



# CHRISTIAN LAWYERS CENTRE LEGAL LINK



Motto: "Defending the Rights of Vulnerable Groups in Society"

The Honorable Speaker of Parliament  
The Parliament of the Republic of Sierra Leone  
Tower Hill  
Freetown  
20<sup>th</sup> July 2021

Dear Honorable Speaker,

## LEGAL LINK's Position Paper on a permanent Abolition of the Death Penalty in Sierra Leone

Sequel to your open call in the Well of Parliament requesting position papers from Civil Society Organizations over the current bill tabled before Parliament entitled: the Abolition of the Death Penalty Act 2021, the legal team of Christian Lawyers Centre (also known as LEGAL LINK) has paid heed to such clarion call of yours and done an extensive research enveloped as an advisory opinion for the urgent consideration of members of Parliament as they embark on the passing of the Abolition of the Death Penalty Bill into law.

As such, LEGAL LINK submits this advisory opinion in good faith and as part of its broader mandate towards legal and policy reforms in Sierra Leone.

### Abstract

This advisory opinion seeks to provide a critical analysis of the Abolition of the Death Penalty Act 2021 that is currently before Parliament awaiting approval. In doing so, the opinion piece looks at the legal frameworks that guarantee the right to life both at the international, regional and domestic levels, advance the pros and cons debate over the death penalty and further interrogates the legislative approach currently adopted by the government of Sierra Leone towards the Abolition of the death penalty. The advisory opinion concludes by proffering plausible recommendations as to how the death penalty can be permanently abolished in Sierra Leone without the possibility of any return to the status quo in the future.

### Introduction

The right to life has been considered not only as a Meta right but the most important of all rights enjoyed by human beings in the world. This is the case because without a right to life no other rights can be enjoyed by human beings within the state.

It is against this backdrop that the international community under the UN framework has come to agree that the sanctity of life must always be protected; hence, the passing of various international treaties and instruments to guarantee the right to life.

### Legal Frameworks protecting the right to Life

#### At the International Level

The Universal Declaration of Human Rights under (Article 3) states that "Everyone has a right to life...".

Also, the International Covenant on Civil and Political Rights under Article 6 further guarantees the right to life and only allows for its taking for the most serious crimes.

Furthermore, there's the Second Optional Protocol to the ICCPR which abolishes the death penalty.

There is also the Human Rights Committee's General Comment No. 36 of 2018 urging state parties to the ICCPR to place themselves in a path towards complete eradication of the death penalty.

### **At the African Regional Level**

The African Charter on Human and People's Rights under Article 4 guarantees the right to life.

Furthermore, there's the African Commission's Resolution of 1999 that seeks to abolish the Death Penalty within the African continent.

It is important to emphasize that apart from the Second Optional Protocol to the ICCPR, Sierra Leone is a signatory to all of the other legal frameworks both at the international and regional levels; hence, the need to take steps including but not limited to legislative means in her jurisdiction for the abolition of the death penalty.

### **At the Domestic Level in Sierra Leone**

In Sierra Leone, the right to life is not absolutely guaranteed. Even though Section 16 (1) of the 1991 Constitution of Sierra Leone protects it generally, it does however allow for the taking of life under section 16(2) in exceptional circumstances and through lawful convictions by a court of law.

Section 16 (1) states thus:

*"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 of which he has been convicted."*

Other legislations that make for the death penalty in Sierra Leone include:

**The Offences Against the Persons Act 1861**

**The Larceny Act 1916**

**The Treason and State Offences Act 1963, and**

**The Sierra Leone Military Forces Act 1961.**

### **Crimes that attract the Death Penalty in Sierra Leone**

Sierra Leone is one of the countries with a retentionist culture towards the death penalty. It maintains it as the highest punishment and provides for it in few legislations. Such laws had been either of colonial legacy or post-colonial extensions.

The death penalty in Sierra Leone is imposed as punishment for the following under- mentioned crimes:

**murder,  
treason,  
mutiny and  
robbery with aggravation.**

For murder, section 1 of the Offences Against the Persons Act 1861 provides for the death penalty upon conviction.

For Treason, section 3 of the Treason and State Offences Act 1963 makes the death penalty a punishment.

For Mutiny, sections 30(1), 31(1) and 37(1) of the Sierra Leone Military Forces Act 1961 provides for the death penalty; and for Robbery with Aggravation, section 23(1) of the Larceny Act 1916 provides for death penalty as a punishment.

The process of such death is described by section 121 of the Criminal Procedure Act of 1965 to include hanging by the neck, or execution by firing squad in the case of court martial. As barbaric as such act may sound, Sierra Leone has never hesitated to pass it down on its inhabitants.

## The death penalty Debate

Proponents of the death penalty have advanced many reasons as to why it must be retained in the law books.

Chief amongst many others is the fact that such a punishment will serve as an effective deterrent to the commission of future crimes in society.

Furthermore, it is the argument that the death penalty ensures true justice and closure for the victims and / or their families.

More important still, is that imposition of the death penalty saves the state from spending / wasting taxpayers money on the upkeep of criminals that have wrecked havoc in the society.

Finally, retentionists have also argued that human rights are never absolute and hence can be limited within the state for the most serious crimes as dictated by many international treaties and conventions including the ICCPR.

On the flipside however, critics of the death penalty have opinionated that no empirical study exists to show that the death penalty had indeed served as a true deterrence to the commission of heinous crimes. As a matter of fact, in some countries that maintain the death penalty in their law books, statistics on the occurrence of violent crimes have risen up considerably.

Secondly, it is the issue of miscarriage of Justice. There are many perpetrators that have been convicted and killed based on an error of law or evidence. A case in point is the Birmingham 6. Because there exists the possibility of human error to occur in judicial trials and court processes, critics have decried the death penalty as inhumane since it will never ensure a return of life to someone, who had been killed but whose trial was later found out to be based on an error of law.

Furthermore, critics of the death penalty have also argued that the right to life is a meta right; and without its protection, no other rights can be enjoyed in the state. The sanctity of life must therefore be protected at all times.

Chaskalson P in the case of *S v Makwayane* expressed this about the death penalty in different words: **"...It puts an end not only to the right to life itself, but to all other personal rights which had vested in the deceased..."**.

By killing the perpetrator, you leave two families in pains. Both will have nobody to call a child. ***'Revenge is not the answer. The answer lies in reducing violence, not causing more death.'*** asserted Marie Deans.

Critics have also condemned the death penalty on the grounds that an eye for an eye leaves everyone blind. They have settled instead for life imprisonment sentence as a better replacement to be imposed since it puts the perpetrator in an effective position to reflect over his crime and even come to a place of healing and genuine repentance.

Finally, some critics have also raised a spiritual argument against the death penalty citing the commandment ***"thou shalt not kill"*** ...and also God's non- execution approach towards Cain notwithstanding his killing of his brother Abel.

Against this backdrop, the Abolitionist school of thought has called for the abolishment of the death penalty. LEGAL LINK shares the sentiments of the above critics and joins the abolitionist school of thought and calls for the Abolition of the death penalty in Sierra Leone for the above stated reasons.

## The application of the death penalty in Sierra Leone

Application of the death penalty in Sierra Leone has always loomed large. Since Independence right on to 1998, the death penalty has been enforced by many of Sierra Leone's political leaders. Examples could be seen in the death of Francis Minah in 1987, December 1992- when death sentence was passed down against 26 people (inclusive of civilians, military and police officers) for treason. This same was also done in 1994 and 1998 for 12 and 24 soldiers respectively.

Such executions have lived to shock the consciences of inhabitants of the nation of Sierra Leone and since 1998, and for a very long time now, Sierra Leone has not executed inmates on death row. The country has continued to maintain a de facto abolition of the death penalty through a moratorium.

## Efforts to abolish the death penalty in Sierra Leone

Both past and present governments have made frantic efforts to respect the sanctity of life. Even though the courts in Sierra Leone have continuously sentenced perpetrators to death, there's been a moratorium on the death penalty in the country since 1999. President Ernest Koroma for example made frantic efforts during his tenure not to carry out the death penalty. He was reputed to have even granted pardon to few prisoners that were on death row. The current President, His Excellency Retired Brigadier Julius Maada Bio has continued the efforts to not only respect the moratorium but also ensure the passing of a new legislation that aims to abolish the death penalty in Sierra Leone.

### Challenges

The death penalty was used as political weapon in time past resulting in the deaths of great politicians and outstanding Sierra Leoneans.

There was an apparent lack of political will to abolish it by many leaders since Independence.

This current government however seemed poised with a strong political will to abolish the death penalty, and they must therefore be commended for that.

The present challenge however is that the government is seeking to abolish the Death penalty through an amendment of the extant legislations providing for the death penalty in Sierra Leone.

But can this be a sustainable way of abolishing the death penalty permanently in the jurisdiction of Sierra Leone?

### Recommendations

#### Short term

#### **1. AMEND ALL LEGISLATIONS THAT MAKE PROVISIONS FOR THE DEATH PENALTY IN SIERRA LEONE**

All the legislations that provides for the death penalty as a punishment in Sierra Leone must be amended and replaced with a maximum life imprisonment sentence.

#### **2. THE SUPREME COURT SHOULD DECLARE SECTION 16 EXCEPTIONS AS ILLEGAL AND CONFLICTING WITH SIERRA LEONE'S OBLIGATIONS UNDER INTERNATIONAL LAW.**

The Supreme Court of Sierra Leone should assume its role under sections 28 and 124 to provide a liberal interpretation of section 16 or declare and or strike down the section 16 exceptions under the 1991 constitution as invalid because it conflicts with Sierra Leone's obligation under international law as well as the new Abolition of Death penalty Act 2021. This was the case with South Africa where the death penalty was abolished by its Constitutional Court in the case of *S V Makwayane*.

#### Long term

#### **3. AMEND SECTION 16 OF THE 1991 CONSTITUTION**

No doubt, the 1991 Constitution will still maintain the death penalty in its spirit and letter-even after the enactment of this bill. This in the opinion of LEGAL LINK will open room for an arbitrary reintroduction of the death penalty into our laws in the future by any government that may see it expedient to do so. The Liberia experience is a case worth nothing. It did adopt the same legislative route in 2005 to abolish the death penalty like Sierra Leone is currently doing now. Because it refused to extend such amendment to its constitution, a reintroduction of the death penalty was done later in their laws with ease.

To prevent therefore a similar occurrence in Sierra Leone, Section 16 (1) & (2) of the 1991 Constitution must be amended to now read thus:.... ***'Everyone shall enjoy the right to life and such right shall not be limited in any circumstances within the state'***. This amendment is key so as to prevent future governments from reinstating the death penalty through legislative enactments.

The amendment of section 16 of the 1991 Constitution can be done as prescribed under section 108 sub- sections 3 & 7 of the Constitution or in the long run by the Constitutional Review Committee and a referendum taken on the entire constitution afterwards.

## **Short Term**

### **4. AMEND THE BILL TO MAKE ROOM FOR CONTROLLED JUDICIAL DISCRETION IN SENTENCING**

The prescribed sentence in the Proposed Abolition of Death Penalty bill is 'life imprisonment'. Such type of life imprisonment sentence, in the opinion of LEGAL LINK lacks a possibility for the intervention of controlled judicial discretion.

We note with apprehension that the life imprisonment term in this bill is mandatory. As such, judges, while sentencing for offences under the bill will not be left with some form of controlled discretion to examine the aggravating or mitigating circumstances of the case to vary sentencing.

This lack of controlled judicial discretion opens room for an offence, on case-by-case basis, not to receive its deserving response. Geraldine Mackenzie in his 1993 article, 'Achieving Consistency in Sentencing' did echo thus:

*"There should be some judicial discretion and the reason is because the judge has the flesh and blood of the person in front of him or her, and the full circumstances of that person there. Having had experience in sentencing people...There should be individualized judge's discretion even if it is just because of the personality of the judge, as it avoids a certain mechanical dehumanized aspect of the sentence."*

LEGAL LINK therefore recommends the substitution of the words '*life imprisonment*' for the words, '*to a maximum term of imprisonment for life or to a term not less than 50 years considering the circumstances of the case*'.

As such for example, section 1(a) of the schedule of the bill should read thus:

*'A person who murders another commits an offence and is liable on conviction to a maximum term of imprisonment for life or a term not less than 50 years considering the presence of mitigating circumstances'.*

### **5. AMEND THE BILL TO MAKE ROOM FOR JUDICIAL REVIEW FOR EARLY RELEASE**

A groundbreaking Judgment from the German Constitutional Court in June 21 1977 ordered that for any life sentence to be compatible with the norm of human dignity, prisoners must have a clear fixed judicial release through legislation. Unfortunately, the current bill does not make room for such. By leaving it out, it allows for section 63 of the Constitution to take precedence in the given circumstance. And since we all know the politics behind presidential pardons; there will always be cases of unmerited releases.

We therefore recommend the fixing of a possibility for release through judicial review for only persons that would have spent a minimum of 50 years of their prison term; and to also spell out expressly by way of amendment that presidential pardon as enshrined under section 63 of the Constitution does not extend to persons found guilty of offences under the bill.

## **Long Term**

### **6. SIGN AND RATIFY THE SECOND OPTIONAL PROTOCOL TO THE ICCPR**

Sierra Leone must ultimately sign and ratify the Second Optional Protocol to the ICCPR which permanently seeks to abolish the death penalty. It is one of the few protocols that doesn't create an exit once a state has sign up to it. The state's membership is forever and there's no turning back. Ratifying the Second Optional protocol will be expedient to forestall any attempt by any government in the future to reinstate the death penalty in our law books since such act would amount to a violation of the ICCPR treaty (international law.)

## **Short Term**

### **7. AMEND THE PRESIDENTIAL PARDON PROVISION IN SECTION 63 OF THE 1991 CONSTITUTION**

The prerogative of mercy (Pardon) provisions under section 63 of the 1991 Constitution can be granted to any person at any time and for any offence by the President. This makes it a threat to the current amendment at hand that aims to replace the death penalty with life imprisonment term. The amendment must be made watertight so that current and future Presidents are not able to set free criminals who have been convicted by a court of law and are serving life sentences for heinous crimes unjustifiably.

## Conclusion

LEGAL LINK applauds the President and the Government of Sierra Leone as well as the Parliament for taking these bold steps towards abolition of the death penalty that will put Sierra Leone on the map in terms of compliance to its obligations under international law.

Borrowing the words of Chaskalson P in the *S V Makwayane* case:

*‘...the death penalty is an inhuman punishment for it involves, by its very nature, a denial of the executed person's humanity', and it is degrading because it strips the convicted person of all dignity and treats him or her as an object to be eliminated by the state...’*. This is all the more reason why there's need for its abolishment.

But if the state of Sierra Leone must prevent the Liberian experience ( that is, a reintroduction of the death penalty in future legislations), then it is imperative for Parliament to consider the above stated recommendations as they seek to enact the Abolition of the Death Penalty Act of 2021.

Faithfully submitted



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For and on behalf of the Legal Team

Cc:

**The Honourable Attorney General and Minister of Justice**

**Press**

## ABOUT US

*Christian Lawyers Centre also known as LEGAL LINK is a non - profit legal advocacy group that defends the rights of religious communities and vulnerable groups in Sierra Leone through advocacy, legal education, public interest litigations, and ensuring accountability and respect for national and international laws to which Sierra Leone is a party.*

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