

The Equal Rights Trust - Universal Periodic Review submission: Sierra Leone, 2010

1. The Equal Rights Trust (ERT) is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. ERT works from the unified perspective on equality, which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome the fragmentation of the field of equality law and policies.
2. In this submission, ERT highlights some of the most significant challenges and problems facing the government of Sierra Leone in fulfilling its obligations to promote equality and combat discrimination. Despite significant progress in recent years, inequality pervades many sections of Sierra Leonean society. There is inadequate equality legislation in force and the enforcement of existing equality-related legislation remains weak. It is our view that in order to meet its international legal obligations, Sierra Leone must amend or repeal discriminatory laws and introduce comprehensive anti-discrimination legislation.

International Obligations

3. Sierra Leone is a party to five United Nations treaties relevant to equality – the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of Persons with Disabilities (CRPD) – all of which establish duties on states to prohibit discrimination.¹
4. Article 2 of the ICCPR and CESCR oblige state parties to ensure that the rights set out in the Covenant are, exercised without discrimination on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”² In addition, both Covenants require all states parties to take steps, in particular through the introduction of legislation, to give effect to the rights contained therein.³ Under Article 26 of the ICCPR, Sierra Leone has a duty to ensure equality of all persons before the law, equal protection of the law without any discrimination and to prohibit discrimination on “any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁴
5. CEDAW, CERD and CRPD create further specific obligations upon state parties with respect to discrimination on grounds of gender, race and disability. Under these treaties, Sierra Leone has obligations to refrain from discriminatory practice,⁵ introduce legislation prohibiting discrimination on the protected ground,⁶ and modify, amend or abolish legislation which discriminates on the protected ground.⁷

¹ Status of Sierra Leone’s international legal obligations established from the UN Treaty Body Database (available at: <http://www.unhchr.ch/tbs/doc.nsf>).

² International Covenant on Civil and Political Rights, Article 2(1) and International Covenant on Economic, Social and Cultural Rights, Article 2(2).

³ ICCPR, Article 2(2) and CESCR, Article 2(1)

⁴ International Covenant on Civil and Political Rights, Article 26.

⁵ Convention on the Elimination of All Forms of Discrimination against Women, Article 2(d) and Convention on the Elimination of All Forms of Racial Discrimination, Article 2.1(a).

⁶ CEDAW, Article 2(b); CERD, Article 2, 1(d); and CRPD, Article 4, 1(e).

⁷ CEDAW, Article 2(f); CERD, Article 2, 1(c); and CRPD Article 4, 1(b).

National Law

6. The Sierra Leonean Constitution prohibits discrimination by the state and individuals. Article 27 of the Constitution stipulates: “no law shall make provision which is discriminatory either of itself or in its effect”, and “no person shall be treated in a discriminatory manner by any person acting by virtue of law.”⁸ The Article provides a closed list of grounds prohibiting discrimination: race, tribe, sex, place of origin, political opinions, colour and creed.⁹ Notably, sexual orientation, gender identity, disability and age are not mentioned in the list of protected grounds.
7. Aside from the Constitution, legislation prohibiting discrimination is limited, though some legal provisions do exist. The Education Act 2004 prohibits discrimination in admission or treatment of students on grounds of “race, colour, sex, disability, language, religion, political, national or social origin, economic condition or birth,” a list which notably includes disability despite its absence from the Constitutional provision.¹⁰ The 2007 Prevention and Control of HIV and AIDS Act affords specific protections from discrimination for persons with HIV and AIDS in a range of fields including employment¹¹, access to health care and other services,¹² and education.¹³ The Refugees Protection Act of 2007 contains a special provision relating to recognised refugees and protected persons, stating that its provisions shall apply “without discrimination as to race, religion or country of origin.”¹⁴
8. These provisions notwithstanding, Sierra Leone has little domestic legislation giving effect to the right to non-discrimination. Notably, the country lacks non-discrimination provisions in key fields such as employment and healthcare; there is no implementing legislation providing protection from discrimination and promoting of equality on grounds of race, gender, or disability despite the obligations arising under CEDAW, CERD and CRPD; and there is no legislation providing for the establishment of an independent national agency with responsibility for monitoring, enforcing or promoting the right to equality. The absence of comprehensive anti-discrimination legislation means that Sierra Leone is failing to give effect to its international obligations.

Positive Developments

9. The government has taken a number of positive steps in recent years which are to be welcomed. In 2007, it adopted three laws increasing rights for women – the Registration of Customary Marriages and Divorces Act, the Devolution of Estates Act and the Domestic Violence Act (referred to as the “Gender Acts”) – which *inter alia* require the consent of both parties to a marriage, abolish the practice of wife inheritance, and create a state obligation to protect women from violence. At the same time, the government adopted a Child Rights Act which creates a commission with a responsibility to undertake civic education “aimed especially at elimination of...female genital mutilation...”¹⁵ In October 2010, Sierra Leone ratified the Convention on the Rights of Persons with Disabilities and consultation is ongoing about the introduction of Disability Bill.

⁸ Constitution of Sierra Leone, 1991, Article 27 (1) and Article 27 (2) (available at: <http://www.sierra-leone.org/Laws/constitution1991.pdf>).

⁹ *Ibid.*, Article 27 (3).

¹⁰ Education Act 2004, Article 4 (available at: <http://www.sierra-leone.org/Laws/2004-2p.pdf>)

¹¹ The Prevention and Control of HIV and AIDS Act, 2007, Article 23 (available at: <http://www.sierra-leone.org/Laws/2007-8p.pdf>).

¹² *Ibid.*, Article 28.

¹³ See above, note 22, Article 24.

¹⁴ Refugees Protection Act 2007, Article 3 (available at <http://www.sierra-leone.org/Laws/2007-6p.pdf>).

¹⁵ Child Rights Act 2007, Article 11 (2)(e) (available at <http://www.sierra-leone.org/Laws/2007-7p.pdf>).

Discrimination issues

10. Sierra Leone's **non-African residents**, notably of Lebanese or Indian descent, are subject to discriminatory laws on grounds of their race. The Citizenship Act 1973 places severe restrictions on people of non-patrilineal Negro-African descent, effectively disenfranchising these groups and institutionalising discrimination in access to citizenship. Article 2 (c) of the Act stipulates that to gain citizenship by birth a person must be *inter alia* of "negro African descent".¹⁶ As a result, long-term residents of non-African descent born in Sierra Leone are unable to acquire citizenship and are denied the opportunity to participate in public life.
11. Despite constitutional protection under Article 27, **women** remain vulnerable in Sierra Leonean society. Patriarchal customary laws are prevalent, and traditional views of women's role in society mean that widespread inequality and gender-based violence are largely tolerated. Inequality between men and women is pervasive. While the gender gap in access to primary education has been virtually eliminated, only 19% of students in secondary and tertiary education in 2007 were female.¹⁷ UNDP Estimates show that 76% of women in Sierra Leone have never been to school, compared to 60% of men.¹⁸ Only 15.3% of parliamentary seats and 7% of civil service positions were occupied by women in 2006.¹⁹ Gender-based violence is a serious problem. While the criminal code prohibits rape, it remains widespread and is ineffectively policed. Furthermore, while the 2007 Domestic Violence Act defines domestic violence broadly, marital rape is not explicitly prohibited.²⁰ Female Genital Mutilation (FGM) remains prevalent, though the introduction of a Child Rights Act in 2007 did outlaw the practice. UNICEF estimates that 90% of all women in Sierra Leone have undergone circumcision.²¹
12. **Lesbian, Gay, Bi-sexual, Transgender and Intersex (LGBTI) people** do not benefit from the protection afforded by Article 27 of the Constitution, and evidence suggests that the LGBTI community remains highly vulnerable. Male homosexual sex remains illegal under the Offences against the Person Act 1861. The government's failure to investigate the death of Fanny-Ann Eddy, the prominent founder of the Sierra Leone Lesbian and Gay Association (SLLGA) in 2004 is indicative of the widespread homophobia which prevails.²²
13. **Persons with disabilities** are also excluded from the protection offered by Article 27 of the Constitution. Estimates suggest that there are between 500,000 and 600,000 persons with disabilities in Sierra Leone (10% of the population)²³ and following a destructive civil war, the disability challenge is one of the gravest that the post-conflict government has to face. Stigmatisation is common and inequality ubiquitous, with disabled people 2.7 times more likely than the unimpaired to experience rape, physical abuse or bullying, 16.4% unable to access healthcare compared to 7.1% of non-disabled people, and only 33% of disabled people of working

¹⁶ Citizenship Act 1973, Part II, Article 2(c) (available at <http://www.unhcr.org/refworld/docid/3ae6b50610.html>).

¹⁷ United Nations Development Programme, *Common Country Assessment: Sierra Leone*, 2007, p. 20 (available at http://www.sl.undp.org/4_media/publications/common_country_assessment.pdf).

¹⁸ *Ibid*, p. 30.

¹⁹ See above, note 29, p33.

²⁰ Domestic Violence Act 2007, Article 2 (available at <http://www.sierra-leone.org/Laws/2007-20p.pdf>).

²¹ AFROL News, *Female Genital Mutilation a Vote-Winner in Sierra Leone*, 17th March 2010 (available at <http://www.afrol.com/articles/15927>).

²² Human Rights Watch, *Sierra Leone: Lesbian Rights Activist Brutally Murdered*, 5th October 2004 (available at <http://www.hrw.org/en/news/2004/10/05/sierra-leone-lesbian-rights-activist-brutally-murdered>).

²³ Sulakshana Gupta for the New Internationalist Blog, *Make Way for Disability Rights*, 13th August 2009 (available at <http://www.newint.org/blog/majority/2009/08/13/disability-rights/>).

age in employment.²⁴ During a recent public meeting organised by the Human Rights Commission of Sierra Leone it was noted that miscarriage of justice for the disabled community is common.²⁵

Conclusion

14. These selected examples provide significant evidence of widespread discrimination in Sierra Leone across a range of grounds and in a number of areas of life. It is clear that the right to non-discrimination is inadequately protected and enforced in Sierra Leone. The legal framework is inadequate in a number of ways, including:
 - a. **Discriminatory laws are in force.** The provisions of the Citizenship Act directly discriminate against residents of non-African descent. Gay men are subjected to discriminatory treatment under the Offences Against the Person Act. The continuing existence in force of discriminatory laws contravenes Sierra Leone's obligations under Article 26 of the ICCPR to provide equality before the law and equal protection of the law.
 - b. **There is inadequate legal protection for some categories of persons.** LGBTI persons and persons with disabilities are not protected from discrimination by Article 27 of the Constitution. In addition, discrimination on grounds of age is not prohibited. The failure to provide legal protection from discrimination for these groups contravenes obligations to provide protection from discrimination under Article 26 of the ICCPR and – in the case of persons with disabilities - CRPD.
 - c. **There is insufficient legislative protection from discrimination in different areas of civil, cultural, economic, political and social life.** The constitutional protection against discrimination is not translated into implementing legislation and policies, with the effect that vulnerable groups are inadequately protected in crucial areas of life such as employment or healthcare. The failure to ensure the enjoyment of the rights to work and health without discrimination is a violation of Article 2 of the CESCER, while failure to enact legislation to provide protection from discrimination contravenes specific obligations under CERD, CEDAW and CRPD.
 - d. **Existing legal provisions prohibiting discrimination are inadequately enforced.** It is clear that despite Constitutional protection from discrimination for some groups, including women and residents of non-African descent, discrimination prevails because laws are inadequately enforced.

Recommendations

15. Despite positive achievements in recent years, Sierra Leone's failure to ensure effective protection from discrimination for all within its territory represents a failure to give effect to its obligations under the ICCPR and CESCER. Further, the state has failed to meet obligations to enact appropriate legislation to ensure protection from discrimination on grounds of gender, race and disability arising under CEDAW, CERD and CRPD respectively.
16. ERT therefore recommends that the government of Sierra Leone:

²⁴ Leonard Cheshire Disability, *First Ever Study on Disability in Sierra Leone Reveals Disabled People in Crisis*, March 2010 (Available at <http://www.lcdisability.org/?lid=12124>).

²⁵ Tarawallie, I., "APC MP Blasts Police", *allAfrica.com*, 20th September 2010 (available at <http://allafrica.com/stories/201009210189.html>).

- a. Undertake a comprehensive review of domestic legislation to identify discriminatory laws and take immediate steps to amend or repeal such laws to ensure compliance with its international obligations.
- b. Take steps to develop and adopt comprehensive anti-discrimination legislation and policies. Equality legislation should provide for protection from discrimination on all relevant grounds, in all areas of life governed by law and should provide for the establishment of a national institution to ensure effective implementation and enforcement of the law and develop guidance for good practice in the area of equality.