



SIERRA LEONE

Submission to the Committee on the Rights of the Child

90th Pre-Sessional Working Group, September 2021

NGO Report

Submitted By

The WORLD Policy Analysis Center

University of California, Los Angeles



TABLE OF CONTENTS

Introduction1

Summary of Findings and Recommendations.....2

- 1. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)2
- 2. Special Protection Measures: Children in Situations of Emergency (Detention based on Immigration Status) (Articles 9, 24, 28, 37).....2

Detail of Legislative Findings3

- 1. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)3
- 2. Special Protection Measures: Children in Situations of Emergency (Detention based on Immigration Status) (Articles 9, 24, 28, 37).....5



INTRODUCTION

The WORLD Policy Analysis Center, based at the University of California, Los Angeles, captures quantitative policy data on more than 2,000 indicators that matter to equality, health, and well-being. We strive to improve the quantity and quality of globally comparative data available to policymakers, citizens, national governments, intergovernmental organizations, civil society, and researchers for all 193 UN member states. We submit the following brief in advance of the 90th Pre-Sessional Working Group of the Committee on the Rights of the Child.

This brief will focus on the following two areas:

- Special Protection Measures: **Child Marriage**
- Special Protection Measures: **Children in Situations of Emergency (Detention based on Immigration Status)**

We have collected and analyzed information on rights, laws, and policies in these areas for all 193 UN member states using a variety of sources, including primary national legal sources (e.g. original legislation and constitutions), national reports on policies and laws to the United Nations and official global and regional bodies, and secondary sources where clarification or corroboration of primary data is needed. Using a rigorous double-coding process, we create original databases which distill thousands of pages of text to highlight the essential features of each right, law, or policy. These original databases are the reference for the following brief. When drafting each brief, we perform a series of additional verifications to ensure the data provided reflects the current constitutional and legal landscape of a country.

In this report we first provide a summary of our legislative findings, as well as suggested questions for the Committee to ask Sierra Leone, and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed legislative excerpts documenting our findings. We hope the Committee will recommend that Sierra Leone address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations. We also recognize that while having strong laws and policies in place are necessary first steps, implementation is also of paramount importance. In areas where we have commended Sierra Leone for having provisions in place, we hope the Committee will recommend that Sierra Leone work with stakeholders to overcome any obstacles in implementing these provisions.



SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)

Based on our review, the Child's Rights Act of Sierra Leone establishes a minimum age of marriage of 18 years. However, exceptions to this law exist; the Registration of Customary Marriage and Divorce Act allows minors of any age to enter into a customary marriage with parental consent.

We hope the Committee will:

- In its list of issues, ask Sierra Leone: Can Sierra Leone outline any concrete, near-term plans to pass legislation protecting all children from early marriage by removing the provisions allowing minor children to enter into customary marriages with parental consent?
 - If Sierra Leone does not have concrete, near-term plans to ensure all children are protected from early marriage, including customary marriages, recommend in its concluding observations that Sierra Leone pass and implement legislation to do so.

2. Special Protection Measures: Children in Situations of Emergency (Detention based on Immigration Status) (Articles 9, 24, 28, 37)

Based on our review of legislation, regulations, and decrees, we find that **Sierra Leone has inadequate provisions protecting minor asylum seekers and migrants from detention, and fails to ensure family unity for migrant children and families.**

For asylum seekers and refugees, we commend Sierra Leone for having laws in place outlining possible alternatives to detention, however:

- The laws do not explicitly prioritize these alternatives. Without prioritization, minor refugees and asylum seekers may be legally detained or imprisoned prior to deportation.
- The laws also generally permit the detention of any non-citizen or migrant prior to deportation.
- Further, if minor migrants are detained, the laws do not consistently guarantee that children will be detained separately from adult strangers.
- Finally, the laws do not guarantee children access to fundamental rights such as education and health services.

We hope the Committee will:

- In its list of issues, ask Sierra Leone: Can Sierra Leone outline any concrete, near-term plans to pass legislation protecting minor migrants and asylum seekers from detention by removing



provisions that permit detention or imprisonment pending expulsion, and adding provisions that prioritize alternatives to detention for accompanied and unaccompanied minors?

- If Sierra Leone does not have concrete, near-term plans to pass legislation prohibiting detainment of minors, or prioritizing alternatives to detention, recommend in its concluding observations that Sierra Leone pass and implement the legislation to do so.
- In its list of issues, ask Sierra Leone: Can Sierra Leone summarize the steps it is taking to ensure minor migrants' and asylum seekers' right to family unity is protected, and that minors are kept separate from adult strangers?
 - If Sierra Leone cannot summarize the steps it is currently taking to ensure family unity and separation from adult strangers for minor migrants and asylum seekers, recommend in its concluding observations that Sierra Leone take affirmative steps towards guaranteeing these rights.
- In its list of issues, ask Sierra Leone: Can Sierra Leone summarize the steps it is taking to ensure detained minor migrants and asylum seekers have access to fundamental services such as education and health care?
 - If Sierra Leone cannot summarize the steps it is currently taking to ensure detained minor migrants and asylum seekers have access to fundamental services such as education and health care, recommend in its concluding observations that Sierra Leone take affirmative steps towards guaranteeing these fundamental rights.

DETAIL OF LEGISLATIVE FINDINGS

While the following review is systematic and rigorous, we recognize that there may be laws or policies governing these areas that we have not captured, including new legislation or policies that have not yet been published globally.

1. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)

General Comment No. 4 (2003) states that:

The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.

Child marriage has life-long health, educational, and economic consequences. For girls in particular, child brides are more likely to drop out of school, be victims of domestic abuse, and experience pregnancy and childbirth complications due to early childbearing, all of which affect core rights of the



Convention, specifically the right to protection from violence (Article 19), the right to health (Article 24), the right to education (Article 28), and the right to protection from sexual exploitation and abuse (Article 34).

We systematically reviewed national civil codes and child-related legislation for all 193 UN member states to determine whether national legislation established a minimum age of marriage for both girls and boys generally, with parental consent, and under religious and customary law. We reviewed all legislation available through the Lexadin World Law Guide, Foreign Law Guide, International Labour Organization's NATLEX database, Pacific Islands Legal Information Institute, Asian Legal Information Institute, JaFBASE, and official country websites.

SIERRA LEONE'S LEGISLATIVE PROVISIONS: MINORS ALLOWED TO ENTER INTO CUSTOMARY MARRIAGES WITH PARENTAL CONSENT

Based on our review, Article 34 of Sierra Leone's Child's Rights Act, passed in 2007, establishes a minimum age of marriage of 18 years.

Child Rights Act

34. (1) The minimum age of marriage of whatever kind shall be eighteen years.

(2) No person shall force a child -

(a) to be betrothed;

(b) to be the subject of a dowry transaction; or

(c) to be married.

(3) Notwithstanding any law to the contrary, no certificate, licence or registration shall be granted in respect of any marriage unless the registrar or other responsible officer is satisfied that the parties to the marriage are of the age of maturity.

However, there is a legal exception to this law. While the Registration of Customary Marriage and Divorce Act, which was passed in 2009, reaffirms 18 years as the minimum age of marriage, the law simultaneously allows minors of any age to enter into a customary marriage with parental consent.

Customary Marriage and Divorce Act

2. (1) Subject to this Act, a customary marriage, contracted after the coming into operation of this Act, shall be valid only if -



(a) both spouses are not less than eighteen years old and consent to the marriage; and

(b) the marriage is contracted in accordance with the customary law applicable to any of the spouses.

(2) Where, either of the prospective spouses, not being a widow or widower, is less than eighteen years, it shall be necessary for the parents to give consent to the marriage and if the parents are dead or unable for any reason to give such consent, then the consent may be given by the guardians of the prospective spouse or spouses to the marriage, as the case may be.

(3) If the consent of the parents or guardians cannot be obtained or is unreasonably withheld, a Magistrate or Local Government Chief Administrator of the locality in which the marriage is to take place may give his consent.

2. Special Protection Measures: Children in Situations of Emergency (Detention based on Immigration Status) (Articles 9, 24, 28, 37)

The detention of children based on immigration status violates the principle of the best interests of the child and infringes on core values outlined in the Convention including the right to liberty (Article 37) and the right to not be separated from their family (Article 9).

Moreover, as noted in the Committee's 2002 Report on the Rights of All Children in the Context of International Migration, migrant and asylum-seeking children may experience heightened vulnerabilities. For example, migrant children held in detention may face barriers to accessing fundamental services such as education (Article 28) and health services (Article 24).

Articles 9.1 and 37.b. specifically state:

9.1 States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. [...]

37 States Parties shall ensure that:

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;



In General Comment No. 6, the Committee has specifically ruled that the detention of minor migrants is not in accordance with the Convention:

61. In application of article 37 of the Convention and the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof.

For 150 UN member states, we systematically reviewed national-level immigration laws, regulations, ministerial decrees, and executive decrees related to asylum seekers, refugees, and migrants. We identified and located relevant laws through the United Nations High Commissioner for Refugees (UNHCR) RefWorld catalog, the International Labour Organization's (ILO) NATLEX legislation database, and the Global Detention Project. For each country, we reviewed all identified legislation to determine whether countries prohibited or allowed the detention of accompanied and unaccompanied minors, and under what circumstances.

SIERRA LEONE'S LEGISLATIVE PROVISIONS: INADEQUATE PROVISIONS PROTECTING MINOR MIGRANTS AND ASYLUM SEEKERS

Based on our review of legislation, regulations, and decrees, we find that **Sierra Leone has inadequate provisions protecting minor asylum seekers and migrants from detention or imprisonment, and fails to ensure family unity for migrant children and families.** Specifically, Article 17 of the Refugees Protection Act permits any refugee or asylum seeker to be detained prior to deportation. While Article 18 of the law outlines alternative measures to detention and imprisonment, these alternatives are not explicitly prioritized over detention. Without prioritization, minor refugee and asylum seekers can be legally detained or imprisoned prior to deportation.

Refugees Protection Act

Interpretation.

1. In this Act, unless the context otherwise requires—

“minor” means a person below the age of eighteen years;

Detention of refugees or asylum seekers pending expulsion.

17. (1) Subject to this section, an authorised officer may arrest and detain any refugee whose expulsion has been ordered under section 16 pending completion of arrangements for his expulsion from Sierra Leone.



(2) A refugee who has been arrested may be detained in a prison, police cell or other convenient place, holding females and minors separate from male adults:

Provided that such person shall be accorded access to all reasonable amenities necessary for his living conditions in the circumstances.

Other measures pending expulsion.

18. (1) The Minister may, after consultation with other relevant State agencies, direct that a refugee awaiting expulsion shall not be detained but shall, while he remains in Sierra Leone, be subject to all or any of the following conditions: —

(a) that the refugee shall reside at a place or within an area specified by the Minister;

(b) that the refugee shall not depart from the place or area or only depart from the place subject to such conditions as may be specified by the Minister;

Additionally, the Non-Citizens (Registration, Immigration and Expulsion) Act permits the detention of any non-citizen or migrant prior to deportation.

Non-Citizens (Registration, Immigration and Expulsion) Act

24. Detention of persons against whom an Expulsion Order has been made.

A non-citizen in respect of whom an Expulsion Order is made, or a certificate is given by a Court with a view to the making of an Expulsion Order, may be detained in such manner as may be directed by the Governor-General, and

(a) may be placed on a ship or aircraft about to leave Sierra Leone, or

(b) may be escorted to and placed across any part of the boundaries of Sierra Leone, and shall be deemed to be in legal custody whilst so detained until he finally leaves Sierra Leone.

Neither law prioritizes alternative processes for minors, which indicates that migrant and asylum-seeking children may legally be detained under the same rules as adults. If children are detained, these laws **do not guarantee that they will be detained separately from adult strangers and do not guarantee their access to fundamental rights such as education and health services.**