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GOVERNMENT WHITE PAPER

On The

REPORT

of

THE CONSTITUTIONAL REVIEW COMMITTEE

ON THE

REVIEW OF THE CONSTITUTION OF
SIERRA LEONE 1991

October 2017

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1. Introduction

After the Truth and Reconciliation Commission (TRC) Report was published, there were series of recommendations advocating for Constitutional change along the lines of a strengthened democracy, gender mainstreaming and better protection of human rights in the country.

Consequently, the Dr Peter Tucker Constitutional Review Commission was set up in 2006 to review the 1991 Constitution, taking cognisance of the recommendations of the TRC Report. This Commission presented its report to His Excellency, the President, Dr. Ernest Bai Koroma in 2008.

To take the review process further, the President set up the Constitutional Review Committee (CRC) in 2012, with the following terms of reference:

1.1. Terms of Reference

The terms of reference of the CRC were to:

- a. Ascertain from the people of Sierra Leone, their views on the operation of the 1991 Fourth Republican Constitution and, in particular, the strengths and weaknesses of the Constitution;
- b. Articulate the concerns of the people of Sierra Leone on amendments that may be required for a comprehensive review of the 1991 Constitution; and
- c. Make recommendations to the Government for consideration and provide a draft Bill for possible amendments to the 1991 Constitution.

1.2. Composition of the Constitutional Review Committee

The CRC had 80 members drawn from various backgrounds, which included but was not limited to political parties, civil society organisations, Non-Governmental Organisations, human rights groups, persons with disabilities, women's groups, youths' groups, governance institutions, and regional and Paramount Chiefs.

1.3. The Background to the Report

In discharging its mandate, the Constitutional Review Committee was guided by the fundamental principles of national participation to ensure wider engagement of Sierra Leoneans. The Committee received 110 submissions in the form of position papers from various stakeholder groups which were then reduced to the core concerns, aspirations and attendant demands of the Sierra Leonean people.

The Final Report of the Constitutional Review Committee was presented to the His Excellency the President, Dr. Ernest Bai Koroma on the 24th January, 2017.

On behalf of the people of Sierra Leone, Government wishes to express its profound appreciation to the Chairman and members of the Constitutional Review Committee, technical experts and support team for the tremendous work done in connection with the review of the Constitution. Government further extends its gratitude to the following, both national and international, for their invaluable financial and logistical support to the Committee, without which the work of the Committee would not have been accomplished: all political parties, traditional authorities, civil society, the media, the Political Parties Registration Commission, the Human Rights Commission, the Office of National Security, National Commission for Democracy, the United Nations Development Program, the European Union, UKAid, and the Ministries of Foreign Affairs of Ghana and Kenya.

Government has studied the Report and paid particular attention to the issues, concerns and recommendations contained therein. Government hereby issues this White Paper in response to the recommendations made in the Report.

2. Government's Responses to the Recommendations of the Constitutional Review Committee

Chapter IV: FUNDAMENTAL PRINCIPLES OF STATE POLICY

Theme: Government and People

Recommendations

- a. That the fundamental principles of Freedom, Democracy and Justice of the Republic of Sierra Leone be expanded to include "human dignity" and "equality": section 5(1).
- b. That the national security of the country should be a matter of collective responsibility of all Sierra Leoneans: section 5(2) (b).

Government's Response

- a. Government accepts this recommendation in line with its international human rights obligations: section 5(1).
- b. Government notes this recommendation and believes that section 5(2)(b) adequately sets out that the Government and its ancillary organs is the body responsible for national security.

Therefore, Government retains section 5(2)(b) of the 1991 Constitution.

Theme: Political Objectives

Recommendations

- a. That the Motto of the Republic of Sierra Leone which is "Unity, Freedom and Justice" be replaced with national values of "Patriotism, Participation, Human Dignity, Equality, Unity, Freedom and Justice.": section 6(1).
- b. That the duty of the State to promote national integration and unity and discourage discrimination, etc. in section 6(2) be amended to replace the word "discourage" with the word "prohibit", i.e. that "the State shall promote national integration and unity and prohibit discrimination....."
- c. That in addition to the current position that Government takes steps to eradicate all corrupt practices and the abuse of power, provision be made in the Constitution prohibiting all organs of Government and Public Officers from acting in any way that is inconsistent with the Constitution or their office and exposing themselves to situations of conflict of interest between their official responsibilities and private interests: section 6(5).

Government's Response

- a. Government notes this recommendation but is of the opinion that section 6(1) protects the ideals of democracy. Further, that the new additions are already captured in other areas of the Constitution.

Therefore Government retains section 6(1) of the 1991 Constitution.

- b. Government accepts this recommendation: section 6(2).
- c. Government notes this recommendation but believes that the Anti-Corruption Commission Act 2008 adequately addresses these issues and has been highly effective in curbing corrupt practices in governance in accordance with section 6(5) of the 1991 Constitution.

Therefore Government retains section 6(5) of the 1991 Constitution.

Theme: Economic Objectives***Recommendation***

That section 7 which sets out economic objectives be deleted and replaced with new chapters dealing with:

- a. lands, natural resources and the environment to mainstream all these important sectors to maximise the benefits for the people of Sierra Leone.
- b. national planning and development to ensure effective coordination between ministries and institutions to develop the long-term national development plan in the Agenda for Prosperity.

Government's Response

Government notes this recommendation but is of the opinion that the additional chapters on natural resources and the environment, national planning and development, should be addressed in separate legislation. Further, the implementation of the Land Policy will generate several legislations including Land Management, Country Planning, etc.

Therefore Government retains section 7 of the 1991 Constitution.

Theme: Social Objectives***Recommendation***

That the social order of the State founded on the ideals of Freedom, Equality and Justice be expanded to include human dignity: section 8(1).

Government's Response

The Government accepts this recommendation and further adds the ideal of 'Patriotism', as follows: "The social order of the state shall be founded on the ideals of human dignity, freedom, equality, patriotism and justice." section 8(1).

Theme: Provision of Mandatory Healthcare***Recommendation***

That the State directs its policy towards ensuring the health, safety and welfare of all persons in employment are safeguarded, not endangered or abused and that special provision be made for working women with children; and that there are adequate medical and health facilities for all persons, without due regard to the resources of the state: section 8(3)(c) and (d).

Government's Response

Government notes this recommendation but is of the opinion that due regard should be given to the resources of the State, at all times, in the furtherance of social objectives.

Therefore Government retains section 8(3)(c) and (d) of the 1991 Constitution.

Theme: Persons with Disability***Recommendation***

That the word "disabled" in the social objective of promoting and safeguarding "the care and welfare of the aged, young and disabled" be replaced with the words "persons with disability": section 8(3)(f).

Government's Response

Government accepts this recommendation and further notes that similar recommendation is made for replacement of the word "disabled" with the words "persons with disability" in other provisions of the Constitution. Government accepts these recommendations: section 8(3)(f).

Theme: Social Security and Social Assistance

Recommendation

That there be added a new social objective on social security and social assistance. That the State shall direct its policy towards ensuring appropriate social security and social assistance to persons who are unable to support themselves and their dependants and that Parliament shall enact legislation to that effect.

Government's Response

Government notes this recommendation as it has over the past several years implemented wide ranging social security and safety net programs providing financial and social assistance to persons who are unable to support themselves particularly women and the aged. Therefore inclusion of this provision in the Constitution is unnecessary and further legislating on it equally so.

Therefore Government retains section 8 of the 1991 Constitution with no additional subsection.

Theme: Educational Objectives

Recommendations

- a. That the responsibility of Government shall be to direct its policy towards "providing necessary structures, finance and supportive facilities for education as and when practicable" be made absolute by deleting the qualifying words "as and when practicable": section 9(1)(c).
- b. That in promoting the educational objectives of the Constitution, the charge that Government shall strive to eradicate illiteracy and shall direct its educational policy towards achieving "free secondary education as and when practicable" be made absolute by deleting the qualifying words "as and when practicable": section 9(2)(c).
- c. That as part of its educational objectives, Government promotes "human rights education and conflict management", in addition to promoting the learning of indigenous languages and the study and application of modern science, foreign languages, technology, commerce and business: section 9(3).

Government's Response

- a. Government notes this recommendation but believes that due consideration was not given to the financial implications and impracticality of its implementation.

Therefore, Government retains section 9(1)(c) of the 1991 Constitution.

- b. Government notes this recommendation but believes that due regard should be given to the resources of the State at all times. Government further notes that having due regard to the resources of the State, girls now have access to free primary education as part of the provision of universal primary education. Girls have access to free Junior Secondary School and benefit from Government payment of fees for the West Africa Senior Secondary School Certificate Examinations (WASSCE). Female students studying sciences (Engineering, Applied Sciences, etc.) at tertiary level institutions also benefit from free tuition for the course of their studies.

Therefore, Government retains section 9(2)(c) of the 1991 Constitution.

- c. Government accepts the recommendation regarding section 9(3) but substitutes "civic education" for "human rights", as follows: "The Government shall promote the learning of indigenous languages and the study and application of modern sciences, foreign languages, technology, civic education, conflict management and commerce".

Theme: Obligations of the Mass Media

Recommendation

That a new chapter titled "Information, Communication and the Media" with detailed provisions on freedom of the press, media freedom and independence, no State interference, and establishment, composition and functions of the Independent Media Commission be included in the Constitution.

Government's Response

Government notes this recommendation and is of the view that the fundamental freedoms set out in the Constitution are all embracing. Government also considers that the Independent Media Commission Act, 2000 which established the Independent Media Commission as an autonomous body to promote and regulate a free and pluralistic media and to ensure the highest level of efficiency in the provision of media services, etc. and the Access to Information Act, 2013 cumulatively address the matters recommended above and therefore should not be included in the Constitution.

Therefore, Government will not propose any additional chapter but will retain the prevailing provisions in the 1991 Constitution.

Theme: Enhancement of National Culture

Recommendation

That in enhancing national culture, Government also promotes "indigenous music, art, dance and dress: section 12(a).

Government's Response

Government accepts this recommendation with the inclusion of Sierra Leonean "dress" which promotes Sierra Leonean culture.

Theme: Duties of the Citizen

Recommendation

That the duties of a citizen should include respect for the National Flag, National Currency and National Pledge. Further, that all citizens satisfy their tax obligations, and protect and safeguard the environment: section 13.

Government's Response

Government notes this recommendation with respect to the National Pledge and National Currency and that there are provisions in section 13 of the 1991 Constitution and other legislation that further support this position such as the Bank of Sierra Leone Act 2011 and the Environment Protection Agency Act, 2008.

Theme: Fundamental Principles not Justiciable

Recommendation

That the fundamental principles of State Policy contained in Chapter II of the 1991 Constitution should not only be seen as central in the governance of the State but should be made justiciable: section 14.

Government's Response

Government notes this recommendation but believes that the fundamental principles as contained in Chapter II of the Constitution are clear and will continue to serve as a guide in the governance of the State and in law making.

Therefore Government retains section 14 of the 1991 Constitution.

CHAPTER 5: THE RECOGNITION AND PROTECTION OF THE FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS OF THE INDIVIDUAL**Theme: Renaming the Chapter*****Recommendation***

That Chapter 3 on the Recognition and Protection of Fundamental Human Rights of the Individual be renamed "The Recognition, Protection, and Promotion of Human Rights and Freedoms of the Individual" or "Bill of Rights".

Government's Response

Government accepts the recommendation in the first option in line with its International Obligations in safeguarding and promoting human rights of its citizenry. Government rejects the recommendation that the chapter be renamed "Bill of Rights".

Theme: Human Rights and Freedoms of the Individual***Recommendation***

That section 15 is amended to read as follows: "The people of Sierra Leone recognise that citizens of Sierra Leone and persons present within its territory are entitled to the following inalienable rights, whatever his/her 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..."

Government's Response

Government notes this recommendation but is of the opinion that the current section is concise and captures the fundamental tenets of human rights.

Therefore Government retains section 15 of the 1991 Constitution.

Theme: Protection of Right to Life***Recommendation***

That the death penalty should be abolished: section 16(1).

Government's Response

Government notes that the CRC Plenary for the death penalty did not have a quorum as evident from the Report; further, the recommendation is not representative of the views of the members of the CRC who voted twenty-three to eighteen in favour of retaining the death penalty: paragraph 5:10 on page 108 of the CRC Report. In view of this, the Government would maintain the position on the death penalty as a deterrent to heinous crimes against humanity.

Therefore Government retains section 16(1) of the 1991 Constitution.

Theme: Protection from Arbitrary Arrest or Detention

Recommendations

- a. That the age at which a person may be deprived of his personal liberty for the purpose of his education or welfare be reduced from 21 years to 18 years: section 17(1)(g).
- b. That the periods within which a person arrested or detained for the purpose of bringing him before a Court or Tribunal or upon reasonable suspicion of his having committed or of him being about to commit a criminal offence be reduced from within ten days to within seven days from the date of arrest in cases of capital offences carrying life imprisonment and economic and environmental offences; and from within seventy-two hours of arrest to within 48 hours of his arrest in the case of other offences: section 17(3).
- c. That any person who is unlawfully arrested or detained shall be entitled to compensation and public apology: section 17(4).

Government's Response

- a. Government accepts the CRC recommendation to reduce the age limit from 21 years to 18 years of age in line with the age a person is deemed to be an adult: section 17(1)(g); See also the Public Elections Act, 2012, the National Civil Registration Act, 2016 and the Child Rights Act, 2007.
- b. Government notes this recommendation but holds that there is need, in some cases, to conduct investigations beyond the seven days and forty-eight hours respectively, depending on the gravity of the offence.

Therefore Government retains section 17(3)(a) and (b) of the 1991 Constitution.

- c. Government notes this recommendation but believes that it will be adequately addressed in the new Criminal Procedure Act. Further, the definition of "appropriate authority or person" is redundant in the circumstances.

Therefore Government retains section 17(4) of the 1991 Constitution.

Theme: Protection of Freedom of Movement

Recommendations

- a. That freedom of movement may be curtailed in the interest of national security: section 18(3)(a).
- b. That the proviso to section 18(3) be amended to read: "Provided that no court or other authority shall prohibit any such person from entering into or residing in any place to which she/he is a citizen."

Government's Response

- a. Government accepts this recommendation: section 18(3)(a).
- b. Government notes this recommendation but considers the following:

- i. The proviso to section 18(3) of the 1991 Constitution states that no Court or other authority shall prohibit any such person from entering into or residing in any place to which he is indigenous. The existing proviso seeks to confer or promote freedom of movement to persons with regards to places they hail from or places to which they are indigenes.
- ii. Citizenship under our laws is not restricted to a particular area of Sierra Leone.
- iii. The recommendation on the other hand seeks to render the freedom of movement an absolute right to citizens. This right should not be absolute but may be restricted in the interest of national security, defence, public safety, etc.

Therefore Government retains the proviso to section 18(3) of the 1991 Constitution.

Theme: Protection from Inhuman Treatment

Recommendation

That the right to protection from any form of torture or other treatment which is inhuman or degrading is absolutely guaranteed. Further, that section 20(2) which legitimised a law or any law authorising the infliction of any kind of punishment which was lawful immediately before the entry into force of the Constitution be abolished.

Government's Response

Government accepts this recommendation in conformity with its Human Rights obligations.

Theme: Protection from Deprivation of Property

Recommendation

That the basis for compulsory acquisition of property should be expanded to include "national security" interest: section 21(1)(a).

Government's Response

Government accepts this recommendation to include National Security interest as one of the reasons for compulsory acquisition of property by the Government.

Theme: Protection for Privacy of Home and Other Property

Recommendation

That the right to protection for privacy of home and other property be subject to "national security interest" among others and that Parliament enacts legislation "for the protection of home, communications, property and privacy....": section 22(2).

Government's Response

Government accepts the CRC recommendation to include "...national security interest..." as an exception to the protection for privacy of home and property: section 22(2)(a). It also accepts the recommendation to change the word "handicapped" to "persons with disability": section 22(2)(e).

Government notes the recommendation that Parliament enacts legislation "for the protection of home, communications, property and privacy..", but believes that there are existing legislation that adequately provide for the protection of home, communications, and property etc.

Therefore, Government retains section 22 of the 1991 Constitution subject to necessary modification for the inclusion of "national security interest" and substitution of "persons with disability" for "handicapped": section 22(2)(a) and (e).

Theme: Provision to Secure Protection of Law

Recommendations

- a. That the proviso to section 23(3) be amended to extend the circumstances in which Court proceedings may not be held in public where required by law so to do, to include the "interest of national security" or "for the welfare of persons under the age of 18 years".

- b. That section 23(10) of the Constitution be replaced by a new subsection conferring on persons detained including persons serving a term of imprisonment and persons in detention awaiting trial, the right to conditions of detention that are consistent with human dignity and to communicate with and be visited by those persons' spouses or partners, religious counsellors, medical practitioners and legal counsel etc.

Government's Response

- a. Government accepts this recommendation: section 23(3).
- b. Government notes this recommendation and is of the opinion that these matters are provided for in the Sierra Leone Correctional Services Act 2014 and the Criminal Procedure Act 1965 and should not be included in the Constitution.

Therefore Government retains section 23(10) of the 1991 Constitution.

Theme: Protection of Freedom of Conscience

Recommendation

That the circumstances for restricting freedom of conscience be expanded to include "the interest of national security": section 24(5)(a).

Government's Response

Government accepts this recommendation: section 24(5)(a).

Theme: Protection of Freedom of Expression and the Press

Recommendation

That freedom of expression and the press be made an absolute right: section 25(1).

Government's Response

Government notes this recommendation but believes that the existing provision on protection of the freedom of expression and the press within the limits permitted by the law, is balanced and adequate. An unbridled right to freedom of expression and the press would serve as a platform to trample on the human rights of others which is unacceptable in a civilized and democratic society.

Therefore Government retains section 25(1) of the 1991 Constitution.

Theme: Protection of Freedom of Assembly and Association

Recommendation

That two new paragraphs be added to section 26 to confer on Trade Unions, Employers' Organisations and employers the right to Collective Bargaining and that national legislation be enacted to recognize union security of tenure, etc: section 26.

Government's Response

Government notes this recommendation but is of the opinion that the Constitution provides sufficient and adequate safeguards for the protection of freedom of assembly and association. Further, the existing labour laws provide Collective Bargaining rights for employers and employees.

Therefore Government retains section 26 of the 1991 Constitution.

Theme: Protection from discrimination

Recommendation

That section 27(1) on the protection from discrimination be replaced by a new section 27 which will make express provision for equality of persons before the law, equality of women and men to opportunities in political, economic, cultural and social spheres; that the State takes legislative and other measures to implement the principle that not more than two thirds of the members of elective or appointed bodies shall be of the same gender and that Parliament enacts laws that are necessary to provide for the implementation of policies aimed at addressing social, economic and educational imbalances in the Sierra Leonean society.

Government's Response

Government notes this recommendation but believes that the existing provision is adequate to protect citizens of Sierra Leone from discrimination and is committed to promoting the rights and empowerment of women.

Therefore Government retains section 27(1) of the 1991 Constitution.

Theme: Enforcement of Protective Provisions

Recommendations

- a. That the current provision on enforcement of Protective Provisions in section 28 be retained.
- b. That legal action for violation of the rights guaranteed in sections 16 through 27 can be brought by way of motion before the Supreme Court in its original jurisdiction and that the Supreme Court has to weigh the situation and discern whether adequate redress has been provided; and that the rules of procedure for such an action be spelt out.

Government's Response

- a. Government accepts this recommendation.

Therefore Government retains section 28 of the 1991 Constitution.

- b. Government notes this recommendation but believes that the Judiciary is a competent body with rules of procedure that guide their practice. That a restrictive constitutional position will be cumbersome.

Therefore, Government retains section 28 of the 1991 Constitution.

Theme: Public Emergency

Recommendations

- a. That a new paragraph be added to section 29(6) to ensure there is no derogation of the fundamental human rights to life, the prohibition of torture, the principles of legality in the fields of Criminal Law, and the freedom of thought, conscience and religion during a State of emergency: section 29(6).
- b. That the period for which a State of Emergency is declared be reduced from 12 months to 3 months: section 29(13).

Government's Response

- a. Government notes this recommendation but retains the provision of the 1991 Constitution: section 29(6).

- b. Government notes this recommendation and believes that the current provisions have proven to be very efficient, as seen during the Ebola Virus Disease outbreak period; alteration to the status quo will be a hindrance to the efficacy of the provision.

Therefore Government retains section 29(6) and 29(13) of the 1991 Constitution.

Theme: Additional Amendments to Chapter III

Recommendation

That a new Chapter be added with provisions for the right to the environment, the rights of the aged, persons with disability and the rights of the child.

Government's Response

Government is of the view that the recommended additional sections to this chapter are not necessary as these issues are addressed in other legislation.

CHAPTER SIX: CITIZENSHIP

Recommendation

To have a dedicated Chapter in the Constitution dealing with Citizenship: Chapter 6.

Government's Response

Government notes this recommendation but believes that matters of citizenship that guarantees matrilineal citizenship and supports women's empowerment, need not be elaborated in the Constitution but should be addressed in other legislation. In this regard, Government is pleased to report that the Citizenship (Amendment) Act, 2017 now provides for citizenship by birth to be acquired directly through the mother.

CHAPTER 7: THE EXECUTIVE

Theme: Office of the President

Recommendations

- a. That the description of the President of the Republic of Sierra Leone as the "supreme executive authority" of the Republic be replaced by the words "Chief Executive": section 40(1).
- b. That the functions of the President contained in section 40(4) be amended to include the following:
- i. To ensure that laws are executed
 - ii. To veto disagreeable legislation
 - iii. To present the State of the Nation in an address to Parliament
 - iv. To manage and regulate disasters and other States of Emergency

Government's Response

- a. Government notes this recommendation but believes that it is superficial and a poor attempt to whittle down the Constitutional authority of the President.

Therefore Government retains section 40(1) of the 1991 Constitution.

- b. Government notes these recommendations but believes that all matters so raised are adequately addressed in the 1991 Constitution and in other legislation.

Therefore Government retains section 40(4) of the 1991 Constitution.

Theme: Qualification for Office of the President

Recommendation

That the current qualifications for election as President be retained: section 41.

Government's Response

Government notes the recommendation but is of the opinion that section 41(d) should be amended in light of the ruling of the Supreme Court in THE MATTER OF AN OBJECTION AGAINST THE NOMINATION OF SOLOMON EKUMA BEREWA FOR THE SIERRA LEONE PEOPLES' PARTY (SLPP) TO CONTEST THE PRESIDENTIAL ELECTIONS OF 11TH AUGUST 2007 [SC1/2007]. The Supreme Court determined several issues pertinent to the qualifications for election as President including that the then incumbent Vice-President of the Republic of Sierra Leone, SOLOMON EKUMA BEREWA, is not a public officer within the meaning of section 171 of the Constitution and that section 76(1)(h) of the Constitution (which disqualifies a person who for the time being is President, Vice President, etc. for election as a Member of Parliament) does not apply to candidacy for presidential election.

In view of the foregoing ruling of the Supreme Court Government proposes to amend section 41(d) of the Constitution as follows: "...he is a person otherwise qualified to be elected a Member of Parliament, except that the disqualifications set out in paragraphs (b) and (h) of Section 76 (1) of this Constitution shall not apply to this section".

Therefore Government retains section 41 of the 1991 Constitution subject to the above amendment to paragraph (d).

Theme: Election of the President

Recommendations

- a. That Presidential, Parliamentary and Local Government elections be held on the same day.
- b. That a fixed date for inauguration of an elected President should be specified in the Constitution so that there would be no vacuum of power: new section 43(c).

Government's Response

- a. Government notes this recommendation but believes that the Electoral Commission has a constitutional mandate for the conduct and supervision of public elections and a stipulation in the Constitution that Presidential parliamentary and Local Council elections be held on the same day could undermine the operational independence of the Electoral Commission.
- b. Government notes this recommendation but believes that "inauguration" is unnecessary within our constitutional framework which adequately provides for the President assuming office and subscribing the oath for the due execution of his office: section 46(4).

Therefore Government retains section 43(b) of the 1991 Constitution.

Additionally, Government is of the view that the existing provision requiring that a candidate for election as President polls in his favour not less than 55% of the valid votes cast has resulted in Runoff elections at great cost to the national purse and national security and peace. The provision is also increasingly inconsistent with regional best practice.

Government is therefore proposing that a threshold of more than fifty percent of the valid votes cast, will suffice for a President to command legitimacy from the electorate. It would therefore stand that, a person shall not be elected as President of the Republic of Sierra Leone unless at the Presidential elections he has polled more than fifty percent of the valid votes cast in his favour.

Theme: Incidents in Office***Recommendation***

That the President should not be exempted from personal taxation: section 48(3).

Government's Response

Government notes this recommendation but is of the view that the President should continue to enjoy personal tax exemption.

Therefore Government retains section 48(3) of the 1991 Constitution.

Theme: Vacancy in the Office of President***Recommendation***

That loss of party membership should not nullify or cause the removal of a sitting President from office but that in such event, a section 51 procedure for misconduct shall follow: section 49(1).

Government's Response

Government notes this recommendation but holds that the Office of President and Vice-President shall become vacant where the incumbent ceases to be a member of the political party of which he was a member at the time he was elected to or assumed the office of President or Vice-President, as the case may be: Alhaji Samuel Sam-Sumana and The Attorney-General and Minister of Justice, etc. (S.C. 4/2015).

Theme: Mental or Physical incapacity***Recommendation***

That the Board constituted to enquire into the mental or physical capacity of the President to discharge his constitutional duties should report to the Speaker within a ninety-day period: section 50.

Government's Response

Government accepts this recommendation.

Theme: Misconduct by the President***Recommendation***

That the impeachment procedure for alleged misconduct by the President be set out and that the scope of the process of impeachment be widened to include citizens: section 51.

Government's Response

Government notes this recommendation but considers that the current provision in section 51 of the Constitution conferring power on Members of Parliament, the representatives of the people, to pass a motion proposing that the President be investigated for violation of the Constitution or any gross misconduct in the performance of the functions of his office, suffices.

Therefore Government retains section 51 of the 1991 Constitution.

Theme: Vice President***Recommendation***

That a new section be added to provide that loss of party membership shall not nullify from office a sitting President or Vice President but that following such event, the impeachment procedure in section 51 shall ensue: Section 54(8).

Government's Response

Government rejects this recommendation. Government holds that loss of party membership by a sitting Vice-President and by necessary implication a sitting President, automatically creates a vacancy in the respective office.

Therefore Government retains section 54(8) of the 1991 Constitution.

Theme: Vacancy in the Office of Vice-President***Recommendation***

That a new paragraph be added to section 55 so that the office of Vice-President shall become vacant if the Vice-President voluntarily ceases to be a member of the political party of which he was a member at the time of election to office.

Government's Response

Government accepts this recommendation. Further, Government recommends the addition of section 55(e), to wit:

"55(e) Upon removal by the President."

Theme: Office of the Attorney-General and Minister of Justice***Recommendation***

That the office of the Attorney General be separated from that of the Minister of Justice: section 64.

Government's Response

Government notes this recommendation but holds that the office, created by the 1991 Constitution, has operated efficiently proving that separation of the two is unnecessary.

Therefore Government retains section 64(1) of the 1991 Constitution.

Theme: Solicitor-General***Recommendation***

That the appointment of the Solicitor-General be subject to Parliamentary approval and that the retirement age be increased from sixty five years to seventy years: section 65(2) and (7).

Government's Response

Government notes this recommendation but is of the opinion that such an increase has to be done subject to State resources and proper consultation with the State apparatus.

Therefore Government retains section 65(2) of the 1991 Constitution.

Theme: The Director of Public Prosecutions

Recommendation

In view of the recommendation that the Office of Attorney-General and Minister of Justice be separated, the CRC recommends replacement of the title "Attorney-General and Minister of Justice" by "Attorney-General". Also, that the retirement age for the Director of Public Prosecutions be increased from sixty five years to seventy years; and that the powers of the Attorney-General and Minister of Justice should vest in him exclusively: section 66(7), (8) and (10).

Government's Response

Government notes this recommendation but holds that the office remains fused as it has been efficient in its service. Further, that the considerations of retirement age be done in line with State resources and other considerations.

Therefore Government retains section 66(7), (8), and (10) of the 1991 Constitution.

Theme: Secretary to the President

Recommendation

That it should no longer be a function of the Secretary to the President to serve as principal adviser to the President on public service matters: section 67(2)(a).

Government's Response

Government accepts this recommendation.

Theme: Secretary to the Cabinet

Recommendation

That the Secretary to the Cabinet should no longer be Head of the Civil Service; that the functions of the Secretary to the Cabinet should not include coordinating and supervising the work of the departments in the Public Service; and that the Secretary to Cabinet acts as the principal adviser to the President: section 68.

Government's Response

Government notes this recommendation but believes that the current provisions in the Constitution are adequate and have worked well.

Therefore Government retains section 68 of the 1991 Constitution.

Theme: Secretary to the Vice-President

Recommendation

That the Secretary to the Vice-President is appointed by the President in his sole discretion and without consultation with the Public Service Commission: section 69.

Government's Response

Government notes this recommendation but believes that the current provision in the Constitution ensures accountability and has worked well.

Therefore Government retains section 69(2) of the 1991 Constitution.

Theme: Office of Paramount Chief***Recommendation***

That there be established a National House of Chiefs with responsibility for the election, removal, entitlements and other matters pertaining to Paramount Chiefs: section 72.

Government's Response

Government notes this recommendation but is of the opinion that the existing provisions in the Constitution and other laws governing the institution of Chieftaincy have worked well and should be retained.

Therefore Government retains section 72 of the 1991 Constitution.

CHAPTER VIII - REPRESENTATION OF THE PEOPLE**Theme: Registration of Voters*****Recommendation***

That the voting age should be uniform and remain as eighteen years of age: section 31.

Government's Response

Government accepts this recommendation.

Therefore Government retains section 31 of the 1991 Constitution.

Theme: The Electoral Commissioners to reside in the regions***Recommendations***

- a. That Electoral Commissioners should reside in the four regions to make them more accessible and to decentralise the Commission's work: Section 32.
- b. That the Electoral Commission comprises a Chief Electoral Commissioner who shall be the Chairperson and four other members.
- c. That section 32(3) which provides for appointment of Electoral Commissioners by the President after consultation with the leaders of all registered political parties and subject to the approval of Parliament be retained.
- d. That there should be no age limit for appointment of Electoral Commissioners: section 32(7)(b).
- e. That express provision be made in the Constitution to require Electoral Commissioners to declare their assets to ensure greater transparency and credibility in relation to their office.
- f. That the mandate of the Electoral Commission be expanded to include the conduct and supervision of Paramount Chieftaincy elections.

Government's Response

- a. Government notes this recommendation but believes that the administrative structure and workings of the Electoral Commission do not lend themselves to residency of Electoral Commissioners in the regions or such arrangements and the operational logistics of Electoral Commissioners having to travel to Freetown to attend meetings several times a week would far outweigh any perceived efficiency in the performance of a branch of the Electoral Commission.

Therefore Government retains section 32(2) of the 1991 Constitution.

- b. Government notes this recommendation but is of the opinion that the existing provisions which stipulate that the Electoral Commission comprises a Chief Electoral Commissioner and four other members is restrictive and does not make room for expansion of the membership of the Electoral Commission.

Government therefore is of the view that the composition of the Electoral Commission should be a Chief Electoral Commissioner who shall be Chairman and such other members as parliament may by law prescribe.

- c. Government accepts this recommendation: section 32(3).
- d. Government notes this recommendation but believes that age considerations in the Public Service must have limits or caps to make room for younger generations to aspire to higher public office. Further, that a meritorious Electoral Commissioner should have an opportunity to continue to serve the nation in that capacity provided he has not attained the age of 65 years.

Therefore Government retains section 32(7)(b) of the 1991 Constitution.

- e. Government notes this recommendation but considers it unnecessary in the light of section 119 of the Anti-Corruption Commission Act, 2008 which mandates every public officer to declare their assets and liabilities within three months of becoming a public officer and thereafter not later than 31st March in each succeeding year that he is a public officer.
- f. In the Chieftaincy Act, 2009, the Provincial Secretary plays a pivotal role in convening a Declaration of Rights meeting to identify the Chieftain Councilors entitled to vote at the election, establishing the claim of persons to be qualified to contest as candidates in the elections, among other things: See section 5 of the Chieftaincy Act 2009.

The Chieftaincy Act 2009 further provides in section 11 that the Minister responsible for local government appoints for every paramount chieftaincy election, 2 Paramount Chiefs as Assessor Chiefs to inter alia, advise and assist the Declaration Officer i.e. the Provincial Secretary in the conduct of the elections and to ensure that the traditions and customs of the Chieftain are respected.

Section 28 of the Chieftaincy Act 2009 empowers the Electoral Commission to supervise the polling at Paramount Chieftaincy Elections and further stipulates that the decision of the Electoral Commission on any electoral issue shall be final.

The functions of the Electoral Commission set out in section 33 of the Constitution are appropriate for the conduct of public elections. It is worth noting that the Supreme Court of Sierra Leone in 2006 ruled that Chieftaincy elections are not public Elections.

Therefore, Government retains section 33 of the 1991 Constitution.

Theme: Political Parties Registration Commission

Recommendations

- a. That the Political Parties Registration Commission be renamed "The Political Parties Registration and Regulatory Commission": section 34(1).
- b. That the functions of the Political Parties Registration Commission include setting candidate fees for Presidential, Parliamentary and Local Council elections in consultation with the Electoral Commission.

Government's Response

- a. Government accepts this recommendation as the Commission performs regulatory functions as part of its mandate as prescribed by the Political Parties Act, 2002.

- b. Government notes this recommendation but considers that the Political Parties Registration Commission (PPRC) should focus on its core mandates of registering and providing oversight for the operation of political parties.

Therefore Government retains section 34 (4) of the 1991 Constitution.

Theme: Registration and Conduct of Political Parties

Recommendation

That at least thirty percent of participants in public elections, i.e. Presidential, Parliamentary and Local Council elections should be women.

Government's Response

Government notes this recommendation, but holds that upon reviewing section 27(3) of the 1991 Constitution, the recommendation violates the said section: section 27(3)

Therefore Government retains section 35(2) of the 1991 Constitution.

CHAPTER IX THE LEGISLATURE

Theme: Establishment of Parliament

Recommendation

That the President should cease to be part of the composition of Parliament.

Government's Response

Government notes this recommendation but holds that the 1991 Constitution reflects a hybrid presidential system of government. The powers exercised by the Executive and the Legislature are subject to checks and balances one such is the President being part of the Legislature of Sierra Leone. This is in consonance with international best practice under Presidential Systems of Government.

Therefore Government retains section 73(1) of the 1991 Constitution.

Theme: Members of Parliament

Recommendations

- a. That the Constitution be amended so that Paramount Chiefs would no longer be part of the composition of Parliament; that all references to Paramount Chiefs in the composition of Parliament should be deleted; and that provision be made for introduction of proportional representation for election as Member of Parliament: section 74.
- b. That not less than 30% of Members of Parliament shall be women details of which should be prescribed by an Act of Parliament.

Government's Response

- a. Government notes this recommendation but is of the view that the composition of the Parliament, which includes Paramount Chief provides a forum for Paramount Chiefs to participate in the legislative process. Government therefore considers a second chamber, House of Chiefs, unnecessary.

Therefore Government retains section 74 of the 1991 Constitution.

- b. Government notes this recommendation, but holds that upon reviewing section 27(3) of the 1991 Constitution, such proposal violates the said provision: section 27(3).

Theme: Introduction of Proportional Representation

Recommendation

That Members of Parliament shall be elected in accordance with the system of proportional representation, the threshold for which shall be 30% of the popular votes.

Government's Response

Government notes this recommendation but is of the opinion that the current provision in the Constitution is adequate.

Theme: Removal of Paramount Chiefs from Parliament

Recommendation

That a National House of Chiefs be created and included in the proposed Constitution.

Government's Response

Government notes this recommendation but is of the opinion that the existing provisions in the Constitution and other laws governing the institution of Chieftaincy have worked well.

Therefore, Government retains the prevailing provisions.

Theme: Establishment of National House of Chiefs

Recommendation

That a National House of Chiefs be established and enshrined in the Constitution.

Government's Response

Government notes this recommendation but is of the opinion that the provisions dealing with the composition of Parliament are adequate.

Theme: Disqualification for Membership of Parliament

Recommendations

- a. That the time limit or the period within which certain Public Officers and members of the Armed Forces of the Republic of Sierra Leone should have resigned from such office in order to qualify for election as a Member of Parliament be reduced from twelve months to six months prior to the date on which he seeks to be elected to Parliament: section 76(1)(b).
- b. That a person shall be disqualified for election as a Member of Parliament if under any law in force in Sierra Leone he is certified to be clinically lunatic or otherwise of unsound mind, or if he has been convicted and sentenced for an offence which involves misconduct or dishonesty: section 76(1)(c) and (d).

Government's Response

- a. Government accepts this recommendation: section 76(1)(b).

- b. Government notes this recommendation but believes that the current provision where one is "adjudged to be a lunatic", which is the accepted term in the practice of the law, is adequate. That a person can be adjudged as such without being referred to as "clinically" lunatic.

Theme: Tenure of Seats of Members of Parliament

Recommendations

The CRC recommends several amendments to section 77(1) relating to paragraphs (k), (l), (n) and the addition of a recall clause as paragraph (o).

That a Member of Parliament shall vacate his seat in Parliament:

- a. if he voluntarily ceases to be a Member of the political party of which he was member at the time of his election to Parliament: section 77(1)(k);
- b. if by his conduct in Parliament, by persistently sitting and voting with members of a different party and the Speaker is satisfied following consultation with that member's party leader and upon sufficient evidence that the person is no longer a member of the political party on whose ticket he was elected to Parliament: section 77(1)(l);
- c. if he accepts office as an Ambassador or High Commissioner for Sierra Leone or any employment with an International or Regional organization: section 77(1)(n);
- d. if he is recalled by his constituents before the end of his term: new paragraph 77(o).

Government's Response

Government notes these recommendations but is of the opinion that the current provisions are adequate.

Therefore Government retains sections 77(1) (k), (l) and (n) of the 1991 Constitution.

Theme: The Speaker

Recommendations

- a. That only persons who are members of Parliament or are qualified to be elected as such and who are qualified to be appointed as Judges of the Superior Court of Judicature can be elected to such office: section 79(1).
- b. That the Speaker shall be elected by a resolution in favour of which there are cast the votes of not less than two-thirds of all the Members of Parliament: section 79(2).

Government's Response

- a. Government is of the view that the Speaker of Parliament should be appointed from among Members of Parliament or from among persons who qualify to be elected members of Parliament. Government therefore recommends modification of section 79(1) of the 1991 Constitution to wit, "The Speaker of Parliament shall be elected by the Members of Parliament from among persons who are Members of Parliament or are qualified to be elected as such."

Therefore Government retains section 79(1) of the 1991 Constitution as amended.

- b. Government notes this recommendation but believes that the current position is efficient and has been employed successfully through several lives of Parliament.

Therefore Government retains section 79(2) of the 1991 Constitution.

Theme: Clerk of Parliament - Parliamentary Service Commission***Recommendations***

- a. That there be established a Parliamentary Service Commission: section 82(1).
- b. That the Clerk of Parliament shall be appointed by the President in consultation with the Parliamentary Service Commission and not the Public Service Commission: section 82(2).

Government's Response

- a. Government notes this recommendation but is of the opinion that the Parliamentary Service Commission was established by the Parliamentary Service Act, 2007 and considers its inclusion in the Constitution unnecessary.

Therefore Government retains section 82 (1) of the 1991 Constitution.

- b. Government accepts this recommendation: section 82(2).

Theme: Sessions of Parliament***Recommendation***

That the authority of the President to appoint sessions of Parliament be exercised in consultation with the Speaker and that there shall be a session in Parliament not later than forty-eight days from the holding of a general election of Members of Parliament: Section 84.

Government's Response

Government notes this recommendation but believes that the current position in the Constitution has worked very well; such inordinate delays are unnecessary as the period for petition as a result of any malpractice during elections is 21 days, an additional seven days is reasonable time to start the session.

Therefore Government retains section 84 of the 1991 Constitution.

Theme: Sittings of Parliament***Recommendation***

That the authority conferred on the President to summon a meeting of Parliament at any time should be exercised by the Speaker of Parliament in consultation with the President, emergencies exempted: section 86(1).

Government's Response

Government notes this recommendation but is of the opinion that the authority conferred on the President under this provision has been exercised judiciously.

Therefore Government retains section 86(1) of the 1991 Constitution.

Theme: Unqualified Persons sitting or voting***Recommendation***

That the penalty for an unqualified person sitting or voting in Parliament knowing or having reasonable grounds for knowing that he is not entitled to do so be increased from a fine not exceeding one thousand Leones or such other sum as may be prescribed by Parliament for each day in which he so sits or votes in Parliament, to a penalty not exceeding five million Leones or such other sum as may be prescribed by Parliament for each day in which he so sits or votes in Parliament: section 92.

Government's Response

Government accepts this recommendation.

Theme: Committees of Parliament**Recommendations**

- a. That in addition to Standing Committees, Members of Parliament, be empowered to appoint "Sessional, Special and Ad-hoc Committees": section 93(1).
- b. That a Committee's power to investigate and enquire into the activities or administration of Ministries and Departments of Government should also cover the activities or administration of Agencies of Government: section 93(3).

Government's Response

- a. Government notes this recommendation but is of the view that the current provision that sets out the different Committees and such other Committees as the rules of procedure may prescribe and section 93 (1)(h), give effect to the recommendation and as such render it unnecessary.

Therefore Government retains section 93(1) and (2) of the 1991 Constitution.

- b. Government accepts the recommendation pertaining to section 93(3).

Theme: Parliamentary Privileges - Avoiding Double Jeopardy**Recommendations**

- a. That section 99(3) which requires that a Member of Parliament who makes a statement defamatory of any person renders an apology at the Bar of Parliament be deleted.
- b. That section 99(4) which provides that the person who refuses to render an apology after making a statement defamatory against any person be suspended by Parliament be deleted.
- c. That section 99(5) which requires a person who has made a contemporaneous report of proceedings in Parliament including a report of a defamatory statement made against any person by a Member of Parliament publishes the apology referred to in section 99(3) with the same prominence as when he published the first report, be deleted.

Government's Response

- a. Government notes this recommendation but believes the current provision affords adequate safeguards as to what should obtain in the event of defamation by a Member of Parliament.

Therefore Government retains section 99(3) of the 1991 Constitution.

- b. Government notes this recommendation but is of the opinion that the procedure in the current subsection has worked efficiently.

Therefore Government retains section 99(4) of the 1991 Constitution.

- c. Government notes this recommendation but maintains that the current provision is adequate.

Therefore Government retains section 99(5) of the 1991 Constitution.

Theme: Immunity for Publication of Proceedings***Recommendation***

That section 103 which provides immunity for publication of proceedings in Parliament unless it is shown that the publication was effected maliciously or otherwise in want of good faith be amended by deleting the words "or otherwise in good faith".

Government's Response

Government notes this recommendation but believes that the deletion is unnecessary.

Therefore Government retains section 103 of the 1991 Constitution.

Theme: Mode of Exercising Legislative Power***Recommendation***

That section 106(5) of the Constitution is amended to restrict Parliament from making laws with retroactive effect.

Government's Response

Government notes this recommendation but is of the opinion that retroactive laws may be necessary for administration of Government. Further, the Constitution has adequate safeguards against the making of retroactive laws in section 23.

Therefore Government retains section 106(5) of the 1991 Constitution.

Theme: Alteration of this Constitution***Recommendations***

- a. That a bill for an Act of Parliament to alter the Constitution be supported by the votes of not less than two-thirds of all the Members of Parliament: Section 108(2)(b).
- b. That the issues at a referendum to enact a new Constitution or to alter an entrenched provision of the Constitution should be clearly presented to the public by ensuring that there is sufficient time for review.

Government's Response

- a. Government notes this recommendation but believes the law as is, is adequate.

Therefore Government retains section 108(2)(b) of the 1991 Constitution.

- b. Government notes this recommendation but holds that the existing provisions are adequate.

Therefore Government retains section 108(5) of the 1991 Constitution.

Theme: Establishment of Office and Functions of Auditor-General***Recommendation***

That the Auditor-General for Sierra Leone be appointed by the President after consultation with the Audit Service Commission instead of the Public Service Commission and subject to the approval of Parliament: section 119.

Government's Response

Government accepts the recommendation with necessary modification of the Audit Service Board and notes further that the Audit Service Act established the Audit Service Board in 2014.

CHAPTER VII - THE JUDICIARY**Theme: Establishment of the Judiciary****Recommendations**

- a. That the establishment of the Judiciary of which the Chief Justice is the head under section 120(1) should include provision that the Chief Justice is responsible for administrative, financial and supervisory aspect of the Office of the Chief Justice.
- b. That the reference to other inferior Courts in section 120(4) be changed to "subordinate": section 120(4).
- c. That the reference to a "Judge of the Superior Court of Judicature" in section 120(9) be amended to read a Justice or Judge of the Superior Court of Judicature.

Government's Response

- a. Government notes this recommendation but is of the considered view that, as Head of the Judiciary, the Chief Justice also performs administrative, financial and supervisory functions and therefore it is not necessary for such functions to be included in the Constitution.

Therefore Government retains section 120(1) of the 1991 Constitution.

- b. Government notes this recommendation and will replace the term 'inferior' in section 120(4) of the 1991 Constitution with the term "lower".
- c. Government notes this recommendation but does not accept it.

Therefore Government retains section 120(9) of the 1991 Constitution.

Theme: Composition of the Supreme Court**Recommendation**

That section 121(1)(b) which currently provides that the Supreme Court shall consist of not less than four other Justices of the Supreme Court be amended to read "... not less than seven other Justices of the Supreme Court..."

Government's Response

Government notes this recommendation but believes the current provision is adequate and should be maintained.

Therefore Government retains section 121(1)(b) of the 1991 Constitution.

Theme: Jurisdiction of the Supreme Court**Recommendation**

That the proviso to section 122(1) be enlarged as follows: "Notwithstanding any law to the contrary the Speaker of Parliament may refer any Petition or matter pending before Parliament and in which she/he has to give a final decision, to the Supreme Court for judicial opinion".

Government's Response

Government notes this recommendation and will amend the current proviso to section 122(1) in the 1991 Constitution to include the Speaker of Parliament as follows: "Provided that notwithstanding any law to the contrary, the President or Speaker of Parliament may refer any Petition in which he has to give a final decision to the Supreme Court for a judicial opinion."

Theme: Appeals to the Supreme Court***Recommendation***

That section 123(1) be amended to allow appeals to lie from a judgement of a Court Martial to the Supreme Court.

Government's Response

Government accepts this recommendation.

Theme: Enforcement of the Constitution***Recommendation***

That section 127(4) which provides that failure to obey or carry out the terms of an order of the Supreme Court for enforcement of the Constitution shall amount to a crime be replaced with "the Supreme Court shall treat or deal with failure to obey or carry out the terms of an order or direction made or given under subsection 1 in the same way as is provided for in sections 120 (5), 122 (3) and 125 of this Constitution."

Government's Response

Government accepts this recommendation.

Theme: Composition of the Court of Appeal***Recommendations***

- a. The CRC recommends that the number of Justices in the Court of Appeal be increased to not less than nine: section 128(1).
- b. That the Court of Appeal shall be duly constituted by any three Justices thereof and when so constituted the most senior of such Justices shall preside; or, if a Justice of the Supreme Court is a member of the panel, such Justice of the Supreme Court shall preside: section 128(2).
- c. That the Chief Justice shall by Statutory Instrument create such Divisions of the Court of Appeal as she/he may consider necessary: section 128(4).
- d. That such Divisions of the Court of Appeal be presided over by the most senior of the Justices of the Court of Appeal constituting the Court; or, if a Justice of the Supreme Court is a member of that panel, the said Justice of the Supreme Court: section 128(4)(c).

Government's Response

- a. Government notes this recommendation but believes that the existing provision is adequate and should be maintained.

Therefore Government retains section 128(1) of the 1991 Constitution.

- b. Government notes this recommendation but believes that the current provision regarding presiding in the Court of Appeal, is adequate and should be maintained.

Therefore Government retains section 128(2) of the 1991 Constitution.

- c. Government accepts this recommendation: section 128(4).
- d. Government notes this recommendation but is of the opinion that the existing provision is adequate and should be maintained: section 128(4)(c).

Therefore Government retains section 128(4)(c) of the 1991 Constitution.

Theme: Jurisdiction of the Court of Appeal

Recommendation

Section 129(2): addition of the Court Martial.

Government's Response

Government accepts this recommendation.

Theme: Composition of the High Court

Recommendation

Section 131(1): that the composition be not less than 15 High Court Judges.

Government's Response

Government notes this recommendation but believes that the current provision is adequate and should be maintained.

Therefore Government retains section 131(1) of the 1991 Constitution.

Theme: Jurisdiction of the High Court

Recommendations

- a. That the section 132(1) be amended so that the word "original" is deleted.
- b. That the High Court of Justice shall have jurisdiction to determine any matter relating to industrial and labour disputes and administrative complaints as Parliament shall by any enactment, provide: section 132(2).
- c. That for the purposes of hearing and determining an appeal within its jurisdiction and the amendment, execution or the enforcement of any judgment or order made on any such appeal, and for the purposes of any other authority expressly or by necessary implication given to the High Court of Justice by this Constitution or any other law, the High Court of Justice shall have all the powers, authority and jurisdiction vested in the Court or Tribunal from which the appeal is brought: section 132(4).

Government's Response

- a. Government notes this recommendation but holds that the current provision is adequate and should be maintained.

Therefore Government retains section 132(1) of the 1991 Constitution.

- b. Government accepts the recommendation that the section is amended to explicitly require Parliament to enact laws governing industrial and labour disputes. Government is of the view that matters relating to industrial and labour disputes are not constitutional matters and can be catered for by Acts of Parliament.

Therefore Government retains section 132(2) of the 1991 Constitution.

- c. Government notes this recommendation but is of the view that the right of appeal to the High Court should not be restricted.

Therefore Government retains section 132(4) of the 1991 Constitution.

Theme: Supervisory Jurisdiction of the High Court

Recommendation

That section 134 should be amended by changing "inferior" to "subordinate".

Government's Response

Government notes this recommendation and will replace the term "inferior" in section 134 of the 1991 Constitution with the term "lower".

Theme: Appointment of Judges

Recommendation

That section 135(4) be amended as follows: "For the purposes of subsection (3), a person shall be regarded as entitled to practise as Counsel if she/he has been called, enrolled or otherwise admitted as such and has not subsequently been disbarred or removed from the Roll of Counsel or Legal Practitioners by the General Legal Council, or, by any other authority or other duly authorised body."

Government's Response

Government accepts this recommendation.

Theme: Judicial Vacancies

Recommendations

- a. That section 136(4) be amended to include the words "...subject to the approval of Parliament".
- b. That notwithstanding the expiration of the period of his appointment, or the revocation of his appointment, a Justice or a Judge appointed pursuant to the provisions of subsections (2) or (4) of this section, may thereafter continue to act, for a period not exceeding six months, to enable him/her to deliver judgement or do any other thing in relation to proceedings that were commenced before him/her previously thereto": section 136(6).

Government's Response

- a. Government notes and holds that the present provision is adequate and should be maintained; but notes that Judges should be put on contract.
- b. Government notes this recommendation but is of the view that the present position gives the Justice or Judge enough time to dispose of the matters that were brought before him before the expiration of the period of his appointment or the revocation of his appointment.

Therefore Government retains section 136(6) of the 1991 Constitution.

Theme: Tenure of Office of Judges***Recommendations***

- a. That sections 137(1) and 137(2) be amended to include the word 'Justice'.
- b. That a Judge of the Superior Court of Judicature shall vacate that office on attaining the age of seventy years: section 137(2).
- c. Notwithstanding that she/he has attained the age at which he is required by the provisions of this section to vacate his/her office, a person holding the office of a Justice or a Judge of the Superior Court of Judicature may continue in office after attaining that age, for a period not exceeding six months, to enable him/her to deliver judgment or do any other thing in relation to proceedings that were commenced before him/her previously thereto: section 137(3).
- d. That subject to the provisions of this section, a Justice or a Judge of the Superior Court of Judicature may be removed from office only for inability to perform the functions of his/her office, whether arising from infirmity of body or mind, or, for stated misconduct, or, for gross incompetence and shall not be so removed save in accordance with the provisions of this section: section 137(4).
- e. That where the question of removing a Justice or a Judge of the Superior Court of Judicature from office has been referred to a tribunal under subsection (5), the President shall suspend the Judge from performing the functions of his/her office, and any such suspension may at any time be revoked by the President, and shall in any case cease to have effect if the tribunal recommends to the President that the Judge shall not be removed from office: section 137(6).
- f. That a Justice or a Judge of the Superior Court of Judicature shall be removed from office only by the President: section 137(7).
- g. That section 137(9) which provides that "...where the question of removing the Chief Justice from office has been referred to a Tribunal under sub section 8, the President may by warrant under his hand suspend the Chief Justice from performing the functions of his office..." be amended by substituting "may" for "shall".
- h. That section 137(10) which provides inter alia that "the Chief Justice shall be removed from office by the President..." be amended by stating that "...the Chief Justice shall be removed only by the President..."

Government's Response

- a. Government notes these recommendations but believes that the existing provisions should be maintained.

Therefore Government retains sections 137(1) and 137(2) of the 1991 Constitution.

- b. Government accepts this recommendation: section 137(2).
- c. Government notes this recommendation but is of the opinion that the principles of fair trial mandates that the current provision be maintained.

Therefore Government retains section 137(3) of the 1991 Constitution.

- d. Government notes this recommendation but believes that the current provision be maintained.

Therefore Government retains section 137(4) of the 1991 Constitution.

- e. Government notes this recommendation but believes that the current provision be maintained.

Therefore Government retains section 137(6) of the 1991 Constitution.

- f. Government notes this recommendation but believes that the current provision be maintained.

Therefore Government retains section 137(7) of the 1991 Constitution.

- g. Government notes this recommendation but believes that the current provision be maintained.

Therefore Government retains section 137(9) of the 1991 Constitution.

- h. Government notes this recommendation but believes that the current provision be maintained.

Therefore Government retains section 137(10) of the 1991 Constitution.

Theme: Remuneration of Judges

Recommendation

That section 138(4) be amended by adding the following proviso at the end of the section, "save where the prior approval of the Judicial and Legal Services Commission has been obtained and the activity does not detract from the dignity of the judicial office or otherwise interfere with the performance of his/her judicial duties": section 138(4).

Government's Response

Government notes this recommendation but believes that the current wording in the 1991 Constitution preserves public trust and prevents possible conflicts of interest.

Therefore Government retains section 138(4) of the 1991 Constitution.

Theme: Judicial and Legal Services Commission

Recommendations

- a. Firstly, that section 140(1) which establishes the Judicial and Legal Service Commission (JLSC) be amended by the addition of a proviso to make the JLSC fully functional with funding from the Consolidated Fund. Secondly, that the membership of the JLSC provided for under section 140(1) be expanded to include two lay representatives, a Judge from the Supreme Court and the High Court, a representative from the Human Resource Management Office and the Financial Secretary.
- b. That the word "Chairman" be replaced with the word "Chairperson": section 140(1)(a).

- c. That the composition of the Judicial and Legal Service Commission under the 1991 Constitution be amended to include: the most Senior Justice of the Supreme Court, the most Senior Judge of the High Court, two practising Counsel instead of one, the Director-General of Human Resource Management Office or other public officer charged with managing the public service establishment and the Financial Secretary: section 140(1)(b)-(f).
- d. Due regard is to be had with respect to the references in this section taking cognisance of the proposed amendments to section 140(1)(b)-(f) above: section 140(3).
- e. That this section be amended to reflect situations wherein a Justice of the Supreme Court/Court of Appeal or Judge of the High Court vacates his membership of the Judicial and Legal Service Commission. In such situations the next most senior Justice or Judge of the Court in question can replace him: section 140(3)(a).
- f. That "gross incompetence" be inserted after "misconduct" as an additional grounds for removal of Counsel of not less than ten years standing and the two non-legal person on the JLSC: section 140(3)(b).

Government's Response

- a. Government notes this recommendation but considers it unnecessary.
- b. Government notes this recommendation but is of the opinion that the recommendation is unnecessary.

Therefore Government retains section 140(1) and 140(1)(a) of the 1991 Constitution.

- c. Government rejects the recommendations for the replacement of the Public Service Commission with the Human Resources Management Office and the addition of one practising counsel to the Judicial and Legal Service Commission. However, Government accepts the inclusion of the Financial Secretary as member of the Judicial and Legal Service Commission.

Therefore Government retains section 140(1)(a)-(f) of the 1991 Constitution, with the addition of a new section 140(1)(g).

- d. Government notes that the order of the composition as it appears in the 1991 Constitution will have to be re-arranged due to the inclusion of the Financial Secretary.

Therefore Government accepts addition of the Financial Secretary and modifies section 140(3) of the 1991 Constitution accordingly.

- e. Government notes this recommendation but believes that the current provision is adequate.
- f. Government notes this recommendation but is of the opinion that such a person can be removed under the current provision.

Therefore Government retains section 140(3)(a) and (b) of the 1991 Constitution.

Theme: Appointment of Judicial and legal Officers

Recommendation

That the power vested in the JLSC to appoint persons and to exercise disciplinary control over persons holding certain Judicial and Legal Offices shall be to the exclusion of any other body or authority: section 141(1).

Government's Response

Government notes this recommendation but is of the opinion that the current provision is adequate.

Therefore Government retains section 141(1) of the 1991 Constitution.

Theme: Appointment of Court Officers

Recommendation

That section 142(2) which empowers the JLSC to make regulations by statutory instruments prescribing the terms and conditions of service of certain Judicial and Legal officers in consultation with the Public Service Commission be amended by substituting Human Resource Management Office for the Public Service Commission.

Government's Response

Government notes this recommendation and is of the opinion that the current provision is adequate.

Therefore Government retains section 142(2) of the 1991 Constitution.

Theme: Fees of Court

Recommendation

That section 143 be amended to ensure that the Judiciary is self-accounting by providing that any fines or other monies (other than fees paid for filing or for the granting of probate) taken by the courts shall form part of the Consolidated Fund.

Government's Response

Government notes this recommendation but believes that the current provision is adequate.

Therefore Government retains section 143 of the 1991 Constitution.

Theme: Alternative Dispute Resolution Mechanism

Recommendation

The CRC recommends the following new section be added "In the exercise of judicial authority, the Court shall promote alternative forms of dispute resolution including mediation, conciliation, arbitration and other traditional dispute resolution mechanisms."

Government's Response

Government accepts the recommendation in principle and notes its existing legislation on Arbitration which is currently being reviewed. Government further notes that a Mediation Bill will be presented to Parliament shortly. Therefore, Government considers that these matters be addressed in legislation and not in the Constitution.