lack of money,” a sex worker;
- “As long as you have money they will treat you but if they know your life style the stigmatize you,” a person who injects drugs;
“As long as you have money, they will treat you.”

Sex Workers, on accessing free healthcare

• “As long as you have money they will treat you” a person who injects drugs;
• “No, only if you have money. You give the nurses money at various stops and they will attend to you quickly,” a prisoner;
• “No, you must have money,” a prisoner; and
• “I have difficulty accessing healthcare because of financial constraints”, a transgender individual.

Following are the responses from key stakeholders on the rights of Sierra Leoneans in respect of access to healthcare, medications and accurate information:

• “Patients should be diagnosed before treatment and should be treated before paying”;
• “[no actual information provided for accessing] free health care for children, pregnant women”;
• “HIV treatment is free but still challenging to access”;
• “As long as they can financially afford”; and
• “[HIV treatment] used to be public and widespread but now has been reduced by service providers”.

Juxtaposed with the views above, all men who have sex with men stated that they found healthcare easily accessible. Similarly, the focus group leading the conversation on access to healthcare affirmed that ART is provided to people living with HIV at no cost to the patient. The Sierra Leone National AIDS Response Progress Report, 2015 supports this position. Here, the authors write that “since the provision of free ART policy came into effect in 2005, there has been a significant increase in the uptake of ART services and subsequent scale-up of ART sites. Between 2013 and 2014, uptake of ART increased from 9,065 to 10,672 clients”.

The Health, Education & Advice Resource Team studies the effectiveness of the initiative for providing free healthcare to pregnant women, lactating mothers and children under the age of five years. As in the findings of this report, they found evidence of efficacy inconclusive. “It is therefore hard to draw conclusions about the contribution of the [Free Health Care Initiative] to the modest reduction in real [out of pocket] payment expenditure over the time period and even harder to speculate about what difference the FHCI should have made”, they wrote in The Sierra Leone Free Health Care Initiative (FHCI): process and effectiveness review.

The African Commission confirms that the FCHI has been undercapitalized and has marked healthcare as an area of concern for Sierra Leone. Specifically, in its Consideration of Reports Submitted by States Parties under Article 62 of the African Charter on Human and Peoples’ Rights, Concluding Observations and Recommendations on the Initial and Combined Periodic Report of the Republic of Sierra Leone on the Implementation of the African Charter on Human and Peoples’ Rights, it writes, “the Commission is however concerned about the following:

67. the current allocation of the annual State budget to the health sector which is less than the 15% minimum amount stated in the Abuja Declaration on HIV/ AIDS, Tuberculosis and other related infectious diseases;
68. The lack of information on access to medical facilities and services in the rural areas;

111 At p. 15.
69. The stigmatization and exclusion faced by survivors of the Ebola virus……

70. The lack of information on the following: the existence of laws on criminalization of transmission; disaggregated data on the HIV prevalence rate; the measures put in place to ensure access of treatment to men who have sex with men; and whether educational programs have integrated information on HIV/AIDS.

Access to Medication and Medical Products

The Pharmacy and Drugs Act prohibits non-licensed pharmacists from (i) preparing or supplying certain drugs and medication to the public and (ii) holding himself or herself out to be a pharmacist.\textsuperscript{112} The law allows for delicensing of pharmacists who violate the standards of practice or engage in professional misconduct.\textsuperscript{113}

Furthermore, medications listed in specific classes can only be obtained from a pharmacist if the patient produces a valid prescription, in which case the pharmacist is required to provide the medication in compliance with the prescribed instructions.\textsuperscript{114} Medications and importers must be registered with and approved by the pharmacy board before a drug may be brought into Sierra Leone and no drug may be distributed unless it is a recognized pharmacopoeia and has been packaged, labeled and stored in accordance with the board’s standards.\textsuperscript{115} Manufacturers must registered with the board and production, in certain cases, must be overseen by a pharmacist.\textsuperscript{116} These regulations are designed to (i) curb the circulation of counterfeit and impure substances, (ii) limit the usage of controlled medications to cases in which a medical professional has deemed appropriate and (iii) minimize cases of dangerous interactions or adverse reactions.

Whilst the above framework can further access to quality healthcare, the Sierra Leone code also contains restrictions that could limit the delivery of healthcare services, particularly to key populations and people living with HIV. For example, no person may supply a syringe designed for injection to any person without a valid prescription (other than a medical practitioner).\textsuperscript{117} In fact, possession of such a syringe without proof of authorization is a punishable offence.\textsuperscript{118}

While the prohibition on syringe distribution may curtail the use of improperly designed syringes, it also limits the supply and incentivizes citizens to reuse needles both for medical needs and recreational drug injection. Naturally, this increases the spread of diseases including HIV.

Similarly, it is illegal to advertise with any description designed to lead the use of a drug or service:

- for prevention or treatment of a range of diseases including, \textit{inter alios}, sexually transmitted infections, hepatitis, tuberculosis, sexual impotence, mental conditions and blood disorders;
- to terminate or influence the course of human pregnancy; or
- for any purpose relating to human sexual intercourse.\textsuperscript{119}

\textsuperscript{112} Sections 15 and 17.
\textsuperscript{113} Id., Section 12.
\textsuperscript{114} Id., Sections 24, 26, 27 and 31.
\textsuperscript{115} Id., Sections 1 “authorized pharmacopoeia”, 42-44, 47, 55
\textsuperscript{116} Id., Sections 39 and 40.
\textsuperscript{117} Id., Section 57.
\textsuperscript{118} Id.
\textsuperscript{119} Id., Section 35 and schedule two.
The policy objective driving this law is elusive, particularly given the specific targets related to human sexual intercourse, human pregnancy and the list of varying, seemingly disconnected, diseases. It would appear that societal norms may have influenced the design of this law to some degree. Nevertheless, advertising condom usage to prevent sexually transmitted diseases, including HIV, has been established as an effective way to diminish the number of infections. Key populations reported that they access information about HIV and current events through the media, with radio serving as the predominant source of news. This discussion is continued under the Access to Information section of this Part III (Key Populations and HIV under Sierra Leonean Law) below.

**Recommendations**

It appears that a fundamental obstacle in access to healthcare is rooted in the reality that the need for change in Sierra Leone outweighs the means for achieving meaningful intervention. Whether this is related to the actualization of free healthcare or addressing stigmatization of those seeking medical attention, resources must be in place in order for access to healthcare to be realized. Failure to honor reformative, human rights laws and policies permeates a distrust in the leadership and creates an environment for disheartened key populations, people living with HIV and persons in need of healthcare. While some international obligations are moderated for a nation’s cultural, economic and social contexts, the laws a country passes domestically do not have a similar exemption in the minds of its people. Therefore, as an overarching recommendation, GoSL should allocate the means to implement the laws that it passes.

It is further recommended that GoSL:

1. as already committed in principle, allocate financial, political and administrative resources for the achievement of the deliverables\(^{120}\) described in the National HIV and AIDS Plan related to access to treatment and healthcare for HIV and key populations, as cited above;
2. undertake an analysis of the value for money represented by the induction of the various subvented public health units. If the quality of medical care does not meet relevant international standards and citizens are unable to afford necessary treatment, then GoSL may wish to consider direct interventions rather than coordinating efforts through numerous public health-related units. The laws also burden the supervisory organizations with the responsibility for ensuring that the standards of healthcare are met. If an entity is insufficiently capacitated or funded meagerly, it will not be able to perform its supervisory duties and no direct obligation is places on the service providers. Legislation should be amended to place the responsibility for the quality of healthcare onto the healthcare providers directly, rather than (or in addition to) placing the responsibility onto intermediary associations that supervise and monitor the delivery of services;
3. repeal the Prevention and Control of HIV Act because it is duplicated by and, at times, conflicts with, the NAS Act;
4. secure financial, political and administrative resources for NAS, either from the consolidated fund or through combined assistance from donors and CSOs, so that it can

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\(^{120}\) Recommendations for strengthening access to health care.
implement the provisions of the NAS Act to an international standard and as ambitiously as required under the terms of the legislation;

5. in line with the Global Commission’s advice and the principles of the Constitution, address stigmatization in access to healthcare and ensure that all citizens receive such care without discrimination. It should, first, follow the instructions of the Constitutional Review Committee and amend Article 27 (Protection from discrimination) of the Constitution so that each key population (and each Sierra Leonean) is granted an unequivocal right to equal protection and access to services under the law. The Constitutional Review Committee Recommendation that Article 27 (Protection from discrimination) be redrafted to clarify the courts with jurisdiction for claims for discrimination suffered from the public or the private sector should also be followed;

6. detail information to the African Commission in relation to laws and policies on HIV and AIDS, statistics and disaggregated data, measures taken to ensure equal access to treatment and information on the existence of educational programs on HIV and AIDS;\(^\text{121}\)

7. repeal section 61 of the Offences against Persons Act, section 37 of the NAS Act and the inclusion of HIV transmission in the definition of “sexual abuse” in the Domestic Violence Act on public health and human rights grounds. Training and sensitization of police officers, corrections officers, healthcare workers and the public at large should be instituted in connection with this repeal and a moratorium on enforcement of these laws should be ordered until the repeals have been validated by Parliament in accordance with the Constitutional process;

8. set aside convictions of those prosecuted under section 61 of the Offences against Persons Act, section 37 of the NAS Act and the inclusion of HIV transmission in the definition of “sexual abuse” in the Domestic Violence Act and/or release the accused immediately from prison with pardons, expunging the charge and conviction from their criminal records;\(^\text{122}\)

9. ensure that necessary health care is available in correctional centers, including HIV prevention and care services, the provision of condoms, comprehensive harm reduction services and ART;\(^\text{123}\)

10. enforce and execute the reformatory programmes contemplated by the Drugs Control Act, the Correctional Services Act and the Correctional Services Plan. Train those working in the rehabilitation programmes; CSOs and the private sector could provide expertise and support in this space;

11. repeal the laws banning distribution of syringes, particularly in respect of correctional facilities;

12. reverse the bar on advertising mechanisms for averting STIs, relating to human sexual intercourse and other diseases and for terminating pregnancy;

13. inform the African Commission on measures taken to install adequate, affordable and accessible health facilities and services to the rural areas;\(^\text{124}\) and

14. where free healthcare is legislated, install the requisite finances for the delivery of services. According to the African Commission, “in the annual State budget, [GoSL should] ensure allocation of the minimum amount of 15% to the health sector, in

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\(^{122}\) See \textit{Risks, Rights and Health}, p. 25.

\(^{123}\) See \textit{Id.}, p. 58.

accordance with the Abuja Declaration on HIV/AIDS, Tuberculosis and other Related Infectious Diseases.\textsuperscript{125} Medication, in addition to medical services, should be provided at no cost. If the finances cannot be delegated to this source, the legislation should be redrafted to match the level of support that GoSL can deliver. Failure to act upon legislation and healthcare initiatives countervails the rule of law and people’s trust in GoSL.

It is also recommended that NAS:

15. where possible and permissible under law, to the extent not already effected, coordinate with CSOs and donors in the execution of its duties as set out under the NAS Act;
16. coordinate with the Medical and Dental Council, CSOs and GoSL to train healthcare workers on and sensitize them to HIV and key populations. NAS should work with the Medical and Dental Council to draft standards for the treatment of key populations and people living with HIV that incorporate The Guidelines and are domesticated appropriately into the Sierra Leonean context; and
17. together with correctional service, obtain clarity as to methods for obtaining lawful authority to use methadone and investigate designing an alternative treatment programme for people who inject drugs in prison.

Access to Justice

International Law and Standards

Sundry stipulations of international treaties, conventions and agreements to which Sierra Leone is a party instruct nations to furnish their citizens with equal access to justice.

These obligations range from blanket grants of equal protection to all people under the law, freedom of citizens from arbitrary arrest and detention, rights of those charged to have a hearing before an unbiased court and exemption for everyone from torture and slavery.

Table 4, below, summarizes selected HIV- and justice sector-related requirements GoSL has accepted under international instruments.

**Table 4: Selected HIV- and Justice Sector-related International Obligations**

<table>
<thead>
<tr>
<th>Source</th>
<th>Obligation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 2, African Charter</td>
<td>Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.</td>
</tr>
<tr>
<td>Article 2(2), ICESCR</td>
<td>The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</td>
</tr>
<tr>
<td>Article 2(1), ICCPR</td>
<td>Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction</td>
</tr>
</tbody>
</table>

\textsuperscript{125} Id., paragraph 87(xxiii).
the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

| Article 3, African Charter | (1) Every individual shall be equal before the law.  
(2) Every individual shall be entitled to equal protection of the law. |
| Article 3, ICESCR | The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant. |
| Article 4, African Charter | Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right. |
| Article 5, African Charter | Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited. |
| Article 6, ICCPR | (1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.  
(2) In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.  
(3) When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.  
(4) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.  
(5) Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.  
(6) Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant. |
| Article 7, ICCPR | No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. |
| Article 8, ICCPR | (1) No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.  
(2) No one shall be held in servitude.  
(3)  
(a) No one shall be required to perform forced or compulsory labour..... |
| Article 6, African Charter | Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained. |
### Article 9, ICCPR

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

### Article 10, ICCPR

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

### Article 7, African Charter

1. Every individual shall have the right to have his cause heard. This comprises:
   - (b) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
   - (c) The right to be presumed innocent until proved guilty by a competent court or tribunal;
   - (d) The right to defence, including the right to be defended by counsel of his choice;
   - (e) The right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

### Article 14, ICCPR

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established
by law. The press and the public may be excluded from all or part of a
trial for reasons of morals, public order (ordre public) or national security
in a democratic society, or when the interest of the private lives of the
parties so requires, or to the extent strictly necessary in the opinion of
the court in special circumstances where publicity would prejudice the
interests of justice; but any judgement rendered in a criminal case or in
a suit at law shall be made public except where the interest of juvenile
persons otherwise requires or the proceedings concern matrimonial
disputes or the guardianship of children.
(2) Everyone charged with a criminal offence shall have the right to be
presumed innocent until proved guilty according to law.
(3) In the determination of any criminal charge against him, everyone
shall be entitled to the following minimum guarantees, in full equality…
(c) To be tried without undue delay….

| Article 13, African Charter | (1) Every citizen shall have the right to participate freely in the
government of his country, either directly or through freely chosen
representatives in accordance with the provisions of the law.
(2) Every citizen shall have the right of equal access to the public
service of the country.
(3) Every individual shall have the right of access to public property and
services in strict equality of all persons before the law. |

| Article 25, ICCPR | (1) Every citizen shall have the right and the opportunity, without any of
the distinctions mentioned in article 2 and without unreasonable
restrictions:
(a) To take part in the conduct of public affairs, directly or through
freely chosen representatives;
(b) To vote and to be elected at genuine periodic elections which
shall be by universal and equal suffrage and shall be held by
secret ballot, guaranteeing the free expression of the will of the
electors;
(c) To have access, on general terms of equality, to public service
in his country. |

The Guidelines transcribe these commonly-accepted human rights standards into the HIV context. In respect of equal protection under the laws and entitlement to public services, Guideline 7 advises that “States should implement and support legal support services that will educate people affected by HIV about their rights, provide free legal services to enforce those rights, develop expertise on HIV-related legal issues and utilize means of protection in addition to the courts, such as offices of ministries of justice, ombudspersons, health complaint units and human rights commissions.”

Regarding the penal system and the established privilege to be treated with dignity and not to be subjected to cruel, inhuman or degrading treatment or slavery, Guideline 4 urges governments to “review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV or targeted against vulnerable groups”.

National Laws and Practices

According to The Guidelines, legislation that conforms with best practices and international human rights norms is only as effective as the country’s rule of law. The authors explain that
“since laws regulate conduct between the State and the individual and between individuals, they provide an essential framework for the observance of human rights, including HIV-related human rights. The efficacy of this framework for the protection of human rights depends on the strength of the legal system in a given society and on the access of its citizens to the system. However, many legal systems worldwide are not strong enough, nor do marginalized populations have access to them”.\textsuperscript{126}

The Global Commission reiterates this principle in its assessment \textit{Risks, Rights and Health}, by resolving the following:

\begin{quote}
\textit{Often, legislation commits a nation to guaranteeing internationally affirmed human rights of equality, liberty and health. But for many reasons (such as lack of resources, political chaos or interpretations of religion), governments frequently fail to uphold these obligations. National legislation may prohibit discrimination, but the law is often ignored, laxly enforced or aggressively flouted. In public institutions and in their homes, people living with HIV feel the blows of stigma, discrimination, marginalization and verbal and physical abuse. These experiences are often compounded by bigotry (based on sex, gender, sexual orientation, social origin, occupation, race or status as a person who uses drugs or engages in sex work) that spills economic onto their families.}\textsuperscript{127}
\end{quote}

These conclusions from The Guidelines and the Global Commission explain well the status of access to justice and human rights in Sierra Leone. It is therefore imperative to set as a caveat to this section that implementation of laws and international human rights norms has been a struggle for GoSL.

The findings from the research undertaken in support of this report is replete with evidence that the rule of law in Sierra Leone is extremely weak. The Justice sector focus group of key stakeholders, in response to the query “How would you characterize the rule of law and access to justice in Sierra Leone? Do law and formal processes reign or are there other factors that characterize enforcement, compliance, prosecution and dispute resolution?”, depicted a virtual absence of the rule of law. “There is no rule of law in Sierra Leone. The law and formal processes do not reign at all”, they announced. “Justice can only be on the side of you if the whims and caprices of the justice delivery team [are on your side]”, they continued.

\textsuperscript{126} UNAIDS and OHCHR, \textit{The Guidelines}, paragraph 56.  
\textsuperscript{127} at p. 17-18.
The United Nations Committee on the Elimination of Discrimination against Women’s review of access to justice in Sierra Leone affirms the focus group’s summary of the justice sector. In its March 2014 Concluding observations on the sixth periodic report of Sierra Leone, the committee notes, “[we are] particularly concerned about the lack of independence of the judiciary, inadequate court infrastructure, the lengthy trials and delays in particular in cases of sexual violence, capacity constraints and lack of due process guarantees, and the insufficient capacity-building on existing legislative frameworks for judges, prosecutors, lawyers and relevant law enforcement agents. The Committee is further concerned that many recommendations made by the Truth and Reconciliation Commission have not yet been implemented, and that reparation for victims of the civil war, including women victims of sexual violence have thus far been inadequate”.128

The African Commission has reviewed GoSL’s submission on the status of its execution of its responsibilities under the African Charter and found similar drawbacks. Among its concerns are:

- obligations of GoSL to ratify and domesticate international instruments
  - GoSL’s non-domestication of the African Charter into national law; and
  - GoSL’s non-ratification of several key human rights treaties it has signed;
- right to security of persons, right to life and the death penalty:
  - the failure to abolish the death penalty in law, though a moratorium placed on the death penalty has, in practice, held off all death sentences since 1998;
- prohibition of torture and cruel, inhuman and degrading treatment:
  - the absence of legislation defining and criminalizing torture; and
  - the existence of the claw back clause under Article 20(2) of the Constitution, which permits the infliction of any kind of punishment that was legal as at the date of the Constitution;
- right to liberty and security of person, conditions of prisons and detention centers:
  - reports of inhuman and degrading treatment of prisoners of mental and correctional facilities compounded with an absence of details of any measures taken to investigate, prosecute perpetrators and compensate victims;

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Evidence of arbitrary arrests conducted by the police and inadequate reparations to victims;
the paucity of information on concrete measures being undertaken to address overcrowding in prisons;
the excessive remand of the accused, which is estimated by GoSL to equal 36.7% of the total prison population; and
the dearth of detail as to whether law enforcement and correctional center personnel integrates the pertinent African Commission instruments, such as the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa;

- access to justice:
  the lack of information on whether training targeting the operationalization of the African Charter and the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa for judicial officers;

- the right to property:
  inadequate reporting on how owners who are evicted forcefully from their property are compensated and resettled
  compensation for expropriated property; and
  the draft National Land Policy has not been enacted;

- protections of gay, lesbian and transgender individuals:
  non-action against violence and abuse against persons based on their genuine or perceived sexual orientation or gender identity.

Key populations confirm that their experiences and perceptions mirror these critiques of the justice system. Only 32% of the key populations interviewed believe that they have a right to a fair trial if defending against an accusation that they committed a crime. As a group, key populations are in a position to judge accessing justice, as 76% of those interviewed had been arrested, with significantly higher ratios of arrests in the people who inject drugs, sex worker and, naturally, prisoners’ groups.

Such experiences with the law enforcement and judicial system could influence perceptions on recourse for mistreatment by law enforcement personnel. 75% of transgender individuals, 80% of people who inject drugs and 84% of sex workers are certain that the law offers a remedy to them if they are wrongfully arrested or harassed by the police. Conversely, only 25% of men who have sex with men and 40% of former and current prisoners think that they have such protection. Nearly all key populations believe that people living with HIV have recourse in such instances.

The relatively high proportion of sex workers who believe that they are protected against police brutality is alarming considering that 100% of these sex workers depicted poor treatment from law enforcement personnel during the process. 12% of such women said that they had been raped and another 18% described being beaten. Overall, 89% of key populations arrested thought that they were treated roughly, unfairly or illegally. Of those who were not raped or physically assaulted, many illustrated solicitations for bribes by the police.

The Guidelines advise on measures to be taken in connection with access to justice. Guideline 4 advocates for the review of criminal laws “to ensure that they are consistent with international

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human rights obligations and are not misused in the context of HIV or targeted against vulnerable groups”.

Guideline 7 recommends that governments “implement and support legal support services that will educate people affected by HIV about their rights, provide free legal services to enforce those rights, develop expertise on HIV-related legal issues and utilize means of protection in addition to the courts, such as offices of ministries of justice, ombudspersons, health complaint units and human rights commissions”.

Table 4, *The Guidelines and Access to Justice*, examines level of compliance the Sierra Leone Code abided by the standards set under Guidelines 4 and 7.

### Table 5: The Guidelines and Access to Justice

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<thead>
<tr>
<th>Guideline Paragraph</th>
<th>Guideline Standard</th>
<th>Sierra Leone Code</th>
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<tr>
<td>Guideline 4</td>
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<tr>
<td>21(a)</td>
<td>Criminal and/or public health legislation should not include specific offences against the deliberate and intentional transmission of HIV but rather should apply general criminal offences to these exceptional cases. Such application should ensure that the elements of foreseeability, intent, causality and consent are clearly and legally established to support a guilty verdict and/or harsher penalties.</td>
<td>As discussed under the Access to Healthcare section of this Part III (<em>Key Populations and HIV under Sierra Leonean Law</em>), the NAS Act and the Prevention and Control of HIV Act criminalize the willful, intentional and/or reckless endangerment of infecting another with HIV. The standards and penalties set out in the two acts are inconsistent. Lack of informed consent of the infected party is an element of the crime, but foreseeability, causation (and actual transmission) and intent are not required.</td>
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<td>21(b)</td>
<td>Criminal law prohibiting sexual acts (including adultery, sodomy, fornication and commercial sexual encounters) between consenting adults in private should be reviewed, with the aim of repeal. In any event, they should not be allowed to impede provision of HIV prevention and care services.</td>
<td>Commercial sexual encounters and adultery are not criminalized under Sierra Leonean law. Sex workers tend to be arrested for violating the loitering provisions of the Public Order Act. Sodomy and attempted sodomy are criminalized under the Offences Against Persons Act.</td>
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<tr>
<td>21(c)</td>
<td>With regard to adult sex work that involves no victimization, criminal law should be reviewed with the aim of decriminalizing, then legally regulating</td>
<td>While commercial sex work is not criminalized, no actions are taken to regulate</td>
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<td>occupational health and safety conditions to protect sex workers and their clients, including support for safe sex during sex work. Criminal law should not impede provision of HIV prevention and care services to sex workers and their clients. Criminal law should ensure that children and adult sex workers who have been trafficked or otherwise coerced into sex work are protected from participation in the sex industry and are not prosecuted for such participation but rather are removed from sex work and provided with medical and psycho-social support services, including those related to HIV.</td>
<td>occupational health and safety conditions of sex workers.</td>
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<tr>
<td>21(d)</td>
<td>Criminal law should not be an impediment to measures taken by States to reduce the risk of HIV transmission among injecting drug users and to provide HIV-related care and treatment for injecting drug users. Criminal law should be reviewed to consider: the authorization or legalization and promotion of needle and syringe exchange programmes; the repeal of laws criminalizing the possession, distribution and dispensing of needles and syringes.</td>
<td>As discussed under the Access to Healthcare section of this Part III (Key Populations and HIV under Sierra Leonean Law), possession, distribution and dispensing of syringes without a prescription is unlawful under the Pharmacy and Drugs Act.</td>
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<td>21(e)</td>
<td>Prison authorities should take all necessary measures, including adequate staffing, effective surveillance and appropriate disciplinary measures, to protect prisoners from rape, sexual violence and coercion. Prison authorities should also provide prisoners (and prison staff, as appropriate), with access to HIV-related prevention information, education, voluntary testing and counselling, means of prevention (condoms, bleach and clean injection equipment), treatment and care and voluntary participation in HIV-related clinical trials, as well as ensure confidentiality, and should prohibit mandatory testing, segregation and denial of access to prison facilities, privileges and release programmes for HIV-positive prisoners. Compassionate early release of prisoners living with AIDS should be considered.</td>
<td>As assessed under the Access to Healthcare and Access to Information sections of this Part III (Key Populations and HIV under Sierra Leonean Law), the Correctional Services Act requires that prisoners be afforded medical information generally and advice on the dangers of “the risks involved in sharing toothbrushes and razors, and engaging in unsafe sexual practices or tattooing”. While it is unclear whether the information is indeed provided to prisoners, it is clear that clean syringes, condoms and other preventative products are not. Mandatory testing is outlawed under the NAS Act and no evidence has been uncovered to indicate that mandatory testing is carried</td>
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Medical and psychiatric care is required to be provided to prisoners under the Correctional Services Act. The Correctional Services Act prohibits separation solely on the basis of a prisoner’s HIV status.

Prisoners suffering from a “serious disease” such as AIDS may be removable to a medical facility, but early release is not available unless the director-general grants it in his/her discretion on “special grounds”.

Guideline 7

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<th>States should consider the following features in establishing such services:</th>
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<td>55(a)</td>
<td>State support for legal aid systems specializing in HIV casework, possibly involving community legal aid centres and/or legal service services based in CSOs;</td>
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<td></td>
<td>The legal aid system is established to provide free legal representation to the indigent under the Legal Aid Act, 2012 (No. 6) (the “Legal Aid Act”) but does not provide specialized HIV casework. The Human Rights Commission wields power to investigate and issue orders in respect of human rights violations by a public officer, including for payment to victims of human rights violations.(^{130})</td>
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<tr>
<td>55(b)</td>
<td>State support or inducements (e.g. tax reduction) to private sector law firms to provide free pro bono services to people living with HIV in areas such as anti-discrimination and disability, health-care rights (informed consent and confidentiality), property (wills, inheritance) and employment law;</td>
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<td></td>
<td>No specific inducements or support services exist for private sector law firms to provide pro bono services, generally, under Legal Aid Act, the Investment Incentives Policy October 2009, the Income Tax Act, 2000 (No. 8), as amended,</td>
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\(^{130}\) Human Rights Commission of Sierra Leone Act, 2004 (No. 9), Sections 1 (definition of “human rights”), 7(a), 8 and 11.
the Finance Act 2016 (No. 6) or the Finance Act, 2015 (No. 1). Cooperation agreements between the Legal Aid Board and private sector firms can be entered into. Legal aid does not extend to civil suits and no specific assistance to people living with HIV is offered.

| 55(c) | State support for programmes to educate, raise awareness and build self-esteem among people living with HIV concerning their rights and/or to empower them to draft and disseminate their own charters/declarations of legal and human rights; State support for production and dissemination of HIV legal rights brochures, resource personnel directories, handbooks, `practice manuals, student texts, model curricula for law courses and continuing legal education and newsletters to encourage information exchange and networking should also be provided. Such publications could report on case law, legislative reforms, national enforcement and monitoring systems for human rights abuses; |
|       | As discussed under the Access to Information section of this Part III (Key Populations and HIV under Sierra Leone Law), access to legal information has proven to be ridden with obstacles. The research for this assessment revealed no none of the suggested materials other than the: |
|       | • National HIV and AIDS Plan; |
|       | • August 2006 draft Sierra Leone Work Place Policy on HIV/AIDS; and |
|       | • Sierra Leone HIV and AIDS Policy for the Mining Sector, April 2011, each which are drafted for government programming and not designed for a public audience. |

The table above demonstrates that, together with the general breakdown of the justice sector, the legal environment related to HIV has proven deficient.

The Human Rights Commission of Sierra Leone

The Human Rights Commission Act establishes the Human Rights Commission to, inter alios, investigate complaints of human rights abuses, advise GoSL on its compliance with international obligations and national law in respect of human rights and to function as a court for the resolution of human rights claims.\textsuperscript{131} In this context, human rights encompasses rights under international treaties that have not been translated into domestic law.\textsuperscript{132} Specifically, human rights include “the rights relating to life, liberty, equality and dignity of the individual protected or guaranteed by the Constitution or embodied in the international conventions, treaties and other agreements to which

\textsuperscript{131} Sections 7 and 8.\textsuperscript{132} Human Rights Commission Act, section 1, definition of “human rights”.

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Sierra Leone is a party. The jurisdiction and investigative powers of the Human Rights Commission are limited to violations by public officials.

The Human Rights Commission has taken strides to make the filing of a complaint more accessible to the public. For example, a complaint may be filed electronically, through the Human Rights Commission website, email, letter or in person at the offices in Freetown, Makeni, Bo and Kenema. The Human Rights Commission also assists complainants who are unable to read and/or write as well as those whose English language capacities are limited, permitting filing of their forms in the language he or she understands well.

*Criminalization of Key Populations and People Living with HIV*

As asserted under the Access to Healthcare section of this Part III (*Key Populations and HIV under Sierra Leonean Law*) and contrary to the prerogatives of the Guidelines, Sierra Leonean law continues to impose criminal penalties for people living with HIV who put another at risk of infection and men who have sex with men who engage in sodomy. While commercial sex acts are not unlawful, sex workers are detained for alleged violations of the Public Order Act.

*The Crimes of HIV Transmission and Exposure*

The statutory clauses chastising endangerment and/or transmission of HIV are:

- Section 37 of the NAS Act – (1) A person who wilfully transmits HIV to another person commits an offence and is liable on conviction to a fine not less than twenty million Leones or to a term of imprisonment not less than five years or to both the fine and imprisonment.

  (2) No person commits an offence under subsection (1) where the transmission of HIV or exposure to the risk of HIV infection arises out of or relates to:

  (a) an act that poses no significant risk of HIV;
  (b) a person living with HIV who is unaware of his HIV infection at the time of the offence;
  (c) a person living with HIV who lacked understanding of how HIV is transmitted at the time of the alleged offence;
  (d) a person living with HIV who practiced safe sex including the use of condoms;
  (e) a person living with HIV who disclosed his HIV positive status to the sexual partner or other person before any act posing a significant risk of transmission;
  (f) a situation in which the sexual partner or other person is in some other way aware of the person’s HIV-positive status;
  (g) a person living with HIV who did not disclose his HIV status because of a well-founded fear of serious harm by the other person or the possibility of transmission of HIV from a woman to her child before or during the birth of the child or through breast feeding of a child.

  (3) A healthcare provider providing treatment, care or counseling service to a person with HIV may notify a sexual partner of the person living with HIV where he is requested by the person living with HIV to do so.

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133 *Id.*
134 Human Rights Act, section 1, definition of “violation”.
136 *Id.*
Section 21 of the Prevention and Control of HIV Act – (1) A person who is and who is aware of being infected with HIV or is carrying and is aware of carrying the virus shall—(a) take all reasonable measures and precautions to prevent the transmission of HIV to others and in the case of a pregnant woman, the fetus; and (b) inform, in advance, any sexual contact or person with whom needles are shared, of that fact.

(2) Any person who is and is aware of being infected with HIV or is carrying and is aware of carrying HIV antibodies shall not knowingly or recklessly place another person, and in the case of a pregnant women, the fetus, at risk of becoming infected with HIV, unless that other person knew that fact and voluntarily accepted the risk of being infected with HIV.

(3) Any person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding five million leones or to a term of imprisonment not exceeding seven years or to both the fine and imprisonment.

(4) A person referred to in subsection (1) or (2) may request any medical practitioner or any other person approved by the Minister under section 13, to inform and counsel a sexual partner of the HIV status of the person.

Definition of “sexual abuse” under the Domestic Violence Act - “sexual abuse” means the forceful engagement of another person in a sexual contact, whether married or not, which includes sexual conduct that abuses, humiliates or degrades the other person or otherwise violates another person’s sexual integrity, whether married or not, or a sexual contact by a person aware of being infected with human immunodeficiency virus (HIV) or any other sexually transmitted infection with another person without that other person being given prior information of the infection.

Section 2 of the Domestic Violence Act – (1) It is an offence under this Act for any person in a domestic relationship to engage in any act of domestic violence.

(2) For the purposes of subsection (1), domestic violence means any of the following acts or threat of any such act:-

(a) physical or sexual abuse....

(3) An offence under subsection (1) shall be punishable by a fine not exceeding Le5,000,000 or by a term of imprisonment not exceeding 2 years or by both such fine and imprisonment.

The NAS Act, the Prevention and Control of HIV Act and the Domestic Violence Act divert the onus of protecting the general public from infection onto people living with HIV. While addressing the same general subject of transmission of HIV outside of the medical context, the breadth of the two provisions varies greatly.

Section 37 of the NAS Act imposes fines and imprisonment to people with HIV who deliberately transmit HIV to another without that person’s informed consent. This is the only activity penalized
separately under the NAS Act and, arguably, is already covered under the common law crime of assault.

Section 21 of the Prevention and Control of HIV Act and section 1 of the Domestic Violence Act not only punish a person living with HIV for the intentional transmission of HIV to another without that person’s consent, they also institute punishments for any person living with HIV who recklessly (that is, accidentally, but with gross disregard to safety standards) puts another at risk of infection. Furthermore, the Domestic Violence Act simply requires sexual contact between the one knowing of his/her infection with his/her domestic partner, neither recklessness nor intent is necessary. Furthermore, section 21 of the Prevention and Control of HIV Act subjects a person living with HIV to a fine and/or incarceration, if he or she does not take “reasonable measures” to prevent the transmission of HIV or notify sexual partners of his or her status. Actual transmission of HIV is not an element of any of the crimes under section 21 of the Prevention and Control of HIV Act or section 2 of the Domestic Violence Act.

It appears that section 21 of the Prevention and Control of HIV Act stems from the Model Law on STI/HIV/AIDS for West and Central Africa, which was developed at a workshop in Chad in 2004. The model law employed a “rights and responsibility” approach, which obliges people living with HIV to divulge their status and take precautions against the spread of HIV. The Global Commission has found no evidence to indicate that such provisions have changed behavior in a positive way. These statutes, in fact, militate against any public health laws designed to combat the spread of the disease and against human rights standards. UNAIDS, the Open Society Foundations and a research team from, inter alios, the Harvard Medical School, Temple University’s James E. Beasley School of Law and the University of Connecticut Health Center, have agreed that legislation like section 21 discourages people from HIV testing, decreases disclosure and repels them from treatment that could otherwise reduce their ability to transmit the disease to nearly zero.137

In summary, the Global Commission has stated that “criminalisation is justified under one condition only: where individuals maliciously and intentionally transmit or expose others with the express purpose of causing harm. But existing laws— against assault, homicide and causing bodily harm, or allowing intervention where a person is spreading communicable diseases— suffice to prosecute people in those exceptional cases. Defining specific HIV offences is not warranted and, in fact, violates international human rights standards. For instance, in the International Guidelines on HIV and Human Rights, Guideline 4 directs States to ensure that their criminal laws “are not misused in the context of HIV/AIDS or targeted against vulnerable groups”.138

It should be noted, however, that, as discussed under the Access to Healthcare section of this Part III (Key Populations and HIV under Sierra Leonean Law), GoSL rarely enforces these laws. Reflecting the key stakeholders’ view that such prosecutions are uncommon, the January 2013 Sierra Leone People Living with HIV Stigma Index (the “Stigma Index”) finds that less than 1 percent of respondents were arrested or taken to court on a charge related to their HIV status.139

The Buggery Crimes

139 January 2013 Sierra Leone People Living with HIV Stigma Index, Network of HIV Positives in Sierra Leone, p. 50, 2015.
The provisions of law prohibiting sodomy are:

- Section 61 of the Offences Against Persons Act – *Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than ten years.*

- Section 62 of the Offences Against Persons Act – *Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable . . . to be kept in penal servitude for any term not exceeding ten years.*

As buggery is not defined under the Offences Against Persons Act, English common law establishes its meaning through judicial precedent. Under the common law, buggery has been determined to involve either:

- anal intercourse or oral intercourse by a man, both with another man or with a woman;\(^{(140)}\)
or
- vaginal intercourse by a man or a woman with an animal.\(^{(141)}\)

Under common law consent and the fact that the parties are married do not constitute tenable defenses.\(^{(142)}\)

The Offences Against Persons Act was not conceived by the Sierra Leonean people or legislated by GoSL. It is, rather, a relic of English law and the colonial era. While sections 61 and 62 law have been repealed in England, the repeal was not effectuated under Sierra Leonean law because, by the time of repeal, Sierra Leone had become independent and its laws were governed under the Constitution. The Constitution, in fact, validates sections 61 and 62, not singularly, but under a blanked clause that grandfathers into full force all laws that were in place in Sierra Leone as at the date of the Constitution. Furthermore, as reported under the Access to Healthcare section of this Part III (*Key Populations and HIV under Sierra Leonean law*), this law appears to be administered infrequently. Therefore, it could be inferred that Sierra Leone never deliberated over whether or desired that sodomy be banished in the country.

**Loitering – Manipulation of the Law to Target Sex Workers**

As the Sierra Leone code does not regulate sex work, the misdemeanor of loitering is used to control, harass and detain sex workers. The relevant provision is from section 7 of the Public Order Act, which states that:

*Any person loitering in or about any stable house or building, or under any piazza, or in the open air, and not having any visible means of subsistence, and not giving a good account of himself, shall be deemed an idle and disorderly person, and shall, on conviction thereof, be liable to imprisonment for any period, not exceeding one month.*

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\(^{(140)}\) *R v Wiseman* (1718) Fortes Rep 91.

\(^{(141)}\) *R v Bourne* (1952) 36 Cr App R 135

Although Sierra Leone circumvents many public health traps related to HIV by excluding sex work from its penal code, sex workers report a high police reliance on section 7 of the Public Order Act, which law enforcement officials are said to use to “harass” them.

Indeed, the Stigma Index reveals that police take advantage of sex workers and abuse their power to subject sex workers to unsafe sexual practices.\textsuperscript{143} 89\% of the sex workers consulted for this LEA had been arrested at least once and, as stated above, all of the sex workers who had been arrested reported poor treatment by the police.\textsuperscript{144}

While sex workers in Sierra Leone enjoy freedom from indictment for their form of employment, mistreatment by law enforcement has left them feeling alienated from society. Many sex workers spoke of living in isolation or being fearful of leaving the brothel in which they live and 89\% have been attacked, by the police or members of the general community, for being sex workers. When asked how the justice sector could be reformed to improve their lives, 57\% of sex workers that responded referred to eliminating harassment and the remaining 43\% had “no idea” or did not have a suggestion.

In such cases, the Global Commission suggests that, in cases like those for sex workers in Sierra Leone, law enforcement work alongside sex workers to promote widespread safe sex practices. According to the Global Commission, “when this was done in India, condom use among sex workers rose as high as 85\% in some parts of the country and HIV prevalence among sex workers fell from over 11\% in 2001 to less than 4\% by 2004”.\textsuperscript{145} Not only would such programme diminish the spread of HIV, it would also improve the relationships between the police and the sex workers.

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\textsuperscript{143} Stigma Index, p. 75.
\textsuperscript{144} As stated above, 12\% of such women said that they had been raped and another 18\% described being beaten.
\textsuperscript{145} \textit{Risks, Rights and Health}, p. 42.
\textsuperscript{146} Stigma Index, p. 75.
\textsuperscript{147} As stated above, 12\% of such women said that they had been raped and another 18\% described being beaten.
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Not only would such programme diminish the spread of HIV, it would also improve the relationships between the police and the sex workers.

**Recommendations**

Poor access to and administration of justice is a major hurdle in the fight against HIV in Sierra Leone. The primary impediment rests at the core of the judicial system, where an absence of rule of law reigns. Therefore, changes in legislation will only have a superficial effect on the treatment and rights of key populations and those living with HIV. A much greater, more comprehensive reform of the justice sector is required in order for the rule of law to be established, statutes respected, human rights observed and policy improvements to be implemented. Without a massive governmental and culture overhaul that reinstates the rule of law, none of the policy and legal changes recommended in this paper will be realized.

Accordingly, it is recommended that GoSL:

1. commission a comprehensive justice sector restoration programme, led by the judiciary and the Office of the Attorney General, whereby the respect for law is instituted and the law, as written, becomes the law, as implemented and enforced by all. Undertake a sector-wide assessment of failures in the administration of justice and secure funding to implement radical changes as soon as possible. Support NAS in the leadership on the legislative reforms that are recommended in this LEA;
2. rectify the concerns raised by the African Commission;
3. educate healthcare workers, legal professionals, employers and trade unionists, and school faculties about their legal responsibilities to guarantee inclusion and equality;
4. ensure that key populations and people living with HIV are informed of their rights. The legal ideal of non-discrimination must be defended by enforcement, including prompt and affordable access to redress in cases of violations, including affordable, accessible legal services and confidentiality of proceedings. Work through the law enforcement structure,

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148 Risks, Rights and Health, p. 42.
the Sierra Leone Bar Association and CSOs to produce and disseminate HIV legal rights brochures, resource personnel directories, handbooks, practice manuals, student texts, model curricula for law courses and continuing legal education and newsletters to encourage information exchange and networking should also be provided;

5. ensure resources and funding are sufficient for correctional centers to implement the requirements under the Correctional Services Act and the Correctional Services Plan;

6. repeal or amend section 7 of the Public Order Act so that it is not abused and used against key populations and any other stigmatized or otherwise innocent person who happens to be in a public place;

7. take all measures to end police harassment, brutality and sexual victimization of sex workers by police. In particular, enhance training of law enforcement personnel on human rights issues and the particulars that relate to HIV and key populations. Hold law enforcement personnel accountable for brutality, harassment and solicitations of bribes;

8. expand the work of the Legal Aid Board to include representation of civil cases for violations of human rights and unveil services tailored for people living with HIV and key populations;

9. formulate tax or other incentives for private law firms who provide pro bono support to the indigent, people living with HIV and Key Populations;

10. 

11. Repeal the Prevention and Control of HIV Act (including, especially, section 21), as stated under the Access to Healthcare section recommendations;

12. Repeal section 37 of the NAS Act and rely on general criminal laws against assault for intentional transmission of HIV, as set out under the Access to Healthcare section recommendations;

13. while the repeal of section 21 of the Prevention and Control of HIV Act, section 37 of the NAS Act and section 2 of the Domestic Violence Act (as it relates to HIV and STD transmission) are underway, impose a moratorium on the administration of these sections;

14. repeal section 61 and section 62 of the Offences against Persons Act as these are obsolete criminal relics from the English colonial period and have been repealed in England. During the period required for these provisions to be repealed, cease all enforcement of these laws; and

15. set aside convictions of those prosecuted under section 61 of the Offences against Persons Act, section 21 of the NAS Act and section 2 of the Domestic Violence Act (as it relates to HIV and STD transmission) and/or release the accused immediately from prison with pardons, expunging the charge and conviction from their criminal records, as set out under the Access to Healthcare section recommendations.149

It is recommended that the courts:

17. together with the Office of the Attorney General, coordinate with and lead GoSL to urgently inaugurate mechanisms to reinstate the rule of law;

18. reduce the backlog on criminal cases and free those held in remand beyond their statutory period; and

19. require a high standard of evidence and proof for the conviction of any party who intentionally infects another with HIV, if such case is brought under the general criminal laws Develop prosecutorial guidance in line with the UNAIDS advice entitled, Ending Overly Broad Criminalisation of HIV Transmission.

It is recommended that the Office of the Attorney General and its subsidiary entities:

149 See Risks, Rights and Health, p. 25.
20. together with the Office of the Attorney General, coordinate with and lead GoSL to urgently inaugurate mechanisms to reinstate the rule of law;
21. assess the compliance of correctional centers with the requirements of the Correctional Services Act and the Correctional Services Plan;
22. support NAS in the leadership on the legislative reforms that are recommended in this LEA;
23. reduce the backlog on criminal cases and free those held in remand beyond their statutory period; and
24. undertake a sector-wide assessment of failures in the administration of justice and secure programming and funding to implement radical changes as soon as possible;

It is recommended that NAS lead on all of the recommended actions in this section, coordinating with the courts and the Office of the Attorney General for legal support and with stakeholders and Parliament for political support.

Access to Information

International Law and Standards

Article 9, article 10 and article 11 of the African Charter order governments to ensure that each citizen holds a right to access of information, free association and free assembly.

The Guidelines set out advice designed to addressed the studied deficiencies relating to access to information on HIV. Guideline 6 counsels governments to "enact legislation to provide for the regulation of HIV-related...information, so as to ensure widespread availability of...adequate HIV prevention and care information...States should also take measures necessary to ensure for all persons, on a sustained and equal basis, the availability and accessibility of quality...information for HIV prevention, treatment, care and support, including ART and other safe and effective medicines, diagnostics and related technologies for preventive, curative and palliative care of HIV and related opportunistic infections and conditions. States should take such measures at both the domestic and international levels, with particular attention to vulnerable individuals and populations."

In explanatory notes, The Guidelines elaborate on particulars related to information on HIV. These include (i) assurances for confidentiality of a patient’s records, both generally and in respect of HIV test results, (ii) granting prisoners (and prison staff, as appropriate), with access to HIV-related prevention information as well as ensure confidentiality.\(^{150}\)

National Laws and Practices

General Overview

The principle laws governing access to information and freedom of expression in Sierra Leone are Article 25 (Protection of freedom of expression and the press) and Article 26 (Protection of freedom of assembly and association) of the Constitution. Here, broad licenses are given for exchange of information, receipt of information without interference and free assembly and association. However, these licenses are negated by reasonable and democratically-justifiable restrictions:

\(^{150}\) The Guidelines, paragraphs 20(f), 21(e)
• on public officials or defense workers;
• required in the interests of defense, public safety, public order, public morality, public health, or, in the case of freedom of assembly and association, maintenance of supplies and services essential to the life of the community;
• necessary for the protection of others’ rights, freedoms or, in the case of freedom of expression and the press, reputation;
• requisite, in the case of freedom of expression and the press, to safeguard confidential information, preserve the sanctity of the courts or regulate the telecommunications sector, including broadcasting, public exhibitions and public entertainment; or
• on the establishment, organization, registration and function of political parties and the conduct of its members, in respect of freedom of assembly and association.\footnote{Article 25(2) and 26(2) of the Constitution.}

The African Commission reviewed the status of GoSL’s incorporation of article 9 (granting a right to access information), article 10 (granting a right to free association) and article 11 (granting a right to free assembly) of the African Charter. While acclamng the passage of the Right to Access Information law in 2013 and the establishment of the Right to Information Commission and the Independent Media Commission, it expressed perplexity with continued restrictions on the flow of information. In particular, the African Commission flagged the following as primary blocks in the system:

• the minimal details available about measures in place that protect media practitioners against attacks and arbitrary arrest, including, but not limited to, prosecution of assailants and recourse for those assaulted.\footnote{Id., at paragraph 62.}

Based on its analysis, the African Commission resolved that GoSL rectify the defects by:

• abolishing the criminal liability for libel and defamation in the Public Order Act;\footnote{Id., at paragraph 87(xv).}
• instituting material actions to guard media professionals against attacks and arbitrary arrest;\footnote{Id., at paragraph 87(xiv).} and
• investigating assaults promptly and prosecuting assailters.\footnote{Id.}

\textit{Access to Information for Key Populations and HIV}

The media plays a major role in the dissemination of international, national and local news and information in Sierra Leone. In particular, the radio has proven to be a significant asset in circulating information about national and international events. This is, in part, because of the low
literacy rates in the country, particular among certain key populations. 100% of the sex workers, people who inject drugs, men who have sex with men and former prisoners consulted for this assessment said that the radio is their primary source of learning about current national and global events. The average number of years of education among this group of sex workers was just over five years and five years for people who inject drugs and former and current prisoners, and most characterized their ability to read and write as nonexistent, poor, or limited to reading. Men who have sex with men and transgender individuals, however, had an average of eleven years of education and were largely comfortable with their literacy abilities.

In contrast, in respect of acquiring information about sex and sexually-transmitted infections ("STIs"), key populations spoke of a variety of sources. Friends, partners and experience were the primary avenues for learning about sex and STIs. One transgender individual self-educated about sex and STIs, 75% of men who have sex with men found out about STIs by contracting one and a sex worker learned about sex when she became pregnant. Two people who inject drugs stated that they still lack rudimentary knowledge about sex and STIs. Sexual education is discussed under the Access to Education section of this Part III (Key Populations and People Living with HIV under Sierra Leonean Law).

The overwhelming majority of key populations turn to hospitals, clinics and medical professionals when seeking information and education about caring for their own health. In locating healthcare providers, they utilize sensitization programmes, the radio, other healthcare providers and, in the case of sex workers, the Sierra Leone Chapter of the Society for Women and AIDS in Africa ("SWAASL").

In the context of information about testing, prevention and transmission of HIV, the resources for key populations change materially. The key populations consulted for this analysis are very well-informed about HIV. All sex workers were tested for HIV within the nine months preceding the interview; in the case of men who have sex with men, all had been tested in the preceding month; for transgender individuals, within four months; former and present prisoners, 80% had been tested within the last year and 60% of people who inject drugs were tested within the previous four years.

Key populations learned about testing facilities as follows:

- **Sex workers** – 38%, through friends and relatives, 33%, through SWAASL and sensitization programmes, 22%, through a medical practitioner and 5%, through a mentor;
- **Prisoners** – 75%, through the correctional center and 25%, through the radio;
- **Men who have sex with men** – 100% through the Dignity Association or sensitization programmes;
- **People who inject drugs** – 33%, through the Sierra Leone Youth Development and Child Link outreach programmes, 33% through word of mouth and 33% through a medical practitioner; and
- **Transgender Individuals** – 50%, through the Dignity Association and sensitization programmes, 25%, though their employers and 25%, through friends.

Furthermore, all key populations who had been tested for HIV had been given information on prevention, treatment and transmission in a way that they were able to understand. In the case
of prisoners, they were told that treatment is available for HIV in the correctional system and those who tested positive were informed about accessing ART through NAS.

It is noteworthy to mention that key stakeholders believed that the primary way that key populations and people living with HIV garner sound information about HIV through HIV billboards, t-shirts, posters, stickers and community outreach and sensitization. While some key populations referred to community sensitization as a resource for HIV, NAS, CSO partners, the medical profession and word of mouth appear to be more effective than the methods the key stakeholders had referenced. Likewise, while the Medical Practitioners and Dental Surgeons Act directs the Medical and Dental Council to publish registered practitioners in the Gazette annually, no interviewee or workshop participant mentioned relying on this publication to access information about medical service providers.

Regardless, it appears that public awareness programming as contemplated under section 19(1) of the NAS Act has reached key populations. In fact, NAS and corrections facilities appear to have executed the specific charges related to informing inmates about HIV and public health. Under the NAS Act, NAS is to tailor programmes for dissemination of HIV information to prisoners. Likewise, the Correctional Services Act calls upon correctional centers to furnish prisoners with medical information generally and advise on the dangers of “the risks involved in sharing toothbrushes and razors, and engaging in unsafe sexual practices or tattooing”.  

It is unclear whether specific HIV-related risks arising out of unsafe sexual practices, tattooing and sharing razors have been covered in the medical information offered to prisoners. In addition, based on the discussion surrounding drug use in prison under the Access to Healthcare section of this Part III (Key Populations and HIV under Sierra Leonean Law), it is alarming that the Correctional Services Act does not require availing information to prisoners on those affiliated dangers. It is also confounding to read that risks about engaging in unsafe sexual practices is required under the Correctional Services Act, because this could contradict section 35 of the Pharmacy and Drugs Act, which prohibits publication, by way of “advertisement” of any material that relates to human sexual activity. Should any information furnished by the correctional center “advertise” the protections condoms offer against STIs and HIV, it would be illegal under the Pharmacy and Drugs Act. Even if the material would not be considered to be an “advertisement”, the policy behind the two provisions are incongruous.

157 Section 19(2)(b).
158 Section 36(e) and section 38(b).
Lastly, The Guidelines recommend that “laws and/or regulations should be enacted to enable widespread provision of information about HIV through the mass media. This information should be aimed at the general public, as well as at various vulnerable groups that may have difficulty in accessing information. HIV information should be effective for its designated audience and not be inappropriately subject to censorship or other broadcasting standards, particularly as this will have the effect of damaging access to information vital to life, health and human dignity”. While the NAS Act dictates that customized information be circulated in an age-appropriate manner (i) in all educational institutions, (ii) to members of the armed forces, (iii) to those incarcerated, (iv) at all places of work and (v) in all communities, the findings of this paper do not address whether this has been successful other than in respect of key populations (prisoners, in particular) and educational institutions as assessed under the Access to Education section of this Part III (Key Populations and HIV under Sierra Leonean Law). According to the Stigma Index, “media and civil society groups need to be at the forefront of efforts towards standing against stigma and discrimination. Innovative information, education and communication approaches to increase awareness, dispel misconceptions and to engage and involve communities are necessary. Sensitization on general HIV information, and PLHIV stigma and discrimination is still greatly needed. An efficient means could be via regular radio broadcast shows that educate the public regarding HIV, safe sex practices and mitigation of stigma and discrimination practices”.

January 2013 Sierra Leone People
Living with HIV Stigma Index

“Confidentiality of HIV Test Results and Medical Information

In respect of confidentiality of medical records and the results of the HIV test, Section 32 (Confidentiality of HIV tests) of the NAS Act and section 15 (Confidentiality of HIV tests) of the Prevention and Control of HIV Act mandates that the results of HIV tests be kept confidential and only revealed to the patient who is the subject of the test, except in certain cases of incapacity, for approved epidemiological studies and to certain other medical practitioners caring for the patient.

159 The Guidelines, paragraph 40.
160 Section 19(2).
161 Stigma Index, p.78.
162 See also section 35 of the NAS Act and section 18 of the Prevention and Control of HIV Act.
Based on meetings undertaken in support of this project, it appears that key populations are assured of the privacy of their records. 94% of the key populations were certain that the results of their HIV tests were kept confidential and 86% thought that the privacy of their medical records, in general, is maintained. Such findings counter the supposition of key stakeholders who considered the lack of confidentiality to be a deterrent in the key populations quest for health coverage. The key populations’ reports are also particularly remarkable because the Medical Practitioners and Dental Surgeons Act does not direct medical professionals to protect confidentiality, though the Medical and Dental Council’s rules, which were unavailable to the research team, could address the subject.

However, during the drafting phase of this LEA, the findings regarding confidentiality of HIV-related medical information were eviscerated by unheralded events relating to the distribution of a list of girls alleged to be HIV positive. On or about 19 April 2017, the names of 117 females were released on Marie Stopes Sierra Leone letterhead and signed indecipherably under the heading “list of sierra leone girls with HIV. if you have sex with anyone of them please go and do HIV test. It is free in any hospital warning to save you from early death”. This document passed predominantly through social media.

Marie Stopes Sierra Leone issued a swift press release disclaiming ownership of the circular. The country director wrote “This list is a forgery and we condemn its creation and circulation in the strongest possible terms. We view this as a ploy to cause emotional distress to the people named on the list and to damage the reputation of MSSL. We would never circulate, publish, share or disclose the data of our clients in any forum. For the last 30 years’ our service delivery has been marked by the highest clinical and ethical standards, including client safety and confidentiality”.

NAS also responded strongly, stating in its press release that “as a Secretariat, we wish to ensure the general public and especially anybody who might have seen a name similar to theirs in that list that the so-called list is a fictitious document that bears no authenticity in its source or credential. There is no truth in that list whatsoever….The position of NAS on the Confidentiality and Disclosure of health records of People Living with HIV is guided by the National AIDS Commission Act of 2011. NAS would like to remind all those who are involved in circulating such false information that it is a prohibition under the National AIDS Commission Act No 11 of 2011”.

The objective propelling the spread of such misinformation eluded the TWG, which considered legal options that could be taken against the aggressor. In terms of violations of law, the following provisions are likely to have been breached by the act:

A core distinction as to the truth of the information would need to be made. For example, if the information on the list is accurate, then the individual who disclosed the names and HIV status of girls would appear to be in violation of sections 32 and 35 of the NAS Act. Under these sections, results of HIV tests and any information relating to HIV status results must remain confidential. The penalty for violating these provisions is no less than 5 years of imprisonment and/or a fine of up to 20 million leones. As this would be the penalty for each violation, then the violators could be sentenced to spend (technically more than) the remainder their lives in confinement.

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163 NAS Act, section 52.
164 That is, one offence for each name.
Regardless of whether the information is accurate, the perpetrators appear to be in violation of section 48 of the NAS Act, which forbids inciting hatred, contempt or ridicule of persons based on their real or perceived HIV status. As the list states "list of sierra leone girls with HIV. if you have sex with anyone of them please go and do HIV test. It is free in any hospital warning to save you from early death....save and share with others", it would be difficult to argue that publication and circulation was not designed to incite hatred, contempt or ridicule. The penalties for each violation are the same as with sections 32 and 25 of the NAS Act, multiplied by 116.\textsuperscript{165} \textsuperscript{166}

If the list of information contained in the list is not accurate\textsuperscript{167}, then those disseminating this false information would likely be chargeable under section 19(4) of the NAS Act and sections 26 and/or 27 of the Public Order Act.

Section 19(4) of the NAS Act states that “any person who disseminates information on HIV and AIDS prevention using erroneous and false publicity and solicitations through any means of communication commits an offense”. The analysis under this law would center on whether the information in the missive addressed HIV and AIDS prevention. It would appear that the language “please go and do HIV test.....to save you from early death....save and share with others” is aimed at treatment for HIV and prevention of AIDS, at minimum, and would likely fall under this provision. The penalty, if convicted for violating this law, would be no less than 5 years of imprisonment and/or a fine of up to 20 million leones.\textsuperscript{168}

The sections of the Public Order Act criminalize defamation, which is the malicious publication of false material,\textsuperscript{169} and the penalties imposed are at least 2 years of imprisonment and/or a fine of 700 leones, if the person did not know the information was false and at least 3 years of imprisonment and/or a fine of 1000 leones if the person knew the information was false. It is unclear whether the fines would be adjusted for inflation given that the law was passed in 1965 and the amounts are now nominal. However, as with the above, each of these penalties would be able to be assessed in respect of each of the girls, so 116 times.

Furthermore, the girls would have civil claims available to them for damages caused by the publication of this information. The cases could be leveraged against the actual perpetrators as well as anyone who handled their medical information negligently.

While the legal framework appears to be in place to resolve situations such as this, it remains to be seen whether the investigative infrastructure and the rule of law are sufficient to bring to account those responsible for this violation. As at the date of this LEA, this matter has not been resolved.

Accessing laws, policies, rules and regulations

Identifying and procuring copies of policies, laws and court decisions as well as regulations and rules, such as those of the Medical and Dental Council, is very arduous in Sierra Leone. Website

\textsuperscript{165} That is, one offence for each name.
\textsuperscript{166} NAS Act, section 52.
\textsuperscript{167} Meaning that the girls are not HIV positive.
\textsuperscript{168} NAS Act, section 52.
\textsuperscript{169} See Black’s Law Dictionary, definition of “defamation”, available at http://thelawdictionary.org/defamation/.
resources, like those of the Sierra Leone Legal Information Institute (“SierraLii”), Parliament library and the Sierra Leone Web, have published many of the key laws, bills and decisions on their websites. However, for those who lack access to reliable internet, who include the state counsel at the Office of the Attorney General and Ministry of Justice, such laws must be obtained from the Government Printing Office and are subject to a fee, availability and the person filing the request having identified that the particular law exists in the first instance.

Even with the resources that are posted online, many gaps continue to exist. While recently-passed legislation and recently-issued judicial opinions tend to be accessible, older laws and decisions cannot be found. Policies are not widely circulated and, in the case of certain policies that were formed in the last two years, members of the committee that developed or were impacted directly by the policy were unaware that Cabinet had passed the policy or did not have access to a copy of the final version. For example, in the case of the National Land Policy of Sierra Leone, the policy had been passed in November 2015 and, during an International Finance Corporation- and U.K. Department for International Development-sponsored public-private dialogue, hosted by the Corporate Affairs Commission and the Justice Sector Coordination Office, a significant portion of the programme centered around acquisition of land. The Law Reform Commission, along with former Chief Justice and land policy expert, Dr. Ade Renner-Thomas, lectured on the land law in Sierra Leone and the proposed changes under the draft National Lands Policy of Sierra Leone. Neither were aware that a final version of the policy had been passed by Cabinet until one participant in the dialogue, from the Food and Agriculture Organisation, updated the group as to this fact. Indeed, no other of the 51 participants, which included the Office of the Attorney General and Ministry of Justice, representatives from the Judiciary, the Sierra Leone Bar Association and others, had been informed of the passage of the policy or possessed the final version.

Recommendations

While the Constitution and the Sierra Leone Code could be more merciful to the media, the law and practices in respect of access to information about HIV and healthcare seem to be functioning comparatively well. The existence of legislation on access to information does not appear to be the determining factor in whether the information is accessible. Rather, the network of NAS and its CSO partners, together with sensitization programmes, have paved the road for access to HIV information.

It is recommended that GoSL:
1. abolish the criminal liability for libel and defamation in the Public Order Act, as resolved by the African Commission;\textsuperscript{170}

2. work with SierraLii, Parliament library and the Sierra Leone Web to publish all policies, laws, rules, regulations and judgments, with particular emphasis on the older documents that remain in effect;

3. empower the Government Printing Office to maintain copies of the Gazette and all laws and policies on file, which should be supplied to, at minimum, other GoSL entities, at no cost;

4. create a working group that will determine a manner for circulating legislative and policy activities to the public;\textsuperscript{171}

5. develop and implement an efficient programme for access to laws, policies, rules and regulations to the public and inform the public accordingly, considering seriously the option of notifying the public, in part, through radio programming;

6. use the radio and social media as a tool for disseminating information to the public on legislative and policy activities and consider revitalizing the Sierra Leone Chamber of Commerce, Industry and Agriculture’s radio programme for this purpose;\textsuperscript{172} and

7. amend the Correctional Services Act so that correctional centers provide prisoners with information on the dangers of sharing needles and drug use;

8. repeal section 35 of the Pharmacy and Drugs Act; and

9. enact general privacy and confidentiality laws.

It is recommended that NAS:

10. continue its effective collaboration with CSOs and correctional centers;

11. utilize the radio for community sensitization and spreading of information on HIV testing, prevention and treatment; and

12. work with correctional centers to provide to prisoners with information on the dangers of sharing needles and drug use.

It is recommended that the Medical and Dental Council:

13. publish its rules on its website and through other mechanisms accessible to the public;

14. modernize its publication of registered medical practitioners so that key populations can utilize the information;

15. if it has not, develop rules on confidentiality of patient information in accordance with international best practices, whereby the disciplinary committee, acting independently, should redress breaches of confidentiality; and

16. in accordance with The Guidelines, regulations should be developed to permit an individual to see his or her own records and to request amendments to ensure that such information is accurate, relevant, complete and up to date.


\textsuperscript{171} A similar version of this recommendation was provided by the participants in the Public–Private Dialogue Workshop on Commercial Law and Justice at the Sierra Lighthouse on 9 December 2015, as set out in the Justice Sector Coordination Office, Report of Proceedings of the First Public–Private Dialogue Workshop on Commercial Law and Justice at the Sierra Lighthouse, 09/12/2015, p. 10, December 2015.

\textsuperscript{172} A similar version of this recommendation was provided by the participants in the Public–Private Dialogue Workshop on Commercial Law and Justice at the Sierra Lighthouse on 9 December 2015, as set out in the Justice Sector Coordination Office, Report of Proceedings of the First Public–Private Dialogue Workshop on Commercial Law and Justice at the Sierra Lighthouse, 09/12/2015, p. 10, December 2015.
Access to Education

International Law and Standards

Under article 7 of the African Charter and article 13 of the ICESR, GoSL acknowledges that every individual has the right to education. Article 13 of the ICESR spells out specific elements of the education system to which GoSL has recognized that each Sierra Leonean is entitled. These include:

- programmes for strengthening respect for human rights and fundamental freedoms;
- primary education should be compulsory and free for everyone;
- secondary education should be generally available and accessible to all by the progressive introduction of free education;
- higher education shall be made equally accessible to all, on the basis of capacity, by the progressive introduction of free education;
- fundamental education should be encouraged or intensified for those who have not received or completed primary education; and
- a system of schools at all levels should be developed to include a fellowship system and constant enhancement of conditions for teachers.\(^\text{173}\)

Guideline 9 advises that states “promote the wide and ongoing distribution of creative education, training and media programmes explicitly designed to change attitudes of discrimination and stigmatization associated with HIV to understanding and acceptance”.

National Laws

The primary issues in respect of access to education and HIV in Sierra Leone revolve around:

- the absence of affordable education for all people;
- the marginalization of key populations, people living with HIV and pregnant girls in the educational environment; and
- the dearth of sexual education available in schools.

As set out under the Constitution section of Part II (The Sierra Leonean Legal Framework), article 7 of the Constitution directs GoSL to formulate its policies so as to ensure “equal rights and adequate educational opportunities for all citizens”. In pursuit of this objective, vulnerable groups are to be safeguarded and structures and finance are to be provided when available.

The African Commission has voiced its concerns about the education system in Sierra Leone, highlighting “the Government's policy of barring visibly pregnant girls from attending school and taking national exams”, the absence of human rights education in the primary and secondary curriculum and the gap in GoSL’s reporting on whether it has availed education to those in rural settings.\(^\text{174}\)

\(^{173}\) ICEPR, section 13.

Unaffordable Education

While the international obligations of GoSL instruct it to make primary education free and to initiate free education gradationally at all other levels, citizens still struggle to send their children to school. Key stakeholders and key populations stated that primary education may be free in principle, but that the costs for uniforms, materials, texts and transportation has made it difficult for many to afford. School fees are also common, according to key populations and key stakeholders.

Stigmatization of Key Populations and Pregnant Adolescent Females

Key stakeholders spoke of the issues related to cost being compounded by stigmatization of key populations in the education environment. Even where the parents are able to afford the costs affiliated with education, adolescent males who have indicated a sexual preference for the same gender, transgender individuals and students living with HIV suffer from ridicule, refusal of services and bullying from other students. Parents have needed to relocate such students to different schools throughout the country so that they can continue learning.

Such treatment is not unique to these key populations. Other students, such as those with epilepsy and Ebola survivors, are also disadvantaged and, denied entry to schools, due to a misperception that they have a contagion.

Furthermore, according to key stakeholders, GoSL employs a policy that bars pregnant girls from entry to schools and exams. Religious and cultural leaders support this stigmatization.

These activities continue despite Constitutional directives and legislation that stand in direct opposition to such treatment. As set out above, the Constitution requires GoSL to provide equal opportunity to education. Section 15 of the Persons with Disability Act forbids an educational institution from denying admission or expelling a student because of his or her disability. In fact, schools are required to “take into account the special needs of persons with disability with respect to the use of school facilities, class schedules, physical education requirements and other similar considerations”.

Likewise, section 40 (Discrimination in schools) of the NAS Act blocks educational institutions from denying admission, expelling, disciplining, segregating, denying participation in any event or activity or denying any benefits or services “to a person on the grounds only of the person or parents actual or perceived or suspected HIV status”.

In the National Policy on the Advancement of Women, GoSL acknowledges that families tend to apply limited resources toward the education of boys rather than girls, recognizes that teenage pregnancy spikes dropout rates and commits to advancing the education of girls.\textsuperscript{175}

According to the Stigma Index, of the more than 570 persons living with HIV and key populations interviewed, more than 70 percent received either no formal education or only primary school education.\textsuperscript{176} Of the key populations consulted for this LEA, sex workers, people who inject drugs and former and current prisoners held a significantly lower level of education and literacy rate than the transgender individuals and men who have sex with men. Sex workers and people who

\textsuperscript{175} Ministry of Social Welfare, Gender and Children’s Affairs, GoSL, National Policy on the Advancement of Women, p. 5, 6, 12 and 13.
\textsuperscript{176} Stigma Index, p. 9.
inject drugs begged repeatedly for skills training from GoSL and indicated that such training would be the best route toward an alternative livelihood.

**Sexual Education in Schools**

Numerous GoSL documents call for sexual and HIV education both in schools and to the public. For example:

- section 19 (*Commission to promote education and information on HIV and AIDS*) of the NAS Act requires NAS to promote “awareness about the causes, modes of transmission, consequences, means of prevention and control of HIV and AIDS through a comprehensive nationwide educational and information campaign”, which should include, *inter alios*, all schools and educational institutions and all places of work;
- section 20 (*HIV and AIDS to be in curriculum of educational institutions*) of the NAS Act charges the Ministry of Education, Science and Technology with implementing a curriculum “that integrate[s] instructions on the causes, modes of transmission and ways of preventing and protecting against HIV and AIDS and other sexually transmitted diseases in subjects taught in public and private schools at primary, secondary and tertiary levels, including formal and non-formal systems”;
- strategic objectives 4.6.1, 4.6.2, 4.6.3 and 4.6.7 of the National Youth Policy, 2014, require increasing education on HIV, AIDS and STIs to youth, improving sexual reproductive rights for adolescent girls, introducing programmes to monitor and reduce illegal drug use and provision of health training to youth in their communities;\(^{177}\)
- the *National Curriculum Framework and Guidelines for Basic Education* incorporates HIV in its educational milestones. Students should “learn how to prevent harmful incidents through practices that mitigate the risk for contagious diseases such as Ebola, Cholera, HIV and AIDS, STIs and infections in general, etc.”.\(^{178}\)

Despite the plethora of explicit directives on education HIV in schools, key populations and key stakeholders declare emphatically that no such education takes place in schools. In fact, they say, sexual education is not delivered at schools because, despite the law and policy on the matter, educational institution board members refuse to permit it. Key stakeholders cite social norms and traditional customs as the basis for resistance to sexual education in schools.

Such resistance to provision of sexual education is not only against the law of Sierra Leone, it counters best practices and can lead to the spread of HIV.

The Guidelines assert that “states should encourage educational institutions (primary and secondary schools, universities and other technical or tertiary colleges, adult and continuing education), as well as trades unions and workplaces to include HIV and human rights/non-discrimination issues in relevant curricula, such as human relationships, citizenship/social studies, legal studies, health care, law enforcement, family life and/or sex education, and welfare/counselling”.\(^{179}\)

The Network of Asia Pacific Youth have observed that “the reason people are vulnerable to HIV and AIDS is not because they are young, or homosexuals, or sex workers or injecting drug users. We are not somehow extra vulnerable to the virus. Yet, we carry the heaviest burden of the

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\(^{179}\) Paragraph 62(b).
pandemic, because society repeatedly denies us access to sexuality education, commodities for contraception and decisionmaking when it comes to HIV and AIDS programmes.”

Moreover, the Global Commission has concluded that “no studies find that sex education leads to earlier, riskier or more prolific sexual activity” but, instead, found that such programmes result in more frequent condom use, fewer sexual partners and significantly reduced sexual risk-taking.\footnote{Network of Asian Pacific Youth, Asia-Pacific Regional Dialogue, 16–17 February 2011.}

**Recommendations**

As with many sections of this report, the legal infrastructure regarding education parallels best practices but the laws are either ignored or superseded by cultural norms, financial constraints and de-prioritization of the letter of the law. As aforementioned, the rule of and respect for the law must be upheld before any of the recommendations in this paper can be realized.

In addition, it is recommended that GoSL:

1. implement the laws and policies already in place and set out in this section;
2. take measures to comply with regional and international obligations to respect, protect and fulfill all girls right to education and non-discrimination;\footnote{Risks, Rights and Health, p. 74.}
4. provide information to the African Commission on the measures put in place to ensure access to education in the rural areas, and establish a comprehensive program on human rights education in the curriculum of primary and secondary schools;\footnote{Id.}
5. in compliance with the African Charter and ICESR, arrange for and manage financing to deliver free primary education and to stagger implementation of free education at higher levels;
6. train educators and board members of educational institutions on the value of sexual and HIV education in supporting public health;
7. utilize media and other creative sources to educate the public on HIV as set out under the NAS Act;
8. develop a training programme to teach skills to people living with HIV and Key Populations, especially sex workers, people who inject drugs, prisoners and former prisoners. Ensure that the programme helps placement of trainees into alternative livelihoods.

It is recommended that NAS:

\footnote{Id.}

\footnote{Id.}
9. coordinate with the National Disabilities Commission, Human Rights Commission, Ministry of Health and Sanitation and Ministry of Education, Science and Technology to ensure that the laws regarding access to education for persons with disabilities, people living with HIV and key populations are implemented and, when not, access to justice is provided;
10. continue to use media and creative resources to educate the public on HIV as set out under the NAS Act;
11. work with CSOs to develop an interim programme (to serve as a placeholder until laws can be implemented) to educate youth, particularly key populations, on HIV and STIs.

Access to Employment

International Law and Standards

Under article 6 and article 7 of the ICESR, GoSL has committed to helping its citizens achieve equal access to full, productive, freely-chosen employment. Similarly, in the African Charter, GoSL has acknowledged that all Sierra Leoneans have an unalienable right to work “under equitable and satisfactory conditions, and shall receive equal pay for equal work.”

The Guidelines has interpreted these human rights obligations to have particular application in the context of HIV. They state that:

[The right to work] is violated when an applicant or employee is required to undergo mandatory testing for HIV and is refused employment or dismissed or refused access to employee benefits on the grounds of a positive result. States should ensure that persons living with HIV are allowed to work as long as they can carry out the functions of the job. Thereafter, as with any other illness, people living with HIV should be provided with reasonable accommodation to be able to continue working as long as possible and, when no longer able to work, be given equal access to existing sickness and disability schemes. The applicant or employee should not be required to disclose his or her HIV status to the employer nor in connection with his or her access to workers’ compensation, pension benefits and health insurance schemes.

National Laws

The key issues under employment law as they relate to HIV and key populations are:

- whether discrimination is prohibited based on perceived or actual HIV status;
- whether key populations are obstructed from employment opportunities because of their status; and
- whether HIV information is provided to employees.

Employment Discrimination of Key Populations and People Living with HIV

Under the Sierra Leone HIV and AIDS Policy for the Mining Sector, GoSL “promotes and encourages” mining companies to institute mechanisms to ensure the observance of human rights among their employees, regardless of HIV status. The policy also forbids all discrimination based on HIV status, whether actual or perceived and whether the status is of the worker or his

185 Article 15.
186 Paragraph 149.
or her family or dependents. Testing may not serve as a prerequisite for employment, an employer must protect the confidentiality of an employee’s HIV status, termination for HIV status is prohibited and, where feasible, employers should support financially the healthcare of the employee living with HIV.

In the same way, the NAS Act criminalizes the denial of employment based on actual or perceived HIV status. Section 39(1) (*Discrimination in the workplace*) states that “no person shall be denied access to any employment for which the person is qualified, or transferred, denied promotion or have his employment terminated on the grounds only of his actual, perceived or suspected HIV status”.

Despite these clear indications that HIV should not serve as grounds for any alteration in employment or a factor into a hiring decision, key stakeholders reported certainty that the law is not followed. During focus group discussions, the employment focus group summarized the situation by saying that “Yes [there is protection against discrimination based on HIV status] but [only] if you are looking at the policies, you are given the space to compete, but [a person living with HIV] won’t be hired”. “[Employers] can’t terminate you, but [they will claim a reason] other than HIV status”, they continued.

While people living with HIV at least have the benefit of the written law against discrimination, key populations have fewer legal resources to leverage when seeking the right to work. Article 27 of the Constitution provides a general protection against discrimination and article 6 of the Constitution sets the GoSL objective of protecting “the right of any citizen to engage in any economic activity without prejudice to the rights of any other person to participate in areas of the economy”. However, the key populations consulted for this LEA did not consider their status as a barrier to employment. Instead, they cited employment difficulties due to lack of skills and education and a limited job market.

**HIV Information in the Workplace**

Pursuant to the 2006 draft of the Sierra Leone Workplace Policy on HIV and AIDS, NAS and the Ministry of Labour, Social Security and Industrial Relations commit to providing “technical support for HIV/AIDS policy formulation and implementation in each workplace by setting up Workplace HIV/AIDS Management Teams. The Management Teams will provide technical support and guidance for program formulation and implementation including training, HIV/AIDS education and service provision in the work place and mobilize resources for the implementation of the workplace programmes”.

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188 *Id.*, paragraphs 4.5, 4.6, 4.7 and 4.10.
While impressive that GoSL strives to implement a universal workplace HIV education programme, the ambition may lead to overextension of resources and a highly bureaucratic structure within the workplace and GoSL.

Such an intensive, detailed model was vacated under the NAS Act, which excludes the concept of management teams. Section 22 (HIV and AIDS education in workplaces) of the NAS Act sets out that

“(1) The Government shall ensure the provision of basic and accessible information and instruction on HIV and AIDS prevention and control to:

(a) employees of all Government Ministries, Departments, Agencies and local councils;
(b) employees of private and informal sectors.

(2) Information provided under subsection (1) shall cover issues such as confidentiality in the workplace and attitudes towards HIV-positive employees and workers.”

The paradigm under section 22 (HIV and AIDS education in workplaces) focuses on the nature and proliferation of information and the end user, rather than the structure. This permits NAS and GoSL latitude to derive an affordable and effective structure for disseminating HIV educational materials in the workplace.

Recommendations

While the labor laws protecting people living with HIV are in place, the general workplace discrimination statutes could be strengthened so as to support the key populations in their quest for sustenance. However, the determining factor in access to employment by people living with HIV and key populations appears to be more highly correlated with skills and connections than with legal protections. This speaks to the larger employment issue in Sierra Leone rather than to HIV and key populations and therefore access to employment should be predominantly addressed under national economic and job creation strategies.

It is recommended that GoSL develop a skills training and education programme for key populations and introduce sensitization on human rights, HIV and key populations for employers, through associations, the Sierra Leone Investment and Export Promotion Agency, the Corporate Affairs Commission, the Office of the Administrator and Registrar General, the Ministry of Trade and Industry and the Sierra Leone Chamber of Commerce;

It is recommended that NAS:

1. investigate the frequency with which employers circumvent the law in respect of employment of people living with HIV and develop an intervention programme accordingly;
2. together with experts such as the Office of the Attorney General, Law Reform Commission, the Sierra Leone Bar Association, Legal Access through Women Yearning for Equality Rights and Social Justice and other CSOs, determine whether enhancements are required to the national labor laws so that the international obligations and constitutional protections regarding rights to work are realized by key populations; and

3. clarify the structure for workplace education in terms of whether the model under the Sierra Leone Workplace Policy on HIV and AIDS or the NAS Act shall reign.

PART IV – CONCLUSION AND SUMMARY OF RECOMMENDATIONS

This LEA has evaluated the legal system in Sierra Leone in respect of key populations and HIV. The primary finding of the report is that, in the majority of cases, the legal infrastructure is aligned with best practices, but the laws and policies are not implemented as drafted. It is therefore essential that GoSL determine the reasons that its laws are not being realized and address those reasons immediately. Without an established rule of law, the recommendations of this report will yield a comparatively weak effect.

That being stated, the recommendations of this LEA are designed to work with the reality of the legal environment and, therefore, even if a comprehensive reinstatement of the rule of law is not executed, it is anticipated that they will bring Sierra Leone closer to the ideals set out in The Guidelines, Sustainable Development Goals and throughout international human rights instruments.

Table 6 (Summary of Recommendations) compiles the recommendations of the LEA and designates them as high priority (to be started within twelve months of the date of the LEA), medium priority (to be started between twelve and eighteen months from the date of the LEA) and low priority (to be started within eighteen to twenty-four months of the date of the LEA).

<table>
<thead>
<tr>
<th>Suggested Responsible Entity</th>
<th>Recommendation</th>
<th>Priority</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Constitutional Amendments</strong></td>
<td>Repeal and replace Article 27 (Protection from discrimination) with the most notable amendments including:</td>
<td>High Priority</td>
</tr>
</tbody>
</table>
| GoSL, Law Reform Commission, Constitutional Review Committee, National Working Group on Constitutional Reforms | • the elimination of permitted discrimination of the following:  
  o naturalized citizens;  
  o anyone, in respect of “adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law”; | |
o members of a particular race or tribe or anyone effected by customary law, with respect to any matter, so long as it is not applicable to non-members of that particular race, tribe or custom;
o anyone, to measures that are reasonably justifiable to address a public emergency;
o anyone, with respect to qualifications for service as a public officer, member of a defence force, service of a local government authority or a body corporate; and
o anyone, through the exercise of any legally- or Constitutionally-afforded discretion in the institution, conduct or discontinuance of a civil or criminal matter.

- the addition of permitted discrimination in members’ only clubs;
- the addition of permitted discrimination “for the taking by the Government of affirmative action to remedy or ameliorate the effects of past discrimination against any [group of people whose rights are recognized and protected in Chapter 3 (The Recognition and Protection of Fundamental Human Rights and Freedoms of the Individual) of the Constitution but who have been treated less favorably than others on the grounds of their race, tribe, sex, religion, place of birth, opinion, color and disability]”; 
- clarification of who holds standing to file a claim arising out of discriminatory activity described in Article 27 (Protection from discrimination) or Chapter 3 (The Recognition and Protection of Fundamental Human Rights and Freedoms of the Individual) of the Constitution;
- clarification that the Human Rights Commission holds primary jurisdiction and that the Court of Appeals and the Supreme Court hold appellate jurisdiction for claims arising under Article 27 (Protection from discrimination) or Chapter 3 (The Recognition and Protection of Fundamental Human Rights and Freedoms of the Individual) of the Constitution;
- clarification that the freedom from discrimination is protected in the private sector as well as in the public sector;
- revision of the definition of discrimination so that it is applicable to all of rights granted under Chapter 3 (The Recognition and Protection of Fundamental Human Rights and Freedoms of the Individual) of the Constitution; and
| GoSL, Law Reform Commission, Constitutional Review Committee, National Working Group on Constitutional Reforms | consider supplementing Article 27 *(Protection from discrimination)* by stating that, *inter alios:*  
  - every person is equal before the law and has the right to equal protection and benefit of the law;  
  - women and men have the rights to equal treatments including the rights to equal opportunities in political, economic, cultural and social spheres; and  
  - the state shall take legislative and other measures to implement the principle that not more than two thirds of the members of elective or appointive bodies shall be of the same gender. | High Priority |
| GoSL, Law Reform Commission, Constitutional Review Committee, National Working Group on Constitutional Reforms | discuss publically the propriety of enlisting new entitlements in the Constitution, such as the right:  
  - of each to:  
    - an environment that is not harmful to one’s health or well-being and that is protected for future generations;  
    - the highest attainable standard of health;  
    - affordable housing and hygienic standards of sanitation;  
    - freedom from hunger and to have food of acceptable quality;  
    - clean and safe drinking water;  
    - social security; and  
    - education;  
  - of the aged population to certain facilities such as medical care, housing and transportation;  
  - to life to be construed as abolishing the death penalty;  
  - of persons with a disability to be treated with dignity and respect and to access housing, educational facilities, medical care, employment, transportation and other required facilities designed to overcome constraints arising from the persons’ conditions;  
  - of children, whose “best interest is of paramount importance”, to protection from all forms of exploitation and abuse; and  
  - of trade unions, employers’ organizations and employers, to collective bargaining. | High Priority |
drawbacks arising out of the Constitution. The key propositions that relate to this report are:

- opening the possibility of litigation when GoSL derogates from the core doctrine set out in Chapter 2 (*Fundamental Principles of State Policy*). This is in response to "many calls for the provisions contained within Chapter II to be made justiciable [during public consultations];"
- buttressing the national values in Chapter 2 (*Fundamental Principles of State Policy*) with devolution of power, integrity, transparency, accountability, sustainable development and the "imperative recommendation of the TRC" of human dignity;
- amending to provide progressive realization of or erasing qualifications, such as "having due regard to the resources of the State" and "as and where practicable", on provisions relating to health, safety, welfare, medical facilities and educational opportunities;
- obliging GoSL to "prohibit" rather than merely "discourage" discrimination under Article 7 (*Economic objectives*);
- redressing those held in unlawful detention to a public apology in addition to financial compensation under Article 17 (*Protection from Arbitrary Arrest or Detention*); and
- shortening the time period by which an individual held in detention must be offered appearance in a court of law.

<table>
<thead>
<tr>
<th><strong>Access to Healthcare</strong></th>
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<tbody>
<tr>
<td><strong>GoSL</strong></td>
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<tr>
<td><strong>High Priority</strong></td>
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<tr>
<td><strong>GoSL</strong></td>
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<td><strong>High Priority</strong></td>
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</tbody>
</table>
intermediary associations that supervise and monitor the delivery of services. This recommendation extends to the broader healthcare sector and is not limited to HIV and key populations.

<table>
<thead>
<tr>
<th>GoSL</th>
<th>Repeal the Prevention and Control of HIV Act because it is duplicated by the NAS Act.</th>
<th>Low Priority</th>
</tr>
</thead>
<tbody>
<tr>
<td>GoSL</td>
<td>Institute moratorium on enforcement of the Prevention and Control of HIV Act until it is repealed.</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Secure financial, political and administrative resources for NAS, either from the consolidated fund or through combined assistance from donors and CSOs, so that it can implement the provisions of the NAS Act to an international standard and as ambitiously as required under the terms of the legislation.</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>In line with the Global Commission’s advice and the principles of the Constitution, address stigmatization in access to healthcare and ensure that all citizens receive such care without discrimination. It should, first, follow the instructions of the Constitutional Review Committee and amend Article 27 (Protection from discrimination) of the Constitution so that each key population (and each Sierra Leonean) is granted an unequivocal right to equal protection and access to services under the law. The Constitutional Review Committee Recommendation that Article 27 (<em>Protection from discrimination</em>) be redrafted to clarify the courts with jurisdiction for claims for discrimination suffered from the public or the private sector, should also be followed.</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Detail information to the African Commission in relation to laws and policies on HIV and AIDS, statistics and disaggregated data, measures taken to ensure equal access to treatment and information on the existence of educational programs on HIV and AIDS</td>
<td>Medium Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Repeal section 61 of the Offences against Persons Act, section 37 of the NAS Act and the inclusion of HIV and STD transmission under the definition of “sexual assault” in the Domestic Violence Act on public health and human rights grounds. Training and sensitization of police officers, corrections officers, healthcare workers and the public at large should be instituted in connection with this repeal and a moratorium on enforcement of these laws should be ordered until the repeals have been validated by Parliament in accordance with the Constitutional process</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Set aside convictions of those prosecuted under section 61 of the Offences against Persons Act, section 37 of the NAS Act and section 2 of the Domestic Violence Act (as is relates to HIV and STD transmission) and/or release the accused immediately from prison with pardons, expunging the charge and conviction from their criminal records.</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Ensure that necessary health care is available in correctional centers, including HIV prevention and care</td>
<td>High Priority</td>
</tr>
<tr>
<td><strong>GoSL</strong></td>
<td>Enforce and execute the reformatory programmes contemplated by the Drugs Control Act, the Correctional Services Act and the Correctional Services Plan. Train those working in the rehabilitation programmes. CSOs and the private sector could provide expertise and support in this space.</td>
<td>High Priority</td>
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<tr>
<td>GoSL</td>
<td>Repeal the laws banning distribution of syringes, particularly in respect of correctional facilities.</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Reverse the bar on advertising mechanisms for averting STIs, relating to human sexual intercourse and other diseases and for terminating pregnancy.</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Inform the African Commission on measures taken to install adequate, affordable and accessible health facilities and services to the rural areas.</td>
<td>Medium Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Where free healthcare is mandated, install the requisite finances for the delivery of services. According to the African Commission, “in the annual State budget, [GoSL should] ensure allocation of the minimum amount of 15% to the health sector, in accordance with the Abuja Declaration on HIV/AIDS, Tuberculosis and other Related Infectious Diseases”. Medication, in addition to medical services, should be provided at no cost. If the finances cannot be delegated to this source, the legislation should be redrafted to match the level of support that GoSL can deliver. Failure to act upon legislation and healthcare initiatives countervails the rule of law and people’s trust in GoSL.</td>
<td>High Priority</td>
</tr>
<tr>
<td>NAS</td>
<td>Where possible and permissible under law, to the extent not already effected, coordinate with CSOs and donors in the execution of its duties as set out under the NAS Act.</td>
<td>High Priority</td>
</tr>
<tr>
<td>NAS</td>
<td>Coordinate with the Medical and Dental Council, CSOs and GoSL to train healthcare workers on and sensitize them to HIV and key populations. NAS should work with the Medical and Dental Council to draft standards for treatment of key populations and people living with HIV that incorporate The Guidelines and are domesticated appropriately into the Sierra Leonean context.</td>
<td>High Priority</td>
</tr>
<tr>
<td>NAS</td>
<td>Together with correctional service, obtain clarity as to methods for obtaining lawful authority to use methadone and investigate designing an alternative treatment programme for people who inject drugs in prison.</td>
<td>Medium Priority</td>
</tr>
<tr>
<td><strong>Access to Justice</strong></td>
<td>Commission a comprehensive justice sector restoration programme, lead by the judiciary and the Office of the Attorney General, whereby the respect for law is instituted and the law, as written, becomes the law, as implemented and enforced by all. Undertake a sector-wide assessment of failures in the administration of justice and secure programming and funding to implement radical changes as</td>
<td>High Priority</td>
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</table>
soon as possible. Support NAS in the leadership on the legislative reforms that are recommended in this LEA. Naturally, this extends to the justice sector as a whole and not just to HIV and key populations.

<table>
<thead>
<tr>
<th>Country</th>
<th>Task</th>
<th>Priority</th>
</tr>
</thead>
<tbody>
<tr>
<td>GoSL</td>
<td>Rectify the concerns raised by the African Commission.</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Ensure that key populations and people living with HIV are informed of their rights. The legal ideal of non-discrimination must be defended by enforcement, including prompt and affordable access to redress in cases of violations, including affordable, accessible legal services and confidentiality of proceedings. Work through the law enforcement structure, the Sierra Leone Bar Association and CSOs to produce and disseminate HIV legal rights brochures, resource personnel directories, handbooks, practice manuals, student texts, model curricula for law courses. Continuing legal education and newsletters to encourage information exchange and networking should also be provided.</td>
<td>Medium Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Ensure resources and funding are sufficient for correctional centers to implement the requirements under the Correctional Services Act and the Correctional Services Plan.</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Repeal or amend section 7 of the Public Order Act so that it is not abused and used against key populations and any other stigmatized or otherwise innocent person who happens to be in a public place.</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Take all measures to end police harassment, brutality and sexual victimization of sex workers by police. In particular, Enhance training of law enforcement personnel on human rights issues and the particulars that relate to HIV and key populations. Hold law enforcement personnel accountable for brutality, harassment and solicitations of bribes.</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Expand the work of the Legal Aid Board to include representation of civil cases for violations of human rights and unveil services tailored for people living with HIV and key populations.</td>
<td>Medium Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Formulate tax or other incentives for private law firms who provide pro bono support to the indigent, people living with HIV and key populations.</td>
<td>Low Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Repeal the Prevention and Control of HIV Act (including, especially, section 21), as stated under the Access to Healthcare section recommendations.</td>
<td>Low Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Repeal section 37 of the NAS Act and rely on general criminal laws against assault for intentional transmission of HIV, as set out under the Access to Healthcare section recommendations.</td>
<td>Medium Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>While the repeal of section 21 of the Prevention and Control of HIV Act, section 37 of the NAS Act and section 2 of the Domestic Violence Act (as is relates to HIV and STD...</td>
<td>High Priority</td>
</tr>
</tbody>
</table>
transmission) are underway, impose a moratorium on the
correctional services Plan.

Office of the Attorney General
Assess the compliance of correctional centers with the
requirements of the Correctional Services Act and the
Correctional Services Plan.

High Priority

Office of the Attorney General
Reduce the backlog on criminal cases and free those held
in remand beyond their statutory period.

High Priority

NAS
Lead on all of the recommended actions in this section,
coordinating with the courts and the Office of the Attorney
General for legal support and with stakeholders and
Parliament for political support.

High Priority

### Access to Information

<table>
<thead>
<tr>
<th>Action</th>
<th>Description</th>
<th>Priority</th>
</tr>
</thead>
<tbody>
<tr>
<td>GoSL</td>
<td>Abolish the criminal liability for libel and defamation in the Public Order Act, as resolved by the African Commission.</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Work with SierraLii, Parliament library and the Sierra Leone Web to publish all policies, laws, rules, regulations and judgments, with particular emphasis on the older documents that remain in effect.</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Empower the Government Printing Office to maintain copies of the Gazette and all laws and policies on file, which should be supplied to, at minimum, other GoSL entities, at no cost.</td>
<td>Medium Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Create a working group that will determine a manner for circulating legislative and policy activities to the public.</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Develop and implement an efficient programme for access to laws, policies, rules and regulations to the public and inform the public accordingly, considering seriously the option of notifying the public, in part, through radio programming;</td>
<td>High Priority</td>
</tr>
<tr>
<td>Authority</td>
<td>Action</td>
<td>Priority</td>
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<tr>
<td>GoSL</td>
<td>Use the radio and social media as a tool for disseminating information to the public on legislative and policy activities and consider revitalizing the Sierra Leone Chamber of Commerce, Industry and Agriculture's radio programme for this purpose.</td>
<td>Low Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Amend the Correctional Services Act so that correctional centers provide to inmates with information on the dangers of sharing needles and drug use.</td>
<td>Medium Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Repeal section 35 of the Pharmacy and Drugs Act.</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Enact general privacy and confidentiality laws.</td>
<td>Medium Priority</td>
</tr>
<tr>
<td>NAS</td>
<td>Continue effective collaboration with CSOs and correctional centers.</td>
<td>High Priority</td>
</tr>
<tr>
<td>NAS</td>
<td>Utilize the radio for community sensitization and spreading of information on HIV testing, prevention and treatment.</td>
<td>Medium Priority</td>
</tr>
<tr>
<td>NAS</td>
<td>Work with correctional centers to provide to prisoners information on the dangers of sharing needles and drug use.</td>
<td>High Priority</td>
</tr>
<tr>
<td>Medical and Dental Council</td>
<td>Publish its rules on its website and through other mechanisms accessible to the public.</td>
<td>High Priority</td>
</tr>
<tr>
<td>Medical and Dental Council</td>
<td>Modernize its publication of registered medical practitioners so that key populations can utilize the information.</td>
<td>Medium Priority</td>
</tr>
<tr>
<td>Medical and Dental Council</td>
<td>If it has not, develop rules on confidentiality of patient information in accordance with international best practices, whereby the disciplinary committee, acting independently, should redress breaches of confidentiality.</td>
<td>High Priority</td>
</tr>
<tr>
<td>Medical and Dental Council</td>
<td>In accordance with The Guidelines, regulations should be developed to permit an individual to see his or her own records and to request amendments to ensure that such information is accurate, relevant, complete and up to date.</td>
<td>Low Priority</td>
</tr>
<tr>
<td>Access to Education</td>
<td>Implement the laws and policies already in place and set out in this section.</td>
<td>Medium Priority</td>
</tr>
<tr>
<td></td>
<td>Take measures to comply with regional and international obligations to respect, protect and fulfill all girls’ rights to education and non-discrimination.</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Immediately establish measures to guarantee that pregnant girls can continue with their education, including attending classes and writing exams.</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Provide information to the African Commission on the measures put in place to ensure access to education in the rural areas, and establish a comprehensive program on human rights education in the curriculum of primary and secondary schools.</td>
<td>Medium Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>In compliance with the African Charter and ICESR, arrange for and manage financing to deliver free primary education and to stagger implementation of free education at higher levels.</td>
<td>Medium Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Train educators and board members of educational institutions on the value of sexual and HIV education in supporting public health.</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL</td>
<td>Develop a training programme to teach skills to people living with HIV and key populations, including sex workers who wish to change careers, people who inject drugs, prisoners and former prisoners. Ensure that the programmes helps placement of trainees into alternative livelihoods.</td>
<td>High Priority</td>
</tr>
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</tr>
<tr>
<td>NAS</td>
<td>Coordinate with the National Disabilities Commission, Human Rights Commission, Ministry of Health and Sanitation and Ministry of Education, Science and Technology to ensure that the laws regarding access to education for persons with disabilities, people living with HIV and Key Populations are implemented and, when not, access to justice is provided.</td>
<td>High Priority</td>
</tr>
<tr>
<td>GoSL and NAS</td>
<td>Continue to use media and creative resources to educate the public on HIV as set out under the NAS Act.</td>
<td>Medium Priority</td>
</tr>
<tr>
<td>NAS</td>
<td>Work with CSOs to develop an interim programme (to serve as a placeholder until laws can be implemented) to educate youth, particularly key populations, on HIV and STIs.</td>
<td>High Priority</td>
</tr>
</tbody>
</table>

**Access to Employment**

| GoSL | Develop a skills training and education programme for key populations and introduce sensitization on human rights, HIV and key populations for employers, through associations, the Sierra Leone Investment and Export Promotion Agency, the Corporate Affairs Commission, the Office of the Administrator and Registrar General, the Ministry of Trade and Industry and the Sierra Leone Chamber of Commerce | High Priority |
| NAS | Investigate the frequency with which employers circumvent the law in respect of employment of people living with HIV and develop an intervention programme accordingly. | Medium Priority |
| NAS | Together with experts such as the Office of the Attorney General, Law Reform Commission, the Sierra Leone Bar Association, Legal Access through Women Yearning for Equality Rights and Social Justice and other CSOs, determine whether enhancements are required to the national labor laws so that the international obligations and Constitutional protections regarding rights to work are realized by Key Populations. | Medium Priority |
| NAS | Clarify the structure for workplace education in terms of whether the model under the Sierra Leone Workplace Policy on HIV and AIDS or the NAS Act shall reign. | Medium Priority |
APPENDIX 1 - REFERENCES


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The Sierra Leone Health Services Commission Act, 2011 (No. 5).
The Sierra Leone Red Cross Society Act, 2012 (No. 15).
The Teaching Hospitals Complex Act, 2016 (No. 8).


APPENDIX 2 – ORGANISATIONS REPRESENTED AT THE KEY STAKEHOLDER WORKSHOP

AdvocAid
Alliance for Women’s Development in Sierra Leone
College of Medicine & Allied Health Sciences
Dignity Association of Sierra Leone
Family Support Unit, Sierra Leone Police
Foundation for Rural and Urban Transformation
Health for All Coalition
Institute of Governance Reform
Justice Sector Coordination Office
Law Reform Commission
Ministry of Social Welfare, Gender and Children’s Affairs, GoSL
Ministry of Youth Affairs, GoSL
Motor Drivers & General Transport Union
Movement Opposed to Violence and Exclusion Sierra Leone
NAS
National Drug Law Enforcement Agency
National Mineral Agency
Network of HIV Positives in Sierra Leone
Office of the Attorney General and Ministry of Justice
Office of National Security, Sierra Leone
Pharmaceutical Board
Prison Watch
Sierra Leone Association of Journalists
Sierra Leone Indigenous Traditional Healers’ Union
Sierra Leone Medical Students’ Association
Sierra Leone Midwives Association
Sierra Leone Police
Sierra Leone Youth Development and Child Link
Sierra Leone Women’s Forum
Society for Democratic Initiatives
SWAASL
United Nations Population Fund
Women’s Centre for Good Governance and Human Rights
APPENDIX 3 – KEY POPULATIONS CONSULTED VIA INTERVIEWS

Key Populations

Sex workers – 19 individuals in total from the Western Region, the Southern Region and the Eastern Region

Men who have sex with men – 4 individuals in total from the Western Region, the Southern Region and the Eastern Region

Prisoners, current and former – 5 individuals in total from the Western Region, the Southern Region and the Eastern Region

People who inject drugs – 5 individuals in total from the Western Region, the Southern Region and the Eastern Region

Transgender individuals – 4 individuals in total from the Western Region, the Southern Region and the Eastern Region

Other Related Groups

Healthcare workers – from the Western Region, the Southern Region and the Eastern Region

Local Government officials – from the Western Region, the Southern Region and the Eastern Region
APPENDIX 4 – MEMBERS OF THE TWG

AdvocAid
Alliance for Women’s Development in Sierra Leone
Business Coalition against AIDS, Sierra Leone
Centre for Accountability and Rule of Law
Dignity Association of Sierra Leone
Human Rights Commission of Sierra Leone
Legal Access to Women Yearning for Equality Rights and Social Justice
Ministry of Youth Affairs, GoSL
NAS
National Drug Law Enforcement Agency
National HIV/AIDS Control Programme
Network of HIV Positives in Sierra Leone
Sierra Leone Inter Religious AIDS Network
Sierra Leone Police
Sierra Leone Youth Development and Child Link
SWAASL