



REPORT OF THE

CONSTITUTIONAL REVIEW COMMITTEE

Republic of Sierra Leone

PRESENTED TO
HIS EXCELLENCY THE PRESIDENT OF THE REPUBLIC OF
SIERRA LEONE
DR. ERNEST BAI KOROMA

2016





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CONSTITUTIONAL REVIEW COMMITTEE
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LEONE
DR. ERNEST BAI KOROMA



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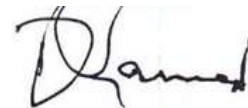
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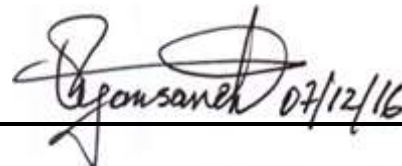
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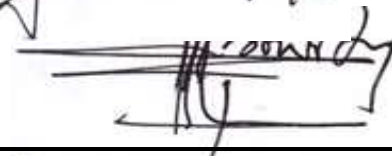
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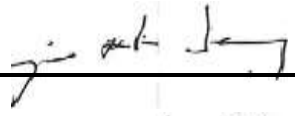
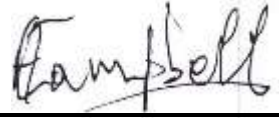
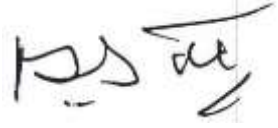


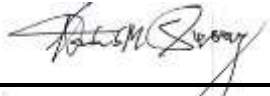


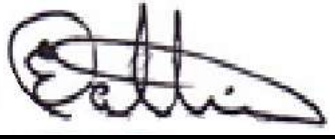



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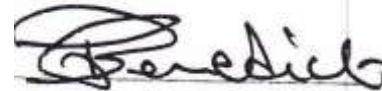


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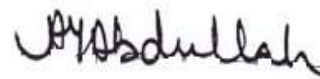
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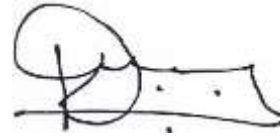


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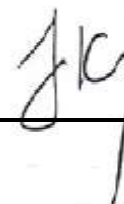
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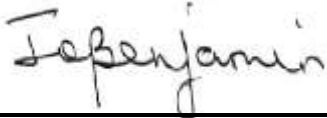

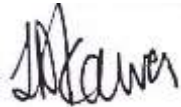



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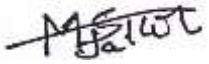









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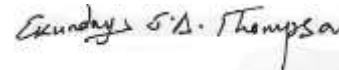
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LIST OF ABBREVIATIONS

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ABA	American Bar Association
AFP	Agenda for Prosperity
AG	Attorney General
AJP	Association of Justices of Peace
AMV	African Mining Vision
APPA	All Political Parties Association
APC	All Peoples Congress
APPYA	All Political Parties Youth Association
ASSL	Audit Service Sierra Leone
AYDN-SL	African Youth with Disability Network- Sierra Leone
BBC	British Broadcasting Corporation
CARL	Centre for Accountability and Rule of Law
CBO	Community Based Organizations
CDP	Citizens Democratic Party
CEDAW	Convention on the Elimination of All forms of Discrimination against Women
CFS	Committee for World Food Security
CGG	Campaign for Good Governance
CIA	Cultural Impact Assessment
CISU	Central Intelligence and Security Unit
CLGDE	Centre for Local Government Decentralisation and the Environment
CNN	Cable News Network
CNU-SL	Campaign for National Unity-Sierra Leone

LIST OF ABBREVIATIONS

COMU	Cabinet Oversight and Monitoring Unit
CPSS	Conference of Principles of Secondary Schools
CPU	Central Planning Unit
CRC	Constitutional Review Committee
CRC	Convention on the Rights of the Child
CSFSL	Civil Society Forum of Sierra Leone
CSO	Civil Society Organizations
CTA	Chief Technical Adviser
DFID	Department for International Development
DISEC	District Security Committees
EPA	Environmental protection Agency
ESC- Right	Economic, Social and Cultural Rights
EVD	Ebola Virus Disease
FAO	Food and Agriculture Organization
FBC	Fourah Bay College
FHCP	Free Health Care Policy
GoSL	Government of Sierra Leone
GSCF	Governance Stakeholders' Coordination Forum
HRCSL	Human Rights Commission of Sierra Leone
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICECSR	International Covenant on Economic, Social and Cultural Rights
ICM	Information, Communication and Media

LIST OF ABBREVIATIONS

ICT	Information Communication Technologies
ILRC	International Legal Resource Centre
IMC	Independent Media Commission
INEC	Independent National Electoral Commission
INTOSAI	International Organisation of Supreme Audit Institution
ITN	International Television Network
JIC	Joint Intelligence Committee
JISC	Judicial and Legal Service Commission
JMC	Joint Monitoring Committee
KDU	Krio descendant Union
LGA	Local Government Act
LOCARL	Local Councils Association of Sierra Leone
LOD	Law Officers Department
LRC	Law Reform Commission
MAFFS	Ministry of Agriculture, Forestry and food Security
MDA	Ministries Department and Agencies
MLCPE	Ministry of Lands, Country Planning and Environment
MLGCD	Ministry of Local Government and Community Development
MOHS	Ministry of Health and Sanitation
MOTC	Ministry of Tourism and Culture
MPs	Members of Parliaments
MRC	Monuments and Relics commission
MRCG	Media Reform Coordinating Group

LIST OF ABBREVIATIONS

MSP	Movement for Social Progress
NaCSA	National Commission for Social Action
NARGEJ	Natural Resource Governance and Economic Justice Network
NASCI	National Security and Central Intelligence
NASSIT	National Social Security and Insurance Trust
NDPC	National Development Planning Commission
NCD	National Commission for Democracy
NCPC	National Council of Paramount Chiefs
NCPD	National Commission for Persons with Disability
NDA	National Democratic Alliance
NDAP	National Democratic Alliance Party
NDPC	National Development Planning Commissions
NEC	National Electoral Commission
NEW	National Elections Watch
NFF	National Fire Force
NMC	National Media Commission
NMJD	Network Movement for Justice and Development
NPRC	National Provisional Ruling Council
NRC	National Reformation Council
NSC	National Reformation Council
NSCCG	National Security Council Coordinating Group
NTB	National Tourist Board
NYC	National Youth Commission

LIST OF ABBREVIATIONS

OGI	Open Government Initiative
OGP	Open Government Partnership
ONS	Office of National Security
OSD	Operational Support Division
OSIWA	Open Society Initiative for West Africa
PC	Paramount Chiefs
PDP	Peoples' Democratic Party
PLP	Peace and Liberation Party
PMDC	People's Movement for Democratic Change
PP	Peoples Party
PPRC	Political Parties Registration Commission
PROSEC	Provincial Security Committees
PRSP	Poverty Reduction Strategy Paper
PTCR	Peter Tucker Constitutional Commission Report
PWD	People with Disability
RAI	Right to Access Information
RUF	Revolutionary United Front Party
RSLAF	Republic of Sierra Leone Armed Forces
RSLMF	Republic of Sierra Leone Military Forces
SAI	Supreme Audit Institution
SDI	Social Democratic Institute
SGBV	Sexual and Gender Based Violence
SLA	Sierra Leone Army

LIST OF ABBREVIATIONS

SLAJ	Sierra Leone Association of Journalists
SLBA	Sierra Leone Bar Association
SLBC	Sierra Leone Broadcasting Cooperation
SLCC	Sierra Leone Chamber of Commerce
SLCDT	Sierra Leone Conference on Development and Transformation
SLCS	Sierra Leone Correctional Services
SLIIL	Sierra Leone Institute of International Law
SLLC	Sierra Leone Labour Congress
SLMWA	Sierra Leone Market Women Association
SLP	Sierra Leone Police
SLPMB	Sierra Leone Produce Marketing Board
SLPP	Sierra Leone Peoples Party
SLUDI	Sierra Leone Union of Disability Issues
SLW	Sierra Leone Women
SLYEO	Society for Learning and Yearning for Equal Opportunities
SOWA	Salone Organisation for the Welfare of the Aged
TAC	Treatment Action Campaign
TRC	Truth and Reconciliation Commission
TTI	Twelve Tribes of Israel
TV	Television
TWG	Technical Working Group
UDMP	United Democratic Movement Party
UK	United Kingdom

LIST OF ABBREVIATIONS

UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nation Environmental Program
UNHCR	United Nations High Commissioner for Refugees
UNPP	United Nations Peoples' Party
UNVs	United Nations Volunteers
VOA	Voice of America
VGGT	Voluntary Guidelines for the Responsible Governance of Tenure
WANEP	Africa Network for Peace building
WIPO	World Intellectual Property Organisation

LIST OF ABBREVIATIONS

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A list of key persons, organisations, and institutions that assisted the CRC is set out in Appendix 3.

Justice (R) Edmond Cowan



Chairman Constitutional Review Committee

PART ONE

EXECUTIVE SUMMARY

PART ONE

EXECUTIVE SUMMARY

The constitutional review process in Sierra Leone is the result of a national commitment made in article 10 of the Lomé Peace Accord 1999 and recommendations made in the Truth and Reconciliation Commission report.

The first Constitutional Review Commission was established in 2007, headed by Dr Peter Tucker. The Commission submitted its report in 2008 (known as the Peter Tucker Report), and recommended that certain aspects of the Constitution of Sierra Leone 1991 (the 1991 Constitution) should be amended. In addition, the National Conference on Development and Transformation in 2011 strongly recommended that the 1991 Constitution should be reviewed in order to expedite national development and consolidate peace and democracy.

To take the review process further, the Constitutional Review Committee (CRC) was launched by the President of Sierra Leone, His Excellency, Dr. Ernest Bai Koroma on 30 July 2013. The CRC consisted of 80 members, representing different stakeholders in Sierra Leone such as political parties, government institutions, NGOs, civil society organisations, women's and youth groups, the media, and key independent bodies.

The mandate of the CRC was to review the 1991 Constitution, in tandem with the Peter Tucker Report of 2008, and propose amendments to it. In doing so, the CRC was required to ascertain the views of Sierra Leoneans, consult with relevant stakeholders, examine the constitutions of other countries, and recommend new and amended provisions for the 1991 Constitution.

In executing its mandate, the CRC was guided by a number of principles, including: making the review process participatory and inclusive; promoting unity and cohesion; and making recommendations that will move the Constitution from being a political document to a national framework that leads Sierra Leone to sustainable economic development and prosperity.

The CRC was divided into sub-committees, each of which dealt with specific areas and themes; experts and knowledgeable people were invited to be members of each sub-committee. The review process was overseen by a Secretariat, which was responsible for the administrative and managerial aspects of the process.

In spite of limited resources and the outbreak of the Ebola Virus Disease, the CRC, with the support of international partners, gave Sierra Leoneans the opportunity to participate in the review process through nationwide consultations. In addition, Public Submission Forms were distributed all over the country, and position papers were submitted to the CRC by political parties, government institutions, NGOs, civil society organisations, women's and youth groups, the media, key independent bodies, and prominent international organisations.

Communicating with and educating the public was a key element of the review process – public meetings, dissemination of information in Braille, radio and television programmes, questionnaires in the form of Public Submission Forms, the creation of a CRC website, newsletters, and the use of social media, were methods all employed to ensure that there was widespread awareness of the constitutional review process.

In analyzing the information gathered, the CRC adopted a methodology that focused on the qualitative and quantitative aspects of the data. The CRC was thereby able to appraise public opinion on popular themes, and these formed the basis of major recommendations to amend, and add seven new chapters to, the 1991 Constitution.

This report sets out the recommendations identified by the CRC for inclusion in the revised Constitution, as follows:-

Fundamental Principles of State Policy: the main issues identified under this theme related to: the ambit of the fundamental principles recognised by the State; the State's political and social objectives; and the duties of citizens. In particular, recommendations were made to set out principles dealing with gender discrimination and to guarantee the justiciability of social objectives on matters such as education, healthcare, housing and social security.

The Recognition and Protection of Human Rights and Freedoms: Sierra Leone's human rights are based on the principles set out in the United Nation's Universal Declaration of Human Rights 1948. Consideration was given to whether these rights should be set out in a separate Bill of Rights or retained in a chapter of the Constitution. As regards which particular rights should be included as human rights, the CRC recommended that they should be increased to add rights relating to protection of the environment, education, health, food, and shelter; the CRC also recommended that persons with disability should have additional rights relating to their participation and representation in Parliament and local councils.

Another major issue was the gender-discriminatory effect of certain provisions of section 27 of the 1991 Constitution. The CRC recommended that they should be deleted, and that discrimination on any ground should be prohibited.

Citizenship: the 1991 Constitution does not make provision for citizenship, but this was a major area of concern for the people of Sierra Leone given the importance of this status. The main legislation on citizenship is the Sierra Leone Citizenship Act 1973, which originally contained gender and race discriminatory provisions; although the Act was amended in 2006 to remove gender discriminatory provisions, it is still regarded as inadequate to deal with developments since 1973.

As a result of the feedback and opinions expressed during the review process, the CRC recommended that the revised Constitution should contain a new and separate chapter on citizenship, and that the chapter should define how citizenship can be acquired (by birth, naturalisation, marriage or adoption), and the circumstances in which it may be revoked.

Representation of the People: Chapter IV of the 1991 Constitution makes provision for the establishment of the Electoral Commission, and the CRC recommended that its functions should

be increased so that the Electoral Commission (to be renamed “the National Electoral Commission”) is made responsible for the conduct of all elections, namely Presidential, Parliamentary, local government, and Chieftaincy. The CRC also recommended that one Electoral Commissioner should reside in each of the four regions so as to decentralise the work of the Electoral Commission.

To ensure greater participation of women in the political process, the CRC recommended that at least 30% of election nominees for each political party in national and local elections must be women.

The CRC further recommended that the title of the Political Parties Registration Commission should be altered so as to make reference to the regulatory role that it currently performs – the new title of this body should therefore be “the Political Parties Registration and Regulatory Commission”.

The Executive: the CRC recommended several amendments to the 1991 Constitution relating to the office of the President. Those amendments: clarify the distinction between the President’s executive powers and ceremonial titles; set out a new procedure for impeachment of the President and Vice-President; and mandate that all elections, including Presidential elections, should be held on the same day.

The CRC also recommended that the President should no longer be exempt from taxation on his income derived from sources other than his Presidential salary and emoluments.

Further, the CRC recommended that the Secretary to the President should no longer have the function of being the principal adviser to the President on civil and public service matters, and that the Secretary to the Cabinet should no longer have responsibilities relating to civil and public service matters. Those functions should be transferred to a new body set up to deal with these operations.

Additionally, the CRC recommended that all matters relating to Paramount Chiefs (for example, their election, entitlements, and removal from office) should be deleted from the Executive chapter of the Constitution and instead dealt with in separate legislation establishing the proposed new National House of Chiefs.

The Legislature: one of the main issues was whether Sierra Leone should continue with a unicameral system (i.e. Parliament alone) or change to a bicameral system (i.e. Parliament and a Senate). The CRC recommended that the present unicameral system should be retained.

The CRC recommended that Paramount Chiefs should no longer form part of the composition of Parliament; instead, a new separate National House of Chiefs should be established. In addition, the CRC recommended that there should be a separation of powers between the Executive and the Legislature, with the result that the President should not form part of the composition of Parliament.

To address women's long-standing demands for greater representation in Parliament, the CRC recommended an affirmative provision that not less than 30% of Members of Parliament must be women.

As regards Members of Parliament, it was recommended that additional grounds on which a Member of Parliament must vacate his seat should be: if he ceases to be a member of the political party under whose symbol he was elected; if he is declared mentally incapable; or if he is sentenced to death or imprisonment.

As regards the conduct of Parliamentary proceedings, the CRC recommended that the Speaker should preside over Parliamentary sittings; following on from the recommendation that the President should not form part of Parliament, his presence during Parliamentary sittings would no longer be necessary. In addition, the CRC recommended that the President must consult the Speaker to determine when Parliament should sit.

The Judiciary: the overwhelming issue on judicial matters was that of the independence of the Judiciary. To ensure that there is indeed a separation of powers between the Judiciary and the Executive, the CRC recommended that the office of the Attorney-General and Minister of Justice should be separated, and that the Chief Justice should be responsible for the administration and supervision of the Judiciary.

To ensure that justice is dispensed in a timely manner, the CRC recommends that the number of justices and judges in the Supreme Court, Court of Appeal and High Court respectively should all be increased, as well as the number of magistrates.

In addition, the CRC recommended that a new provision should be included in Chapter VII by which all Courts are obliged to promote alternative forms of dispute resolution, including conciliation, arbitration, mediation, and other traditional dispute resolution mechanisms.

Further, the CRC recommended that the composition of the Judicial and Legal Service Commission should be broadened to include the Director-General of the Human Resource Management Office, the most senior justice of the Supreme Court, the most senior judge of the High Court, and the Financial Secretary.

Another important issue relating to the independence and impartiality of the Judiciary was whether the Judiciary should have financial autonomy or whether it should continue to be reliant on funds allocated from the Consolidated Fund. The CRC recommended that the Judiciary should be self-financing, and so all Court fees should be retained by the Judiciary for that purpose, whilst fines should be paid to the Consolidated Fund.

Local Government and Decentralisation: The need to devolve power and resources from central government to local government units was seen as critical to achieving greater citizen participation in the governance and overall development of Sierra Leone.

The CRC therefore made recommendations on detailed provisions that should be included in a new chapter of the revised Constitution on local government and decentralisation. Those provisions relate to: the composition of the local government system; the responsibilities of

local councils; the role of Chief Administrators in local councils; the frequency of local council elections; and the establishment of a new Local Government Finance Commission to allocate funds amongst local government authorities.

Consistent with new constitutional provisions on local government, the CRC recommended that the Local Government Act 2004 and the Chieftaincy Act 2009 should be amended accordingly.

Information, Communication and the Media: the media was another subject that was regarded as important enough to warrant a separate new chapter in the revised Constitution. Although the 1991 Constitution gives the right to freedom of speech (section 25) and affirms the right of the press to “highlight the responsibility and accountability of the government to the people” (section 11), there was a view that greater clarity and detail should be given to media-related issues.

The CRC therefore recommended that the proposed new chapter on information, communication and the media should make provision: guaranteeing media freedom and independence; confirming the State’s obligations to the media; setting out the responsibilities of the media; affirming the establishment of the Independent Media Commission, and making provision for its composition so as to make it independent and inclusive.

National Security: the ambit of national security has broadened greatly since 1991 such that it now encompasses not only territorial integrity and regime protection but extends to economic and political issues and has international dimensions such as terrorism, transnational organized crime, human trafficking and money-laundering.

The CRC acknowledged the call for there to be a new, separate chapter on national security in the revised Constitution, and therefore recommended provisions to be included in the new chapter. Those provisions: set out broad principles of national security; list the bodies that constitute organs of national security; establish the National Security Council as the body responsible for coordinating all national security organs; and set out the functions of the Defence Forces, the Police Service, Correctional Services, the Central Intelligence and Security Agency, and the Fire Service.

The Public Service: the 1991 Constitution established the Public Service Commission and makes detailed provisions for public service office holders. However, the Public Service Commission made strong arguments for the mandate, structure and functions of the Public Service Commission to be revised so that both the public service and the Public Service Commission operate more effectively and efficiently.

The CRC therefore recommended that the revised Constitution should contain a new, separate chapter on the public service that specifies the public services that form part of the public service and makes provision for legislation to be enacted to detail matters relating to the governance, functions and membership of the public service.

Land, Natural Resources and the Environment: Given the strategic and economic importance of lands, natural resources and the environment, and the many developments that have occurred nationally and internationally since 1991, the CRC recommended that there

should be a new chapter in the revised Constitution on lands, natural resources and the environment.

Lands: The main statute governing lands in the Provinces is the Provinces Land Act, Cap 122, and there are still in force several statutes dating from colonial times that deal with land under the general law. The 1991 Constitution makes little provision for land issues.

The National Land Policy was approved by Cabinet in 2015, and the CRC attached great significance to this document, which sets out a long-term blueprint for a wide range of land-related issues.

On the issue of sovereign title to lands, the CRC recommended that the revised Constitution should contain a provision in the new chapter on lands, natural resources and the environment that states that lands belong to the people of Sierra Leone.

As regards the classification of lands, the CRC placed emphasis on the policy statement made in the National Land Policy in this respect, and therefore recommended that lands should be classified as government lands (including state and public lands), private lands (including land held under customary law), and freehold and leasehold lands.

As regards ownership of lands by non-citizens, the CRC recommended that their interest in lands should be limited to leasehold for a set period of time.

The dual land tenure system was a very contentious issue: whilst recognizing that it poses significant challenges, it is nevertheless deeply-engrained in the culture of Sierra Leone. The CRC recommended harmonizing land tenure system in the country therefore the government should continue to engage stakeholders in both the Western Area and the Provinces to reach a consensus on the issue. The CRC also recommended that whatever tenure system operates in Sierra Leone, it should be non-discriminatory.

Land administration was another central issue, and it was acknowledged that a national body is necessary to co-ordinate a wide range of issues relating to land, including introducing a system of registration of title to land and establishing Land Adjudication Tribunals. The CRC therefore recommended that a National Lands Commission should be established in the new chapter of the revised Constitution on lands, natural resources and the environment.

Natural Resources: as part of the provisions to be included in the new chapter of the revised Constitution on lands, natural resources and the environment, the CRC recommended that a Natural Resources Commission should be established, and that all natural resources should vest in it.

The CRC also recommended that there should be provisions in the new chapter that expressly provide for the “protection and responsible use” of natural resources, and for the equitable distribution of the proceeds from natural resources to district councils, municipalities, and Chiefdoms.

The Environment: climate change has become a major global challenge that has focused attention on the need to make greater efforts to protect the environment. The CRC

recommended that environmental rights should be recognised as fundamental, justiciable rights, and that they should be added to the fundamental rights set out in Chapter III of the 1991 Constitution.

The CRC also recommended that a National Environmental Tribunal should be established in the new chapter of the revised Constitution on lands, natural resources and the environment to deal with claims for compensation for environmental damage, and that a Land and Environment Court should be established to deal with disputes relating to the environment and use and occupation of, and title to, land.

The CRC also made a set of policy recommendations relating to additional environmental rights, including the rights to clean air, water, security of tenure, and food.

In addition, the CRC recommended that the National Protected Area Authority should be merged with the Environmental Protection Agency.

The National Development Planning Commission: National development planning has been recognised internationally as a means of achieving social, economic, and political growth. Although attempts have been made in Sierra Leone since 1945 to devise and implement different short-term and medium-term national development plans, there has been little success. One of the reasons for this is that national development plans have been uncoordinated and mismanaged.

The establishment of the Ministry of Development and Economic Planning (MoDEP) in 1968 was one of the country's attempts to create an institution to develop national policy and economic development. It failed because MoDEP did not have, or could not retain, the necessary technical capacity. MoDEP was merged with the Ministry of Finance in 2007 to form the Ministry of Finance and Economic Development (MoFED). This has not, however, led to improvements in the aim of having a national development plan.

Having considered regional practices and taken account of views expressed in public consultations and by experts, the CRC identified elements that are essential to a successful national development plan, namely that the plan must be long-term and must apply nationally, whilst taking account of regional differences; it must also be binding on successive governments.

The CRC also recognised that it is necessary to establish an independent institution that has responsibility for developing, coordinating, monitoring, and evaluating the national development plan.

The CRC therefore recommended that a National Development Planning Commission should be established in a new chapter of the revised Constitution to oversee a long-term national development plan, and that the national development plan should be comprehensive, strategic, and binding. In addition, the CRC recommended that every Ministry, Department and Agency and local council should have a department that will be linked to the National Development Plan Commission. The CRC further recommended that Ministries, Departments, and Agencies

should primarily be responsible for implementing the national development plan, and that Parliament should also play a significant role in all aspects of the national development plan.

As regards the content of the national development plan, the CRC recommended that all district and local councils, and also regional planning committees, should prepare development plans and submit them to the National Development Planning Commission. The national development plan should focus on socio-economic and development issues such as job creation, land use, agricultural and educational development, processing natural resources, and road and transport development.

The CRC also recommended that amendments to the national development plan should be permitted only where necessary, and any changes should be proposed by the National Development Planning Commission and supported by a two-thirds majority of Parliament. In addition, the National Development Planning Commission should monitor and evaluate the national development plan, and report annually to Parliament on it.

As regards the organisation and structure of the National Development Planning Commission, the CRC recommended that it should have a governing council (chaired by the President) that includes the Minister of Finance and the Statistician-General, amongst others. In addition, the National Development Planning Commission should have a Secretariat composed of technical experts and headed by a Director-General.

So that the National Development Planning Commission can be truly independent, the CRC recommended that the Constitution should establish a fund for all independent constitutional bodies, including the National Development Planning Commission.

Commissions and Independent Offices: as a result of recommendations made by the Truth and Reconciliation Commission after the Civil War in 2002, a number of new Commissions have come into existence since the 1991 Constitution was enacted. In addition, the provisions relating to the Commissions and independent offices that existed at the time of the 1991 Constitution are set out in different chapters of the Constitution rather than in the same chapter or part.

The CRC therefore recommended that there should be a new chapter in the revised Constitution on Commissions and Independent Offices that would set out their objectives, independence and funding arrangements, together with details of their composition, procedure for the appointment to and removal from office, and also their term of office.

The CRC further recommended that all Commissions and Independent Offices should be corporate bodies that are obliged to submit annual reports to Parliament.

PART TWO

THE CONSTITUTIONAL REVIEW PROCESS

1 CHAPTER ONE - THE PROCESS

1.1 Establishment of the Constitutional Review Committee

Sierra Leone is currently governed by the 1991 Constitution which ended one-party rule and ushered in multi-party democracy.

The review of the 1991 Constitution of Sierra Leone formed part of the July 1999 Lomé Peace Accord which brought the civil war to an end. Additionally, the Truth and Reconciliation Committee (TRC), established after the end of the Civil War, recommended a series of changes to the Constitution in order to boost democracy, gender mainstreaming, and human rights in the country. There were also calls from civil society groups and agreements among political parties for the Constitution to be amended to reflect the modern values of Sierra Leone, while contributing to the maintenance of peace and stability in the country.

Consequently, a Constitutional Review Commission, headed by Dr. Peter Tucker, was set up by the government to look into the matter and propose appropriate changes to the Constitution. The Commission submitted its report to the government in 2008.

After his re-election in 2012, the government of President Ernest Bai Koroma initiated another process to review the 1991 Constitution and the Peter Tucker Commission report. It needs to be emphasized that the Sierra Leone Constitutional review exercise was as a direct result of recommendations made by the Truth and Reconciliation Report.

1.2 Establishment, Composition and Mandate of the CRC

On 30th July, 2013, an 80-member CRC under the chairmanship of Justice Edmond Cowan, was inaugurated and sworn in by His Excellency the President of Sierra Leone, Dr. Ernest Bai Koroma and the constitutional review process officially launched. It was tasked to work for a period of three years. The proclamation provided for the membership of the CRC, the appointment of its members, and its terms of reference.

The CRC members represented a variety of stakeholders in society including women and youth groups, political parties, civil society organisations, democratic institutions, NGOs, business community, the media, and key independent bodies.

At the inauguration, the President highlighted the roles of different types of constitutions dating from the 1863 Blackhall Constitution to the 1991 multi-party Constitution but acknowledged the fact that the 1991 Constitution needs to be modernised. Furthermore, the President stated that “our constitutional history has its low point of compromising statutes, acrimonious debate, and democratic deficit and all must be done to avoid the dark days in the history of Sierra Leone”.

The President made reference to the gaps in the 1991 Constitution which undermined the rights of women and gender equality, youths and the physically challenged. He expressed the need for

the new constitution to be inclusive and seen to be the true voice of the people of Sierra Leone in true spirit of modern constitutionalism.

Also, the President charged the CRC to look into the reports of the Truth and Reconciliation Commission and The Peter Tucker Constitutional Review Commission. He further urged the CRC to address all ambiguities, cumbersome and bureaucratic red tape that would hinder a successful review process.

1.3 Composition of the CRC

The CRC has 80 members drawn from various backgrounds, political parties, civil society organizations, Non-Governmental Organizations, human rights groups, the physically challenged, women's groups, youths and governance institutions. The list of members, designations and their institutions are listed in the signature page of this report.

1.4 Mandate of the CRC

The CRC was established to review the 1991 Constitution of Sierra Leone, using Dr. Peter Tucker's Constitutional Review Commission report submitted to Government in January 2008 as a working document. The CRC was required to collect public views in Sierra Leone and abroad, consult with relevant stakeholders including social, political and economic groups, examine constitutions of other countries and recommend provisions aiming at promoting an open, transparent and democratic society.

The mandate of the CRC was extended from March 2015 to September 2016 due to the impact of the Ebola Virus Disease (EVD) on the exercise.

1.5 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.

The mandate of the CRC was, therefore, not limited to the review of the text of the Constitution, but extended to the operation of the 1991 Constitution as well.

1.6 Organisation of the Review Process

In order to effectively carry out the terms of reference, the CRC adopted a number of strategies. It facilitated capacity-building of its members in matters relating to the constitutional review process, and the CRC Secretariat provided administrative, legal and research services, including coordination with Members of Parliament, Ministries, Departments, and Agencies, political parties and civil society organizations in order to enhance their support and participation in the review. It also designed and implemented a communication strategy.

1.7 Values and Principles for the Review Process

The CRC was guided by a number of principles to ensure conflict sensitivity, support peace building and reconciliation, promote social cohesion, and maximize partnership.

In executing its mandate, the CRC was guided by the following values and principles:

- a. Every action and recommendation of the CRC must have as an overriding aim, namely the promotion of the unity and cohesion of the Nation.
- b. Every action and recommendation of the CRC must aim at contributing to the attainment of a better standard of living for the people of Sierra Leone in general.
- c. The review exercise, cumulatively, must move the Constitution from a political document to a developmental document, shifting from the politics of democracy to the economics of democracy, so that Sierra Leoneans may look at it as the source of a better life.
- d. Nation building is the responsibility of all citizens; it is not a task for any one group of persons or political party, thus the review exercise belongs to the people of Sierra Leone and every Sierra Leonean at home and abroad must be given an opportunity to contribute to the review process.
- e. To reinforce the inclusiveness of the review process, special care must be taken to provide facilities such as translation services to facilitate consultations held in local languages; interpretation services for persons who are hearing impaired; and Braille documentation for the blind.
- f. The review process must engender the trust and confidence of the nation. To this end, mechanisms must be developed to ensure that information about the purpose and activities of the CRC are freely available and actively communicated to the Sierra Leone public as a measure of transparency and to facilitate their participation in the process.
- g. The consultations with the people of Sierra Leone on the operation of their constitution must be devised as a low cost, highly participatory process with a range of channels of communication.
- h. Information gathered and generated during the review exercise must be documented and preserved for the future.

- i. All submissions made to the CRC would be assessed for their factual and legal integrity in order to ensure that the CRC would proceed to make its findings, observations and recommendations on secure factual and legal bases.
- j. The recommendations of the CRC would be informed by a thorough examination of the historical evolution of Sierra Leone's political and socio-economic development.
- k. The recommendations of the CRC would be informed by international comparative experience and best practice, adapted to fit local circumstances.

1.8 Strategies and Modus Operandi

The CRC developed the following strategies from the broad principles outlined above:

- a. A communications strategy;
- b. A public consultations strategy;
- c. A research strategy;
- d. A documentation strategy;

The details of the strategies included the following:

- a. Utilising multiple strategies to communicate the existence, mandate and modus operandi of the CRC to the public, including the use of advertisements in the media, posters, banners, handbills and the Internet (including social media, for example Facebook, WhatsApp, YouTube and Twitter).
- b. Embarking on outreach programmes to the districts and communities throughout Sierra Leone, using a three-part strategy of educating on the Constitution, informing on issues raised about the operation of the Constitution and eliciting submissions.
- c. Using an open-door strategy that allowed Sierra Leoneans to interact freely with the CRC and make their submissions without any hindrance.
- d. Utilising multiple avenues for the receipt of submissions from the public, including receipt of oral submissions and the receipt of submissions through a text-in campaign.
- e. Engaging a team of research associates to assist the CRC thematic committees.
- f. Forming strategic partnerships with the National Commission for Democracy, Social Democratic Institute, Campaign for Good Governance, and West Africa Network for Peace building, and Sierra Leone Broadcasting Corporation, utilising these institutions to reach as many Sierra Leoneans as possible in Sierra Leone and abroad directly and through the media. These included the CRC Hour and "Face to Face with the Law" on national TV.
- g. Holding consultations with stakeholders, interest groups and institutions in order to solicit their opinions.

- h. Holding expert consultations with Members of Parliaments, Ministries, Departments and Agencies, the Secretary to Cabinet, Chief of Staff, and the Judiciary.
- i. Assigning Committee members to particular thematic research areas in order to encourage specialization within the CRC.
- j. Embedding United Nations Volunteers (UNVs) and research volunteers, support staff to execute assignments of the CRC under the direction of the Chief Technical Adviser (CTA).
- k. Engaging experts to provide opinion papers and reports on many areas of constitutional governance for the consideration of the CRC.
- l. Documenting and archiving all information utilized and developed by the CRC in hard copy and electronic format.

1.9 The CRC Work Plan

The modus operandi of the CRC was set out in its detailed work plan.

The CRC established the Secretariat; conducted background research; established various avenues for Sierra Leoneans to interact freely with the CRC; and consulted with the public and various organizations and institutions.

The CRC accomplished the following major activities from January 2014 to September 2016:

- a) Completion of the public consultation exercise, engagements with MDAs, stakeholders, and experts.
- b) Fact-finding tours in Ghana and Kenya, and consultations with Sierra Leoneans living abroad.
- c) Qualitative and quantitative analyses of the submissions received.
- d) Syntheses of all submissions received into thematic matrices.
- e) Research into constitutional history and international comparative experiences.
- f) Development of seven thematic briefs, one for each of the main themes arising from the analyses of the submissions.
- g) Development of proposals for constitutional change, legislative reform and administrative action.
- h) Submission of the CRC's final report.

1.10 The CRC Sub-Committees

The CRC established nine thematic sub-committees to implement the following terms of reference:

- To review the provisions and related clauses of the Constitution of Sierra Leone pertaining to the relevant thematic area;

- To examine the report of the Peter Tucker Constitution Review Commission in a similar manner and make recommendations to the CRC.

1. Sub-Committee on the Judiciary

Members

1. Justice Nicholas Brown Marke- Judiciary (Chairman)
2. Mr. E. V. Morgan - Association of Justices of Peace
3. Justice V. V. Thomas – Judiciary
4. Charles A. Campbell - Chamber of Commerce
5. Mr. Raymond B. Thompson - People's Movement for Democratic Change Political Party
6. Alhaji U. A. Sesay - National Asset and Government Property Committee
7. Allieu I. Kanu - Sierra Leone Institute of International Law
8. Mr. Victor W. Horton - Association of Justices of Peace
9. Georgina J. Benedict - Association of Justices of Peace
10. Francis L. Keili - Office of National Security
11. P. C. Charles Caulker - National Council of Paramount Chiefs
12. Justice Hamid A. Charm - Judiciary
13. Martina M. Kroma - Law Officers Department
14. Glenna Thompson - Sierra Leone Bar Association

2. Sub-Committee on the Legislature

Members

1. Justice M. E. Tolla Thompson - Political Parties Registration Commission (Chairman)
2. Mr. Mohamed S. Jalloh - National Democratic Alliance Party
3. Gibril Thulla - Citizens Democratic Party
4. Mr. Ibrahim I. Mansaray - National Union of Sierra Leone Students

5. Arrow J. Bockarie - Attorney General Department
6. Mr.J. B. Jenkins-Johnson - Sierra Leone Bar Association
7. Ahmed S. Kanu - United Democratic Movement Party
8. Hon. Justice Salimatu Koroma - Law Reform Commission
9. Suliaman Banja Tejan-Sie Esq. - Sierra Leone Peoples Party
10. Kabba Franklyn Bangura - Sierra Leone Union of Disability Issues
11. Sheik Gibril Koroma - United National Peoples' Party

3. Sub-Committee on the Fundamental Principles of State Policy and Human Rights

Members

1. Olatungie Campbell – (Chairperson)
2. Solomon Sogbandi - Amnesty International
3. Ansumana M. P. Fowai - Revolutionary United Front Party
4. Lois Kawa - Ombudsman Office
5. Ibrahim S. Sesay - Citizens Democratic Party
6. Husainatu Jalloh - United National Peoples' Party
7. Ibrahim Sorie - Sierra Leone Bar Association
8. Issac Massaquoi - Sierra Leone Association of Journalists
9. Gibrilla Kamara - PUSH Salone
10. Yoni E. Sesay - Educationist
11. Valnora Edwin - Campaign for Good Governance
12. Aminata Sillah - National Youth Commission
13. Georgina Benedict - Association of Justices of Peace
14. Umaru Fofanah - National Elections Watch
15. Justice V.V. Thomas - The Judiciary

16. Ambassador Allieu I. Kanu - Sierra Leone Institute of International Law
17. Dr. Kandeh B. Conteh - Peace and Liberation Party
18. Sheik Gibril Koroma - United National Peoples' Party

4. Sub-Committee on Local Government and other Ancillary Divisions of Government

Members

1. Dr. Abu Bakarr Kargbo - National Committee for Democracy (Chairman)
2. Mr. Aruna Mans Davies - Alliance for Positive Conscience Teachers
3. Osman Koroma - United National Peoples' Party
4. Alhassan J. Kanu - Decentralisation Secretariat
5. Mary Harding - Peoples' Democratic Party
6. Ambassador Dauda Kamara - All Peoples Congress
7. Mohamed A. Deen - Sierra Leone Labour Congress
8. Aminata Sillah - National Youth Commission
9. Floyd Alex Davies - Center for Local Government Decentralisation and the Environment
10. P. C. Charles Caulker - National Council of Paramount Chiefs

5. Sub-Committee on the Executive Branch

Members

1. Dr. Habib Sesay - People's Movement for Democratic Change Party (Chairman)
2. Mr. E. V. Morgan - Association of Justices of Peace
3. Mr. Nabie M. Kamara - Peace and Liberation Party
4. Mr. Abass Kamara - National Democratic Alliance Party
5. Mr. Victor King - Citizen Democratic Party
6. Yusuf Bangura - Fourah Bay College
7. Africanus Sorie Sesay - Lawyer

8. Ismael Koroma - Lecturer FBC-USL
9. Dr. John L. Musa - Cabinet Oversight and Monitoring Unit
10. Hon I. B. Kargbo - All Peoples' Congress
11. Augusta James-Teima - National Democratic Alliance Party
12. Vandi Konneh - National Commission for Persons with Disability

6. Sub-Committee on Management on Natural Resources and Environment

Terms of Reference:

This Committee was established to identify issues, opportunities and challenges of natural resources management in Sierra Leone in the years spanning the turn of the 21st Century and provide the framework for CRC to advise on developing country-specific strategies to interactively manage natural resources and climate change.

Members

1. Yoni E. Sesay - Educationist / Environmentalist (Chairman)
2. Mariama Dainkeh - Revolutionary United Front Party
3. Jamesina King - Human Rights Commission of Sierra Leone
4. Joseph H. Bangura - United Democratic Movement Party
5. Eldred Collins - Revolutionary United Front Party
6. Memunatu Pratt - National Elections Watch
7. Umaru Fofanah - National Elections Watch
8. Elizabeth Mans - All Peoples Congress
9. John Oponjo Benjamin - Sierra Leone Peoples' Party
10. Professor E. J. Thompson - National Commission for Democracy
11. P. C. Haja FBK Meima-Kajui - Paramount Chiefs

7. Sub-Committee on Information, Communication and the Media (ICM)

Terms of Reference:

This Committee was established to solicit public opinion on press, media, information technology, and communication-related matters.

Members

1. Morlai Conteh - National Youth Coalition (Chairman)
2. Halimatu L. Deen - United Democratic Movement
3. Memunatu Pratt - National Elections Watch
4. Elfrida E. Conteh - Peoples' Liberation Party
5. Marie Bob-Kandeh - Sierra Leone Market Women Association
6. Umaru Fofanah - National Elections Watch
7. Eldred Collins - Revolutionary United Front Party
8. Chief Bai Seborah Somanoh Kapen III - Sierra Leone Peoples' Party
9. Kabba Franklyn Bangura - Sierra Leone Union of Disability Issues
10. Honorable Alpha Kanu - All People Congress Party
11. Georgiana J. Benedict - Association of Justices of Peace
12. Bai Mahmoud Bangura - All Peoples' Congress Party

8. Sub-Committee on Research

Terms of Reference:

This Committee was established to conduct research on modern constitutionalism. The scope of the research guided the CRC.

Members

1. Alhaji Ben Kamara - Peoples' Democratic Party
2. Dr Prince Coker - Peoples' Democratic Party
3. George B. Samai - Fourah Bay College
4. Ambassador Osman Foday Yansaneh - All Peoples' Congress (Chairman)
5. Hindolo Moiwo Gevao - Sierra Leone Peoples' Party

1.11 The CRC Secretariat

The CRC Secretariat comprised of staff from different Ministries, Departments and Agencies, United Nations Volunteers (National), and interns assigned to support its administrative and operational functions.

The Secretariat was located at the Miatta Conference Centre, Freetown, and was headed by the Executive Secretary assisted by the Deputy Executive Secretary.

2 CHAPTER TWO - METHODOLOGY

2.1 Introduction

The CRC's methodology was guided by the fundamental principles of national participation to ensure wider engagement of Sierra Leoneans in the review process.

Large-scale stakeholder consultations, expert engagements and a nationwide public consultation process yielded oral and written as well as individual and collective submissions. In addition, the CRC received 110 position papers from political parties, civil society organisations, women's groups, youth organisations, professional bodies and Ministries, Departments, and Agencies.

The CRC also benefited from assistance given by international organisations. For example, the American Bar Association/International Legal Resource Centre, the United Nations High Commission for Refugees, the Food and Agricultural Organisation, and the Office of High Commission for Human Rights provided relevant expert review on the 1991 Constitution.

The CRC adopted a qualitative and quantitative approach to capture accurately the core concerns and aspirations expressed, and the attendant demands and suggestions made by the people of Sierra Leone. The qualitative and quantitative approaches complemented each other.

Five major issues are discussed in this chapter: research strategy and consultations; data coding; data analyses; developing the report; and methodological limitations.

Under the section on research strategy and consultations, there is a discussion on the methods used for the background research and the collection of data from different sources.

The section on data coding explains how the submissions and data gathered from the field were stored and managed. The data analyses section explains the qualitative and quantitative methods adopted in analyzing the submissions that the CRC received.

The section on developing the report explains how the recommendations were put together and incorporated into the report.

2.2 Research Strategy

Developing Background Research Issues

Prior to the establishment of the CRC, various issues concerning the 1991 Constitution had emerged. Many of the Constitutional problems concerned the operation of the Constitution, resulting in proposals for substantive amendments to the Constitution. Governance institutions and think-tanks also reiterated the need to update, amend and strengthen legislative and administrative measures to give full effect to the Constitution.

The CRC conducted a comprehensive review of material focusing on the performance of the Constitution in the last two decades.

The purpose was to use the information as a basis for developing proposals for reform. The CRC also undertook extensive media monitoring to compile an exhaustive list of constitutional issues discussed in the media in the twenty-five years since the 1991 Constitution was enacted.

As a result of these endeavours, the CRC identified key topics for discussions and deliberations. These topics were compiled into questionnaires which were distributed widely in Sierra Leone and abroad. The CRC received responses from many institutions and individuals.

2.3 Library Research

The CRC did not purely rely on the submissions it received. It carried out a lot of library research to make its recommendations. In particular, the CRC researched Sierra Leone's institutional evolution from a historical perspective in order to unearth all available options with a view to resolving the issues raised in the submissions and considering the viability of those options.

These were mainly contained in the reports and other documents of previous constitutional committees, the Peter Tucker Commission Report and the report of the Truth and Reconciliation Commission. Additionally, it researched international experiences and best practice on the issues in order to develop a unique format for the CRC's report.

2.4 External Assistance

In addition to the research output of its research team, the CRC requested position papers and inputs from many individuals and organizations. The position papers received by the CRC included papers on:

- a. The Legislature
- b. Local government and decentralization
- c. Lands, natural resources and the environment
- d. Citizenship
- e. The Judiciary
- f. National Security
- g. National planning and development
- h. Human rights and justiciability
- i. Engendering the Constitution

- j. Women participation and representation

2.5 Consultations

The CRC employed a consultation strategy to include the Sierra Leonean population at home and abroad.

The CRC collected data from all parts of the country. In order to ensure that the entire country was covered, such that all the different demographic, ethnic and geo-political groups were included, public consultation meetings were held in all 14 administrative districts.

2.6 Objectives of the Consultations

The consultations had three objectives, namely:

- a. Educating the people on the Constitution and the review process;
- b. Informing the people about the issues raised concerning the Constitution; and
- c. Eliciting more issues and submissions.

2.7 Scope of the Consultations and Submissions

The CRC held community and district level consultations in all the 14 administrative districts between 2014 and 2016. Seven teams, comprising of various committee members, led the consultations, and the Chairman and the Executive Secretary of CRC also attended many of these consultation meetings.

The consultations were attended by a variety of stakeholders such as political parties, Paramount Chiefs, civil society organisations, women's groups, youths, traders, land owners, tribal authorities, fishermen and students.

Preparatory activities for the consultations took several months. These included the establishment of strategic partnerships with many organizations, and the engagement and training of district coordinators.

The consultations were held for two days in each district by the different teams; in the Western Urban and Rural Districts, consultations were held at ward level. Day One focused on educating and sharing information on the constitutional review process and thematic issues. This included statements from the Senior District Officers, representatives from the local council and paramount chiefs and village heads. Day Two was dedicated to group discussions and presentations by the stakeholders.

From the public consultations held in the 14 districts, the CRC received a total of 30,000 responses and submissions.

The thematic issues discussed were:

- a. The Executive;
- b. The Legislature;
- c. The Judiciary;
- d. Local government and other ancillary branches;
- e. Information, Communication and Media;
- f. Fundamental Principles of State Policy and Human Rights; and
- g. Lands, Natural Resources and the Environment;
- h. National planning and development.

During the CRC's visit to Ghana and Kenya, the CRC held consultations with Sierra Leoneans in Accra and Nairobi.

Consultations with MDAs were held during 2014 and 2015.

2.8 Developing Thematic Matrices

The submissions received were categorised into 9 thematic areas, and a large number of issues were identified within each thematic matrix for deliberation at the CRC plenary.

The matrices included: summaries of the submissions for the specific thematic area; proposals for constitutional changes arising from the submissions; the rationale for each proposal; the sections of the 1991 Constitution referred to in the submissions; and a trend analysis of the submissions.

2.9 Data Analysis

The submissions were subjected to qualitative and quantitative analyses to capture accurately the core review concerns and aspirations expressed, and the attendant demands and suggestions made by the people of Sierra Leone.

2.10 Qualitative Analysis

The qualitative approach of analysing the submissions concentrated on capturing substantive and technically sound ideas and recommendations for constitutional change. In using this approach, the context of the submissions was examined in depth, and this helped to understand the following critical questions:

- a. What do Sierra Leoneans want?
- b. How do they want it?
- c. Why do they want it?

The responses were categorised in thematic matrices to indicate patterns and proposals concerning the key national issues that relate either to the Constitution or to other legislation.

The CRC used district and regional maps to determine the geographical trends of the submissions and the importance of certain issues in specific areas.

Because the CRC received a large number of submissions on key national issues, resource maps were used to explain the preponderance of different issues in specific areas.

However, qualitative methods in general are subject to wide variations and interviewer/observer biases and misinterpretation. In order to minimize this, the following strategies were adopted:

- a Holding frequent meetings of CRC representatives at plenary level to deliberate on key issues in the submissions.
- b Conducting frequent reviews of the data during and after collating analysis from the submission forms.

2.11 Quantitative Analysis

While the qualitative approach aimed primarily at analysing the reasons behind every submission, the quantitative approach was geared towards identifying the frequency at which each issue arose. The quantitative analytical method was therefore used to support the qualitative method in order to avoid subjectivity.

2.12 Developing the Report

Based on the trends of the submissions, the CRC developed thematic briefs. Each brief had an introduction, a historical account of the evolution of the institutions implicated in the submissions on that theme, the key issues raised in the submissions, a summary of the submissions made, the law relating to the submissions, the findings and observations of the CRC on the issues, and the recommendations on the issues.

The findings and observations of the CRC focused on three things. The first was the evolution of Sierra Leone's institutions. This involved historical research, including consideration of the reports and records of previous constitution-writing processes. The second was the aspirations of the people of Sierra Leone with regard to the social, economic and political development of the country. The third was to ensure that Sierra Leone's legal framework is at par with international best practices. The recommendations of the CRC were therefore categorised into constitutional changes and policy guidelines.

2.13 Developing Recommendations

The CRC thoroughly deliberated on all findings related to the various recommendations and options for modernising constitutional governance in Sierra Leone. The discussions also focused on the arguments made in support of the various calls for the retention, amendment, or repeal of specific provisions of the Constitution or for the inclusion of fresh provisions.

The CRC was guided by the following principles during its deliberations:

- a. There should not be unwarranted amendments to the current Constitution. Thus, the CRC would only recommend an amendment of the Constitution where the current provisions have proved deficient.
- b. Proposals for the review of the Constitution must aim not merely at textual changes in order to remove ambiguities and lay emphasis on certain parts of it, but more importantly, to create institutional mechanisms that ensure proper operation of the Constitution.
- c. Overall, the review exercise must:
 - i. Consolidate peace and democracy and strengthen a culture of good governance.
 - ii. Prioritise national planning and development.
 - iii. Strengthen national culture as a source of national identity and pride.
 - iv. Recognise that diversity as a nation is a source of richness and wealth.
 - v. Encourage local governance and decentralisation.
 - vi. Address long-standing needs of marginalised groups such as women, people with disability, children, and the aged.
 - vii. Strengthen independent constitutional bodies to better protect the institutions of the State and the rights of the people.
 - viii. Encourage transparency and participation in the management of land and natural resources.

3 CHAPTER THREE - CIVIC EDUCATION

3.1 Introduction

The Public Information and Outreach section of the CRC constituted an important arm of the work of the Secretariat. It employed a number of strategies aimed at providing relevant information to the public about the CRC process. A dedicated team worked on various areas of expertise under the overall supervision of the UNDP's Chief Technical Adviser.

The bulk of the outreach and civic education component was outsourced to the national broadcaster, Sierra Leone Broadcasting Company, and civil society groups. Social media made it possible for the CRC to employ a number of communication strategies aimed at disseminating information to citizens.

3.2 Civic Education Strategy

The CRC employed a series of strategies aimed at promoting public knowledge and information about the review process. It used a media mix approach to inform people about the process, including audio, video, text, social media, and web-based communications.

To ensure greater outreach of information, a partnership between the CRC and the media was sought with a view to ensuring that the media reported the CRC's work responsibly and accurately. In 2014 and 2015, journalists were trained to understand the constitutional review process and substantive issues to ensure conflict-sensitive reporting. The training also included capacitating journalists' skills on thematic areas.

3.3 UNDP support for Civic Education

Publication and Printing

Braille versions of the Constitution: to make the review process as inclusive and participatory as possible, the CRC endeavoured to make the documents used in the review accessible to visually impaired persons. The CRC with the support of the UNDP and international partners produced Braille versions of the 1991 Constitution which were distributed to various parts of the country.

USB Flash Drives/memory sticks: documents including: the Constitution; the PTRC report; the TRC report; the Constitutions of over 70 other countries; information about the formation of the CRC including its composition, terms of reference, and rules of procedure; newsletters; the Lomé Peace Accord; the Sierra Leone Conference on Development and Transformation (SLCDT); Constitutional Development in Sierra Leone; a glossary of constitutional terms; and CRC questionnaires were put together on memory sticks.

20,000 copies were distributed to stakeholders around the country so as to ensure greater access to relevant information. The production of a resource that contained all these documents greatly facilitated the review process.

Public Submission Forms: the CRC printed and circulated nationwide over 70,000 copies of the public submission forms to elicit information from the public on their aspirations for the revised Constitution. The forms were thematic questionnaires developed by the Sub-committees to encourage debate and discussion on key national issues that need to be captured in the revised Constitution.

The forms were extensively used during the nationwide stakeholder and public consultations. The forms were also made available on the CRC website (www.constitutionalreview.gov.sl).

Combined Document: the Constitution of Sierra Leone Act No 6 of 1991 and the Dr. Peter Tucker Constitutional Review Committee Report were the working documents of the CRC. These documents were important not least because the review process mandated that the Constitution be reviewed in tandem with the Dr. Peter Tucker Constitutional Review Committee Report (the PTC Report).

Initially, the Constitution and the PTC Report were two separate documents, but they were combined into a single document for ease of reading. Over 50,000 hard copies were produced and distributed nationwide. Sections of the 1991 Constitution that were reviewed by the Peter Tucker Commission were accordingly laid to their corresponding sections so that readers could easily spot the difference and the amendments that had been proposed.

The document also served as a resource for the general public, MDAS, CSOs, NGOs, journalists, regional and local councils and traditional authorities to submit their feedback, views and proposals on sections contained in the document.

CRC T-Shirts and Caps: the objective for which the T-shirts and caps was produced was to create visibility for the review process. T-shirts and caps can be useful during social mobilization campaigns for the following reasons:

- They command attention
- They are non-verbal communication tools that often bridge the communication gap which neither broadcast nor print media fulfils
- Their messages are normally succinct and easily understood
- T-shirts and caps that have logos show the organization and identify the campaign

Inscribed with a series of messages such as “A good Constitution for a better Sierra Leone,” and “Add your voice to the Constitutional Review Process,” the CRC was able to reach out to large sections of society.

3.4 Media

The CRC Social Media Activities

The CRC Website: the website (www.constitutionalreview.gov.sl) was created in 2013 to update the public, Sierra Leoneans living abroad, and the international community about the work of the CRC and to use it as a means of eliciting responses on issues relating to the review process.

The website had a series of texts, photographs, and other graphics relating to the review process. To date, more than 50,000 viewers have visited the website, downloaded materials and raised queries on the review process.

In addition to the CRC website, the CRC had a WhatsApp group, a YouTube account and a Facebook page and group.

Print Media: media practitioners were invited to provide coverage of key events of the CRC. The CRC's communications and outreach department invited reporters and journalists from specific media institutions to interview key CRC officials such as the Chairman, Executive Secretary, and the Head of Communications and Outreach. The CRC also partnered with ten leading newspapers to serialise the 1991 Constitution and relevant documents.

Newsletter: the CRC newsletter provided up-to-date information about the review process. The first newsletter was produced in January 2014. Thereafter, editions were produced and printed on a monthly or bi-monthly basis. Soft copies were also made available on the CRC website and on the memory sticks that were distributed to the public.

Radio Jingles and Discussion Programmes: as well as airing jingles on various thematic issues on 18 community radio stations across the country, the CRC held a number of radio discussion programmes during the nationwide consultation. Radio stations served as a pivot between the CRC and listeners, helping to disseminate vital information relating to the review process.

The Sierra Leone Broadcasting Corporation (SLBC): with funding from UNDP, SLBC implemented a two year outreach/sensitization project on behalf of the CRC, involving radio jingles, radio and television drama, advertisements, and simultaneous broadcast of discussion programmes.

The CRC Hour: the CRC aired over 30 hours of a weekly programme titled CRC Hour from April to November 2014. The programme reached about 60% of the population and attracted participants from all walks of life. Topics discussed included the composition of the CRC, the mandate of the CRC, the contents of the Peter Tucker Commission report, and issues in the report for possible amendment.

The programme was aired every Tuesday on SLBC TV, with simultaneous broadcast on 18 community radio stations across the country.

Face To Face With the Law: Face to Face with the Law was designed to create an environment where legal luminaries would discuss issues relating to the law. This flagship programme on SLBC TV was seconded to the CRC by an agreement between SLBC and UNDP.

Close to 50 hours of programming was dedicated to the constitutional review process for almost a year. Targeting persons aged 18 and above, Face to Face with the Law reached at least 65% of the population. People in the urban areas viewed the programme on television whilst those in remote and hard-to-reach rural areas listened on their community radio stations.

The CRC and CSO Partnership: with support from UNDP, the CRC engaged six leading civil society organisations to educate Sierra Leoneans on different thematic topics and issues on the review process. The CSOs were: the National Commission for Democracy, Campaign for Good Governance, West African Network for Peace building, Citizens for Constitutional Change, Society for Democratic Initiative, and Oxfam.

PART TWO

FUNDAMENTAL PRINCIPLES OF STATE POLICY

PART TWO**4 CHAPTER FOUR****FUNDAMENTAL PRINCIPLES OF STATE POLICY****4.1 Introduction**

The constitution is the supreme authority and law of a country. A written constitution is a set of fundamental principles or codified and established precedents according to which a State, its people and institutions are governed. It lays down clear rules that define the political arrangements and systems in the country. The constitution takes precedence over all other laws and legislation.

A constitution defines the relationship between the State and its citizens and gives clear guidance on the roles, rights and responsibilities of the three branches of the State, namely the Executive, the Legislature and the Judiciary.

A chapter on State Policy in a constitution outlines the fundamental obligations of the government and defines the overarching relationship between the state and its citizens and institutions. It outlines the state's goal and aspirations towards securing basic rights and development for its people.

Chapter II- Fundamental Principles of State Policy in the Constitution of Sierra Leone 1991 details obligations of the government, how the government and its citizens interrelate, as well as the Government's political, economic, social, educational and foreign policy objectives. It also refers to obligations of the media and citizens of Sierra Leone and the enhancement of the national culture. In the 1991 Constitution, none of the provisions contained in this chapter are justiciable.¹

The CRC reviewed the Constitution of Sierra Leone 1991 and The Peter Tucker Constitution Commission Report 2008 (PTC Report). The CRC was also informed by expert opinions, position papers, and reports from special engagement sessions with different interest groups and stakeholders. The CRC analysed and took account of the feedback from the district level and Western Area consultations on issues relating to State Policy.

¹ "Notwithstanding the provisions of Section 4, the provisions contained in this Chapter shall not confer legal rights and shall not be enforceable in any court of law, but the principles contained therein shall nevertheless be fundamental in the governance of the State, and it shall be the duty of Parliament to apply these principles in making laws": section 14 of the Constitution of Sierra Leone 1991.

The CRC's research Sub-committee also provided invaluable feedback and analysis of different thematic reports which proved extremely helpful to the CRC for its considerations and deliberations.

The CRC reviewed and took into consideration constitutional best practices, including modern and updated constitutions from African countries. UNDP facilitated the CRC's meetings and discussions with counterparts in Ghana and Kenya during October/November 2015.

During the consultation process there was an overwhelming call from the people of Sierra Leone, women and youth groups, political parties, civil society organisations and other stakeholders for the provisions contained within Chapter II to be made justiciable.

The nationwide consultations endorsed the recommendation made by the PTC Report to remove restrictions on provisions relating to health, safety, welfare, medical facilities and educational opportunities. So it was recommended that phrases such as "having due regard to the resources of the State"² and "as and where practicable"³ should be deleted.⁴

4.2 Historical background

On 27th April 1961 Sierra Leone was declared an independent State. The first Constitution was drawn up on 14th April 1961 in the United Kingdom. It was laid before the British Parliament on the same day and came into operation on 27th April 1961.⁵ This became the Constitution of Sierra Leone 1961 (the 1961 Constitution).

The Constitution detailed provisions relating to the governance of the country, human rights, the Governor General, Parliament, elections, the office of Paramount Chiefs, the Judiciary, the establishment of certain Commissions and Executive powers.

The 1961 Constitution did not contain a specific chapter relating to the fundamental principles of State policy. However, various relationships, rights and responsibilities of institutions of the State and its citizens were outlined.

The Constitution of Sierra Leone 1971 ("1971 Constitution") ushered in the Republic of Sierra Leone on 19 April 1971. It led to a change of sovereignty from the Queen of England to the President of the Republic of Sierra Leone. President Siaka Probyn Stevens, the elected head of the government, became the first Executive President.

Despite being the first republican constitution, the 1971 Constitution did not have a specific chapter relating to the fundamental principles of state policy.

² Section 8(3)(c) of the 1991 Constitution.

³ Section 9(1)(c) of the 1991 Constitution.

⁴ PTCR page 20 paras 33, 34 and 35

⁵ Statutory Instruments WEST AFRICA 1961 No 741(The Constitution of Sierra Leone 1961) page 1

In 1977, there were nationwide protests and uprising in Sierra Leone led by student groups and the Labour Congress. The reasons for the protests were stated as poor governance, corruption, unemployment, and worsening economic conditions.

In order to stem the protests, the government immediately announced holding multi-party elections, which were won by the governing All People's Congress (APC) led by President Siaka P. Stevens.

After the elections, the APC Government held a referendum to decide whether to retain the multi-party system or replace it with one-party rule. The outcome of the referendum was in favour of one-party rule, and this led to the establishment of the one-party Constitution of Sierra Leone 1978 (the 1978 Constitution). An important feature of the 1978 Constitution was that it contained a skeletal outline of the responsibilities of the President to the country.

During the 1990s, the one-party system caused a great level of frustration due to the limited participation in the governance process. The system of governance was considered dictatorial with no socio-economic benefits for the impoverished masses. It also failed to address corruption and nepotism.

An important factor was the international context at that time. The fall of the Berlin Wall, the collapse of the USSR, the end of apartheid in South Africa, and a wave of global and African democratisation influenced Sierra Leoneans to challenge the legitimacy of a one-party system.

An overwhelming demand for a return to multi-party democracy in the country emerged, and President J. S. Momoh and his government yielded to this popular demand. Thus the 1991 Constitution of Sierra Leone was developed, which reintroduced a democratic multi-party system in Sierra Leone.

Although the 1991 Constitution had been approved by Parliament, President J. S. Momoh and his government were not able to implement it due to the military coup d'état on 29th April 1992. The National Provisional Ruling Council (NPRC) suspended the 1991 Constitution and ruled the country by provisional decrees from 1992 to 1996.

In 1996, multi-party elections were held under the 1991 Constitution. The Sierra Leone People's Party (SLPP), led by Ahmad Tejan Kabbah, won the election, and the SLPP government formally adopted the 1991 Constitution.

4.3 Current context

The 1991 Constitution was the first constitution of Sierra Leone to clearly spell out the core obligations of the three branches of the government, namely the Executive, the Legislature and the Judiciary, in relation to the provisions in Chapter II, as well as the duties of its citizens to the State.

The 1991 Constitution provides a detailed chapter on the Fundamental Principles of State Policy. These are contained in sections 4 to 14 of Chapter II.

The chapter details the principles of the State, its political, economic, social and educational objectives. It outlines the State's foreign policy objectives and its commitment to enhancing national culture. It details the obligations of mass media and the responsibilities of its citizens.

This chapter deals with matters of crucial importance to the citizens of Sierra Leone, such as the right to health and education, but none of the sections in this chapter are justiciable. This limits the citizen's rights to seek legal redress.⁶

The CRC's Research Sub-committee identified international best practices and Conventions relating to the implementation of the Fundamental Principles of State Policy:

The International Covenant on Economic, Social, and Cultural Rights 1966, to which Sierra Leone is a signatory, recognizes the right to work, health, and education among others. It encourages all State parties to work towards the realization of these rights.

"Each state party to the present Covenant undertakes to take steps individually and through international assistance and cooperation, especially economic and technical to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the present covenant by all appropriate means, particularly the adoption of legislative measures."⁷

"Under the 1991 Constitution, these rights have been reduced to mere Directive Principles of State policy, as contained in Chapter II of the Constitution. This sets out a range of principles regarding economic and social and cultural rights. Even though a preamble statement in section 4 provides that "all organs of Government and all authorities and persons exercising legislative, executive or judicial powers shall conform to, observe and apply the provisions of this Chapter.....", these provisions are merely directory in nature and not recognised as enforceable individual entitlements."⁸

"It is important to state here that Sierra Leone has not only ratified the International Covenant on Economic, Social and Cultural Rights 1966 but is also a state party to the African Charter on Human and People's Right, (adopted in 1981) which makes no distinction between Civil and Political Rights on the one hand and Economic, Social and Cultural Rights on the other hand. By ratifying these instruments, Sierra Leone has made binding international commitments to adhere to the standards laid down in these universal human rights documents".⁹

"However by virtue of the provisions of section 40(4)(d) of the Constitution, the primacy of the constitution over the international human rights treaties is well established. In terms of section 40(4)(d) "any Treaty, Agreement or Convention executed by or under the authority of the President which relates to any matter within the legislative competence of Parliament, or which in any way alters the law of Sierra Leone ... shall be subject to ratification by Parliament, by an

⁶ The 1991 Constitution Chapter II section 14

⁷ The International Covenant on Economic Social and Cultural Rights. Article 2 paragraph 1

⁸ Constitutional Review Research team Paper, Human Rights in Sierra Leone page 10

⁹ Constitutional Review Research team Paper, Human Rights in Sierra Leone page 10

enactment of Parliament or by a resolution supported by the votes of not less than one-half of the Members of Parliament”.

Section 40(4) of the Constitution therefore established the dualist nature of the Sierra Leonean legal system, in terms of which an international treaty can become part and parcel of domestic law only when it has been specifically domesticated through an Act of Parliament. So where there is a violation of the economic, social and cultural rights there appears to be no mechanism for redress as these rights have been declared non-justiciable by the constitution”.¹⁰

“However in countries like Kenya, South Africa and Uganda, the justiciable human Rights and freedoms have been enlarged to include social, economic and cultural rights as stated in the UN Covenant on Social, Economic and Cultural Rights. The entrenchment of these rights and fundamental freedoms obliges the State and every State organ to respect, protect, promote and fulfill them and to take legislative, policy and other measures, including the setting of standards, to achieve the realization of the rights guaranteed.

Within the international, regional and comparative national law jurisprudence, two approaches have found application in the judicialisation of economic, social and cultural rights”.¹¹

The question of justiciability of the provisions of Chapter II (Fundamental Principles of State Policy) became an important issue for the deliberations of the CRC in the review process.

Dimension of the issues

- a. Strengthening the existing Chapter II
- b. The justiciability of Chapter II
- c. Establishment of an additional chapter titled “Sovereignty of the People and Supremacy of the Constitution”.

4.4 Theme - Government and the People

Current context

Section 5(1) and (2) of the 1991 Constitution state:

“(1) The Republic of Sierra Leone shall be a State based on the principles of Freedom, Democracy and Justice.

(2) It is accordingly declared that—

- (a) sovereignty belongs to the people of Sierra Leone from whom Government through this Constitution derives all its powers, authority and legitimacy;

¹⁰ Constitutional Review Research team paper, Human Rights in Sierra Leone, pages 10-11

¹¹ Constitutional Review Research team paper, Human Rights in Sierra Leone, page 11

- (b) the security, peace and welfare of the people of Sierra Leone shall be the primary purpose and responsibility of Government, and to this end it shall be the duty of the Armed Forces, the Police, Public Officers and all security agents to protect and safeguard the people of Sierra Leone; and
- (c) the participation of the people in the governance of the State shall be ensured in accordance with the provisions of this Constitution.”

4.5 Observations

The major issue raised by experts and different stakeholders during nationwide public consultations was that human dignity and equality should be added to section 5(1).

During the consultations and investigations conducted by the Truth and Reconciliation Commission (TRC), the issue of human dignity and equality was raised as an important consideration for Sierra Leone to be added as a fundamental principle in the Constitution.

The TRC report frequently referred to the importance of including human dignity in rebuilding Sierra Leone to promote tolerance and respect and therefore made recommendations to include human dignity within the constitution and also called for the principle of equality to be introduced in Sierra Leone.

“Human life without dignity is substantially impaired. Respect for human dignity means not treating fellow human beings in a demeaning way. It means not subjecting any human to cruel, degrading or inhumane treatment. Respecting human dignity ultimately means respecting the life of each and every human being.”¹²

“The recommendations contained in this chapter are designed to facilitate the building of a new Sierra Leone based on the values of human dignity, tolerance and respect for the rights of all persons. In particular, the recommendations are intended to help create an open and vibrant democracy, in which all are treated as equal before the law.”¹³

“The Commission identified a need for individual and national restoration of dignity and the establishment of a new rights culture in Sierra Leone; a rights culture in which all Sierra Leoneans respect each other’s human rights, without exception. Under the heading “Protection of Human Rights”, the Commission recommends the enshrining of the right to human dignity in the Constitution and the upholding of the right to human life.”¹⁴

“The Commission calls for a new and equitable citizenship in Sierra Leone. A common or equitable citizenship is likely to promote a new patriotism and devotion to Sierra Leone. This

¹² TRC Volume 2 Chapter 3 page 126 para 50

¹³ TRC Volume 2 Chapter 3 page 117 para 2

¹⁴ TRC Volume 2 Chapter 3 page 122 para 35

new citizenship demands a new culture of mutual respect, understanding and tolerance by Sierra Leoneans for all Sierra Leoneans and other peoples.”¹⁵

“The Commission recommends, as its first imperative recommendation, that the right to human dignity be enshrined as a fundamental right in the Constitution of Sierra Leone 1991 (“the Constitution”).”¹⁶

During a consultative meeting between Parliamentarians and the CRC on 11th February 2014 when section 5(1) was discussed, there was unanimous agreement that “equality” should be added: “it was agreed unanimously to recommend that “Equality” should be added before “Freedom, Democracy and Justice “and that this should apply universally throughout the new Constitution. The new term will be “Equality, Freedom, Democracy and Justice.”¹⁷

The position paper of the Sierra Leone Women, “Many Messages, and One Voice” commented that:

“Issues and principles that we want the constitution to focus on this chapter are: statement of key national values: Equality, Accountability, Implementation, Service Delivery, Participation, Respect for One Another, Religious Tolerance, Honesty, Sincerity, Commitment”¹⁸.

The Open Government Partnership (OGP) is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. In the spirit of multi-stakeholder collaboration, the OGP is overseen by a Steering Committee of governments and civil society organizations in Sierra Leone, there are 17 Civil Society organizations and 17 representatives from government MDAs.

The position paper of the OGP and Open Government Initiative (OGI) recommended that citizens’ participation in the governance process should be strengthened to ensure transparent, effective and accountable governments:

“The 1991 Constitution which is now under review provides in Section 5 (2) (c) that citizens should participate in the governance of the state which is the more reason as Steering Committee Members of the OGP we have decided to make the following submissions to be included in the revised Constitution.

1. To establish a Clause in the Constitution on OGP and OGI
2. That the concept of OGP and OGI should be an entrenched clause in the constitution

¹⁵ TRC Volume 2 Chapter 3 page 122 para 37

¹⁶ TRC Volume 2 Chapter 3 page 126 par a 52

¹⁷ Report on Consolidated points from Parliamentarians and CRC Subcommittee Chapter 2 following workshop 11th February 2014 Page 1

¹⁸ Sierra Leone Women’s Position Paper, “Many Messages, One Voice” page 7

3. To guarantee continued collective civil society and government participation in governance thus fostering transparency, accountability and good governance.
4. OGP and OGI be included in the constitution as part of the governance structure of the country
5. That the President of the Republic of Sierra Leone serves as chairperson of the OGP and OGI process.¹⁹

During the nationwide public consultation exercise, there was a clear and consistent call for the principle of human dignity to be included in the revised Constitution.²⁰

4.6 Recommendations

Based on the feedback from the public, the CRC endorses the TRC recommendation and strongly recommends adding “Human Dignity” to the subsection (1) of section 5 relating to the Government and the people.

The CRC is convinced that it is imperative that the revised Constitution sends out a clear message that Sierra Leone is a State that respects human dignity and that it is a State which lays its foundations on the principles of equality for all its citizens.

Therefore, the CRC recommends the following amendment to section 5(1):-

“The Republic of Sierra Leone shall be a State based on the principles of Human Dignity, Equality, Freedom, Democracy and Justice.”

4.7 Protection and the welfare of the people

Current context

Section 5(2) of the 1991 Constitution states:

“(2) It is accordingly declared that—

- (a) Sovereignty belongs to the people of Sierra Leone from whom Government through this Constitution derives all its powers, authority and legitimacy;
- (b) the security, peace and welfare of the people of Sierra Leone shall be the primary purpose and responsibility of Government, and to this end it shall be the duty of the Armed Forces, the Police, Public Officers and all security agents to protect and safeguard the people of Sierra Leone;
- (c) and the participation of the people in the governance of the State shall be ensured in accordance with the provisions of this Constitution.”

¹⁹ Open Government Partnership (OGP) and Open Government Initiative (OGI) position paper pages 1-3

²⁰ Consultation Index Full Report pages various by district.

Although it is the primary responsibility of the Government of Sierra Leone to protect and safeguard the security, peace and welfare of people of Sierra Leone, section 5(2)(b) specifies this as being the duty of the Armed Forces, the Police, Public Officers and all security agents. The 1991 Constitution does not mention the people of Sierra Leone as playing any role in this.

Observation

After thorough consideration, the CRC agreed that the language in section 5(2)(b) should be updated in line with modern constitutionalism. In particular, the CRC considered that:-

A) It is the duty of every citizen to protect the security, peace and welfare of Sierra Leone and its people.

B) The Armed Forces and the Police are both national institutions, and their personnel are all public officers. In addition, “security agents” is a broad term which includes several government and private security agencies. It could also give rise to groups gathering together for malicious purposes and calling themselves security agents.

C) Mentioning the Armed Forces, the Police and security agents particularly in section 5(2)(b) may lead to confusion or conflict between the roles and responsibilities of civilian authorities and the Armed Forces for the security and protection of the people of Sierra Leone.

Sierra Leone has experienced political turmoil on several occasions leading up to and including the Civil War 1991 –2002 when military coups overthrew constitutionally-elected civilian governments.

The justification given for these forced transfers of power from civilian to military rule was that the actions had been taken in defence of the country and the security of the people²¹.

It is in this context that the CRC agreed that the security, peace and welfare of the people of Sierra Leone is the equal responsibility of all Sierra Leoneans, representatives, and public officers.

²¹ Brigadier David Lansana (1922–1975) justified his military coup of 1967 claiming he was upholding the Constitution to defend the country and protect the people of Sierra Leone. He took control of the army from the British colonial adviser, Brigadier R.D. Blackie when Lansana's close ally Prime Minister Albert Margai came to power. In 1967 Margai, who promoted a one party (non-democratic) state was defeated in the general elections. Lansana staged a brief coup, arresting Siaka Stevens, the democratic winner of the elections. That led to the emergence of the National Ruling Council (the NRC). In 1975, Lansana was executed for treason.

The NRC was overthrown by a group of army officers who called themselves the Anti-Corruption Revolutionary Movement (ACRM), led by Brigadier General John Amadu Bangura. The ACRM imprisoned Brigadier Andrew Juxon-Smith and other senior NRC members and restored the constitution.

4.8 Recommendations

The CRC recommends that in line with modern constitutions, there should be more inclusive provision for those responsible for the security, peace and welfare of the people of Sierra Leone. The CRC also discussed on the issue of national security, and proposed that these issues should be captured in a new comprehensive chapter on national security.

The CRC recognised that this section 5(2)(b) of the 1991 Constitution had been used to justify coups and other unlawful armed conflicts on the grounds that the intention behind these events was to protect the security, peace and welfare of the people.

The CRC therefore recommends that the wording of section 5(2)(b) should be rephrased to make the matter of national security of the country a collective responsibility.

The CRC proposes that section 5(2) (b) should read as follows:-

“The security, peace and welfare of the people of Sierra Leone shall be the primary purpose and responsibility of Government and it shall be the duty of all Public Officers and all representatives of the people to protect and safeguard the rights and freedoms of the people.”

4.9 Theme - Political objectives

Current context

Section 6(1) of the 1991 Constitution states:-

“(1) The motto of the Republic of Sierra Leone shall be Unity, Freedom and Justice.”

Observation

The CRC deliberated on two different proposals regarding section 6(1):-

- A) In addition to unity freedom and justice, the proponents of the change wanted to add patriotism, rule of law, democracy, participation, human dignity, equality.
- B) Another view expressed was that this would affect the National Coat of Arms and should therefore remain the same.

At diaspora engagements in Ghana and Kenya, the CRC consulted with members of the Sierra Leonean community. Members of the Sierra Leonean Community in Kenya particularly highlighted issue of national values and its importance to the behaviour of people, institutions and political parties in setting the interests of a nation.

In their position paper, they stated that “It is often said that a country's national values are the representation of the paramount values upheld throughout the common cultural experience of

that nation. The importance of shared values has become essential for citizens of a nation state to coexist and have mutual understanding. Some countries have gone as far as to enshrine these in their constitutions while others have had enough of an unspoken understanding for written values to be part of the constitution. Values are important because they set the behaviour of people, institutions and political parties in setting the interests of a nation”²².

They recommended that the CRC should put the issue of national values at the center of the common quest to build a strong and viable nation state. Issues such as integrity and patriotism should be addressed and clearly defined in that context, and Chapter II of the 1991 Constitution (Fundamental Principles of State Policy) should be revised.

4.10 Recommendations

The CRC considered both views, and discussed them with the stakeholders and general public.

The public endorsed the view that adding patriotism, rule of law, democracy, human dignity and equality would have no effect on the Coat of Arms and that these are desirable national values.

The CRC therefore proposed the following amendment to section 6(1):-

“The national values of Sierra Leone shall be Patriotism, Participation, Human Dignity, Equality, Unity, Freedom and Justice.”

4.11 Issue - To replace “Discourage” with “Prohibit”

Current context

Section 6(2) of the 1991 Constitution states:-

“(2) Accordingly, the State shall promote national integration and unity and discourage discrimination on the grounds of place of origin, circumstance of birth, sex, religion, status, ethnic or linguistic association or ties.”

Observation

Section 6(2) should be updated in line with modern constitutionalism and human rights principles. The word “discourage” in section 6(2) gives scope for discrimination, and so it was suggested that the word “discourage” should be replaced with “prohibit”, which forbids an action by law, rule or other statutory authority.

Throughout the process, the CRC was inundated with suggestions that issues of equality and principles of non-discrimination must be clearly and robustly stated in the revised Constitution.

²² Members of the Sierra Leone Community in Kenya position paper page 3

The Human Rights Commission of Sierra Leone (HRCSL) also endorsed this opinion in their position paper, stating:

“HRCSL also proposes that the revised Constitution include an articulation of National Values (compatible with human rights standards) in the revised Constitution. These could include:-

Truthfulness, Inclusiveness, Openness, Fairness, Respect for Women, Pride in Community, Volunteerism, Sustainability, Inclusiveness, Dialogue, Honesty, peace, tolerance, Love for fellow citizens, patriotism and non-discrimination.”²³

The Sierra Leone People’s Party (SLPP) Women’s Wing in its recommendation stated that “All forms of discrimination against women must be abolished in the Constitution.”²⁴

The Women’s Forum of Sierra Leone suggested in its position paper that the revised Constitution should ensure that “non-discrimination principles in political and public life should be strengthened and made more effective.”²⁵

The Child Rights Coalition, Sierra Leone also added its voice relating to discrimination, stating that: “not only should laws not be discriminatory, but there should be no discrimination in all political, economic, social and cultural levels, including the private public and family life.”²⁶

There were persistent calls throughout the consultation process that discrimination should be tackled in the revised Constitution:

During the inter-party dialogue held by the Political Parties Registration Commission (PPRC) in collaboration with the CRC and UNDP on 1st August, 2013, political parties and their associated wings strongly demanded that access to information should be a human right, and that any discriminatory provisions should be removed from the Constitution.²⁷

The National Youth Commission in its position paper called for discrimination on grounds of age to be recognised: “the constitution needs to include age in its discrimination definition. So that young people cannot be discriminated against because of their age.”²⁸

A coalition of one hundred and fifty civil society organisations and community-based organisations presented a joint submission to the CRC recommending that “The Constitution should include non-discriminatory measures.”²⁹

In addition, women from rural Sierra Leone made the point that “the principle of non-discrimination in political and public life to be strengthened and made more effective.”³⁰

²³ HRCSL position paper, page 6 para 3

²⁴ SLPP Women’s Wing Recommendations page 2, point 11

²⁵ Women’s Forum position paper page 3 bullet 9

²⁶ The Child Rights Coalition, Sierra Leone position paper , page 22

²⁷ Political Parties Engagement with the CRC report page 11 State Policy

²⁸ The National Youth Commission position paper pages 9, 4.2

²⁹ CSO Position Paper page 1, bullet point 8

During the CRC’s nationwide consultations, the majority of people made very firm and specific recommendations in respect of addressing discriminatory provisions within the constitution. They demanded that “A new clause be added enshrining that in public and private spheres, the principle of equality between men and women will be respected and adhered to.”³¹

The CRC paid heed to all of these recommendations and suggestions, and also considered international best practices, and thoroughly reviewed modern constitutions to ensure equality and non-discrimination provisions are recommended for inclusion in the revised Constitution.

Moreover, the CRC took cognizance of the fact that Sierra Leone is a signatory to international Conventions, Covenants and Treaties relating to eliminating discrimination within its territory.

4.12 Recommendations

The CRC is of the view that the wording in the 1991 Constitution is not concomitant with working towards eliminating discrimination. The CRC accordingly recommends amending this section to state that discrimination is prohibited in Sierra Leone.

The CRC strongly endorses all the positions and recommendations from the public and stakeholders, and recommends replacing the word “discourage” with “prohibit”.

Section 6(2) should therefore be amended to read as follows:

“Accordingly, the State shall promote national integration and unity and prohibit discrimination on the grounds of place of origin, circumstance of birth, sex, religion, status, ethnic or linguistic association or ties.”

4.13 Issue – Strengthening Anti-Corruption Provision

Current context

Section 6(5) of the 1991 Constitution states:

“The State shall take all steps to eradicate all corrupt practices and the abuse of power.”

This is the only reference made to corruption in the 1991 Constitution.

Observation

³⁰ Port Loko District Women’s Recommendation for the CRC, page 1, point f

³¹ Summary Report of Public Consultations by the CRC 2015 page 25 bullet points 8 and 9

The Anti-Corruption Act 2000 established the Anti-Corruption Commission. That Act was repealed in 2008 and replaced by the Anti-Corruption Act 2008, which enhanced the Anti-Corruption Commission's mandate to prevent, investigate, prosecute and punish for corruption and corrupt practices and to provide for other related matters.

The TRC in its report in 2004 welcomed the steps taken by the government of Sierra Leone to address corruption especially by the establishment of the Anti-Corruption Commission³².

The issue of corruption and corrupt practices, although being tackled, is still a cause of major concern in Sierra Leone. It is recognised that the revised Constitution should strengthen the single reference to it in the 1991 Constitution which was described as being too scanty and weak.

The CRC was conscious of the findings of the TRC that corruption had played a significant role in contributing to the Civil War:-

“The Commission found that the central cause of the war was endemic greed, corruption and nepotism that deprived the nation of its dignity and reduced most people into a state of poverty. The recommendations under the headings “Promoting Good Governance” and “Combating Corruption” are accordingly highlighted. The Commission calls on all of those involved in the public sector to usher in a new culture of ethics and service and to fight the scourge of corruption which saps the life-force of Sierra Leone.”³³

“Years of lapses in governance and unrestrained corruption produced the deplorable conditions that set the scene for bitter civil war in Sierra Leone.

There is no option but to address bad governance and corruption head on. It would not be an overstatement to say that the survival of the nation depends on the success of society in confronting these issues.”³⁴

The HRCSL in its position paper recommended that eradication of corruption needs to be addressed in the reviewed constitution: “Reduction of inefficiency, mismanagement and waste of public funds and assets should be recognized and addressed in the Constitution alongside the reference to eradication of corruption in Chapter II.”³⁵

The Conference of Principals of Secondary Schools (CPPS) Kono District made the observation that “in fighting corruption, good governance efforts rely on principles such as accountability, transparency and effective participation to shape anti-corruption measures.”³⁶ The CPSS

³² TRC Volume 2 Chapter 3 page 160 para 270

³³ TRC Volume 2 Chapter 3 page 121 para 34

³⁴ TRC Volume 2 Chapter 3 page 151 para 207

³⁵ HRCSL position paper page 6 para 4

³⁶ Position Paper on the Status of Human Rights CPSS Kono District page 8

statement continues: “until and unless the good/best practices in good governance are implemented without fear or favour we would ever remain far from sustainable development.”³⁷

The Revolutionary United Front Party (RUF) in its position paper also called for the corruption provisions to be strengthened.³⁸

During the nationwide consultations, people called for stronger measures and mechanisms to be introduced in the revised Constitution and other legislation to tackle corruption and corrupt practices at all levels, including public officials, parliamentarians, judiciary and the executive.³⁹

4.14 Recommendations

Taking into account the overwhelming concerns expressed, the CRC concluded that revamped and stronger provisions on corruption, including a detailed chapter on leadership and integrity, should be added to the revised Constitution. The leadership and integrity provisions should give clear guidance as to responsibilities of leadership, conduct of State officers, financial probity of State officers, restrictions on activities of State officers, and citizenship, to satisfy the public demand for transparency and effectiveness in tackling corruption at all levels.⁴⁰

The CRC recommends that section 6(5) should be amended to read as follows:

“(5) The State shall take all steps to eradicate all corrupt practices and the abuse of power.

All organs of Government, authorities and public officers shall not-

(a) act in any way that is inconsistent with this Constitution or their office; and

(b) expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests.”

4.15 Theme - Economic Objectives

Current context

Section 7 of the 1991 Constitution gives guiding principles to the government to promote national prosperity through prudent management of natural resources to maximise welfare and benefits for all citizens.

³⁷ Position Paper on the Status of Human Rights CPSS Kono District pages 8-9

³⁸ RUF position paper page 2

³⁹ District Level and Western Area Consultation Report 2015

⁴⁰ The government should consider adding a new chapter on leadership and integrity

The section also provides general principles on protecting and promoting economic activities including focus on agricultural development to ensure food security and national self-sufficiency.

Section 7 states:

“7. (1) The State shall within the context of the ideals and objectives for which provisions are made in this Constitution—

- (a) harness all the natural resources of the nation to promote national prosperity and an efficient, dynamic and self-reliant economy;
- (b) manage and control the national economy in such a manner as to secure the maximum welfare and freedom of every citizen on the basis of social justice and equality of opportunity;
- (c) protect the right of any citizen to engage in any economic activity without prejudice to the rights of any other person to participate in areas of the economy;
- (d) place proper and adequate emphasis on agriculture in all its aspects so as to ensure self-sufficiency in food production; and
- (e) ensure that Government shall always give priority and encouragement to Sierra Leoneans to participate in all spheres of the economy in furtherance of these objectives.”

4.16 Observation

During the review process, Sierra Leoneans demanded comprehensive provisions on lands, natural resources and long-term national planning and development.

In 2013, the Government constituted a committee on development and transformation, charged with the responsibility of taking stock of the progress Sierra Leone has made as an independent nation over the last 50 years and charting the way forward for the next 50 years. The CRC organised the Sierra Leone Conference on Development and Transformation, which made a number of proposals, key among which was the aspiration that Sierra Leone should become a middle income country by 2035.

The Agenda for Prosperity (AfP) sets out the vision and development agenda of the Government, and is designed for Sierra Leone to overcome challenges to its economic development, including:

- (a) the relatively undiversified nature of the economy, with high unemployment;
- (b) a rate of economic growth that is too low to have the desired impact on poverty;
- (c) potential external shocks such as inflationary pressures from international food and fuel prices;

- (d) potential fluctuations in international prices of commodity exports;
- (e) the possibility of “Dutch Disease”, that is distortion to the economy caused by an appreciating exchange rate due to earnings from commodity exports;
- (f) high domestic debt; and
- (g) low domestic revenues.

Macroeconomic and fiscal strategies set out in the AfP include: enhancing domestic revenue by improving tax administration and the tax base; improving budget planning, re-orienting public expenditures in favour of capital spending while rationalising recurrent expenditures; monetary policy focusing on maintaining price stability, consistent with high, sustainable economic growth; a flexible exchange rate regime; and developing a medium term debt strategy⁴¹.

In assessing the economic development of the country, the AfP states: ‘The economy has not generated the much desired gainful employment, partly because production has remained undiversified, dominated by subsistence agriculture’.

The AfP gives priority to promoting diversification towards economic sectors with long-term potential for inclusive, sustainable growth, to increasing value added in production, and to removing constraints to women’s participation in the economy. Strategies will focus on agriculture (both small and larger scale, subsistence and cash crop), fisheries, manufacturing, and tourism.

In all sectors, the AfP pledges that the Government will work to remove constraints, for example by promoting feeder roads and other infrastructure, microfinance and wider financial access including seeking foreign investment, marketing and export support, research, training and guidance, setting up economic hubs and special economic zones, and institutional support. The AfP emphasizes improved coordination among MDAs and other actors.

During the nationwide consultations and engagements with stakeholders, many participants expressed their dissatisfaction over the inequitable distribution of resources, the high level of unemployment and the decline in revenue from natural resources.

The Ebola epidemic had a devastating impact on the national economy and on foreign direct investment.

The CRC took into consideration both the AfP’s long-term economic and development plan and also the current economic scenario.

The CRC recognised that the government had visualised a long-term plan, but lack of coordination between institutions and ministries is a major challenge to transform these goals and objectives into reality.

⁴¹ Agenda for Prosperity, Sierra Leone’s Third Generation Poverty Reduction Strategy Paper (2013 – 2018), page 6

4.17 Recommendations

The CRC proposes strengthening economic and development-related provisions further in the revised Constitution and therefore recommends the following:

- A) **a comprehensive chapter on lands, natural resources and the environment in the revised Constitution to mainstream all these important sectors to maximise the benefits for the people of Sierra Leone.**
- B) **a chapter on a national planning and development to ensure effective coordination between ministries and institutions to develop the long-term national development plan in the AFP.**

4.18 Theme - Social Objectives

Current context

Section 8(1) of the 1991 Constitution states:-

“(1) The Social Order of the State shall be founded on the ideals of Freedom, Equality and Justice”.

Observation

Human dignity should be included in the social order of the State to address discriminatory practices and policies affecting marginalised groups in society.

The CRC observed that it is important to make specific reference to establishing a society which upholds and promotes the principle of respect for every person’s human dignity. This has already been recognised earlier in the chapter, fundamental principles state policy, and particularly all the justifications, observations provided in this report detailed in the themes government and the people, and political objectives.

The CRC received a position paper on women’s rights from Oxfam in partnership with the 50/50 Group of Sierra Leone. The paper noted that women constitute 60% of the Sierra Leonean populace and commented that women’s voices should therefore be an integral part of the constitutional review process.

The position paper emphasized the need to redress gender discrimination, and stated that: “clear Constitutional Confirmation is to be given of the State’s obligation to provide Affirmative Action and to institute Temporary Special Measures to address Sierra Leonean women’s long standing and deepening economic backwardness, poverty and exclusion from leadership. The Constitution is to enshrine the Right to Affirmative Action in Employment so that any employer with 10 employees should have at least 50 percent of each gender. The Constitution is to include

a Minimum 50% (Fifty Percent) Quota for women's participation at all levels in public and private sectors and spheres."⁴²

The Campaign for National Unity-Sierra Leone (CNU-SL) raised their concern on the state of unemployment of youth in Sierra Leone and recommended that the Constitution must ensure that the youth are equally provided opportunities in socio-economic and governance processes.

The CNU-SL stated that "the Sierra Leone National Youth Policy is anchored on the twin notion of youth empowerment and the creation of a responsible citizenry. Yet, it is disheartened to note that youth unemployment remain almost 60-70 percent for ages 15-35 in Sierra Leone. This represents among the highest in West Africa. Young people account for 40 percent of the world's population - the largest youth generation in human history - but they are disproportionately affected by unemployment. This is a persistent problem. Approximately 30 percent of young people are not in employment, training or education, and around the world, young women are worse off. We need to act now, and we need to act together if we are going to realize the significant opportunities presented by this many young people today".

"CNU-SL recommends that the CRC report clearly integrate sections and provisions that stress the importance of an independent National Youth Commission and the need for a total revamp with adequate structures, and resources devoid of political interference; structures and institutional processes that can enhance effective and efficient functioning of the National Youth Commission with the aim of reducing the level of youth unemployment in Sierra Leone. The commission should be able to commission national research looking at trends, identifying constraints, and proffer potential solutions to the youth employment crisis based on knowledge of successful and promising programmes in collaboration with development partners and the private sector."⁴³

The Sierra Leonean community in Kenya highlighted best constitutional practices in other African countries and demanded that gender equality should be the cardinal principle of national development.

They stated in their position paper that "there are often customary and religious tenets that affect a large number of women. It is therefore important that any law being put into place not ignore those tenets. The constitution should go beyond just providing a formula for equal representation of women in socio economic and political life. It must clearly include a provision that enshrines the protection of women and young girls from gender-based violence and gender-based discrimination".

In addition, they recommended that "the Constitution should promote gender equality as a cardinal principle of national development and have this enshrined. It must also provide a formula for equal representation of women in the socio-economic and political life of the country, and for the protection of women and young girls from gender-based violence and discrimination. Provision should also be made for affirmative action in favour of women and

⁴² Oxfam in partnership with the 50/50 Group of Sierra Leone position paper on women's rights page 10

⁴³ CNU-SL position paper page 8

other marginalised groups, to bridge gender gaps in education, health and elective and representative office (quota system). Traditional and religious practices that are against human rights should not be considered binding and should be outlawed.”⁴⁴

Moreover, the community placed emphasis on the protection of children and youth and their rights as well as promoting their full participation and inclusion in governance. They recommended that “the Constitution should promote the rights and protection of children and the youth, promoting their participation in national development, and this must be enshrined. The Constitution must also provide a formula for equal representation of young people in the socio-economic and political life of the country.”⁴⁵

The 1991 Constitution has discriminatory laws related to women in the entrenched clauses. The 2007 gender laws related to registration of customary marriages, inheritance devolution of property and domestic violence have sought to remedy this. In keeping with the constitutional provision for amendment of entrenched clauses, these amendments should go through a national referendum. They should therefore be included in the revised Constitution to prevent any constitutional challenges to their validity.

4.19 Recommendations

The CRC reviewed all the submissions made, and was mindful of the emphasis that the TRC had placed on embodying human dignity as a fundamental right.

The CRC agreed that a culture of respect for everyone’s human dignity would have a beneficial impact on encouraging a more inclusive society.

The CRC endorses the TRC recommendation, and therefore recommends adding “Human Dignity” to this section 8(1) so that it reads as follows:-.

“The social order of the state shall be founded on the ideals of human dignity, freedom, equality and justice.”

4.20 Issue – Provision on Mandatory Healthcare

Current context

Section 8(3)(c) and (d) of the 1991 Constitution states:

“The State shall direct its policy towards ensuring that—

⁴⁴Members of the Sierra Leone Community in Kenya position paper page 6

⁴⁵Members of the Sierra Leone Community in Kenya position paper page 7

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

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

Observation

Sierra Leone is recognised as one of the least developed countries and has one of the highest infant and maternal mortality rates in the world. According to the World Bank statistics, in 2015 the maternal mortality ratio per 100,000 live births was 1,360.⁴⁶

There have been calls endorsing the idea proposed in the PTC Report to delete the words “having due regard to the resources of the state” in this section. This in effect is calling for free healthcare service to be extended in Sierra Leone for everyone.

On 27 April 2010, Independence Day, the government of Sierra Leone introduced a free healthcare policy to address the high infant and maternal death rates. This policy was aimed at providing sufficient and free healthcare for pregnant women, lactating mothers and children under five. The Free Health Care Policy (FHCP) was launched under the supervision of the Ministry of Health and Sanitation, with initial support from UNICEF.

The Ebola crisis in Sierra Leone affected the FHCP because the medical services in the country were overwhelmed, and so pregnant women were unable to access general medical care. The FHCP has been reintroduced, but the government needs to address some serious issues including logistics, supply of drugs and human resource capacity of health care practitioners.

The CRC took into account the recommendation made by PTC Report to delete the words “having due regard to the resources of the “State.”

The Governance Stakeholders’ Coordination Forum (GSCF) expressed the view that as a minimum, a right to health should be stated: “every person has the right to the highest attainable standard of health, which includes the right to healthcare services including reproductive health care”.⁴⁷

The CRC was mindful of the unanimous decision by Parliamentarians of both parties and CRC members to delete this phrase at the meeting held to discuss the chapter on State Policy.⁴⁸

⁴⁶ “Maternal mortality ratio is the number of women who die from pregnancy-related causes while pregnant or within 42 days of pregnancy termination per 100,000 live births. The data are estimated with a regression model using information on the proportion of maternal deaths among non-AIDS deaths in women ages 15-49, fertility, birth attendants, and GDP: <http://data.worldbank.org/indicator/SH.STA.MMRT>

⁴⁷ GSCF report pages 14 and 15 para 7.7.4 A

⁴⁸ Consolidated Input from Parliamentarians and CRC Subcommittee Chapter 2 13th February 2014 page 2

In the Women's Conference in Bo, the women called for amendment to section 8(3)(c) and (d) of the 1991 Constitution, so as to remove the expression 'having due regard to resources of the state' from the section⁴⁹.

In a position paper presented following a Kenema district consultative meeting with the All People's Congress (APC), the recommendation was made that "free healthcare must be maintained and should be grafted into the new constitution."⁵⁰

The SLPP Women's Wing recommended that "State Policy should give priority to spending money on providing services for the people not on costs of government".

There were also requests that free and specialist healthcare services be extended to cover the aged⁵¹ and persons with disability.⁵²

An individual submission requested that the Constitution includes "extending the free healthcare initiative to include the youths, vulnerable, elderly men and women as well as teenagers."⁵³

The Sierra Leone Women's position paper recommended a "new right to health, including sexual and reproductive health"⁵⁴ to be included in the revised Constitution as a human right.

The Women's Forum in Sierra Leone reiterated this: "women and girls' sexual and reproductive health rights should be included,"⁵⁵ as did the Port Loko Women's Association Women's position paper.⁵⁶

The Sierra Leonean community in Kenya emphasised that epidemics such as Ebola can be avoided only by strengthening the national legal framework and building the institutional capacity of the health sector.

"The health of a nation's population is fundamental to that nation's well-being, socio-economically, politically and indeed culturally. Health issues should therefore be elevated to the highest level of national concern, especially in light of the recent Ebola pandemic that devastated our country and its people".

They recommended that "the right to health and well-being should be clearly enshrined in the Constitution, with clear guidance on how those rights are enforced (through policies, legislation, legal actions, and so forth). It should be noted that Section 8(3)(d) of the 1991 Constitution states that "the State shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons, having due regard to the resources of the State. However, section

⁴⁹ Report on a two-day Women's Conference held in Bo District Council Hall on 6th -7th March, 2014, page 6.

⁵⁰ APC District Consultative Meeting of the CRC-Kenema District position paper 6th May 2015 page 2 issue 6

⁵¹ Salone Organisation for the Welfare of the Aged position paper page 4 para 1, and National Association for Assistance to Senior Citizens in Sierra Leone page 2 para 2

⁵² National Disabled Women's position paper page 2 para 10

⁵³ Mohamed Fofabah, Kaffu Bullom Chiefdom. Page 1 para 2

⁵⁴ Sierra Leone Women's position paper page 9 para 1

⁵⁵ Women's Forum position paper page 3

⁵⁶ Port Loko Women's District Women's recommendations page 2

14 of the said Constitution states that it is not a legal right and cannot be enforceable in any court of law but that Parliament has a duty to apply it in making laws. This inconsistency must be addressed by the CRC.”⁵⁷

The Society for Peace and Development wrote “include free healthcare in the constitution.”⁵⁸

During the national consultations, there was an overwhelming positive response to a question put to the people as to whether the Government should have enough resources available to meet its obligations.⁵⁹ The summary report of the public consultations highlights this: “they also stated that it is mandatory for Government to provide basic needs such as education, health, shelter and portable water, and that the Government should have enough resources available to meet its obligations and provide for its citizens.”⁶⁰

The public made it clear that they considered the right to health and education as a basic human right. Under the heading Special Areas Concerning the Effective Operations of Human Rights and Freedom of the Individual, the same report says: “stakeholders submitted that the Constitution should have a separate and distinct chapter setting out the Human Rights of every person in Sierra Leone and should include the right to shelter, health and education-basic Human Rights.”⁶¹

The report continues that stakeholders suggested that the expression ‘having due regard to the resources of the state’ should be deleted from section 8(3)(d) of the 1991 Constitution.⁶²

4.21 Recommendations

The CRC was conscious of the widespread and consistent demand for a universal free healthcare system to be introduced in the country. The CRC therefore endorsed all the recommendations presented by the stakeholders and also the PTC Report recommendation to delete the phrase “having due regard to the resources of the State” in section 8(3)(c) and (d) the 1991 Constitution so that it reads as follows:-

“(3) The State shall direct its policy towards ensuring that—

- (a) every citizen, without discrimination on any grounds whatsoever, shall have the opportunity for securing adequate means of livelihood as well as adequate opportunities to secure suitable employment;**
- (b) conditions of service and work are fair, just and humane and that there are adequate facilities for leisure and for social, religious and cultural life;**

⁵⁷ Members of the Sierra Leone Community in Kenya position paper page 5

⁵⁸ Society for Peace and Development position paper page 9

⁵⁹ Final State Policy and Human Rights Data Entry Analysis Report page 11

⁶⁰ Summary Report of Public Consultations by the CRC 2015 page 23 para 2

⁶¹ Summary Report of Public Consultations by the CRC 2015 page 24 para 1

⁶² Summary Report of Public Consultations by the CRC 2015 page 25 bullet point 14

- (c) **the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused, and in particular that special provisions be made for working women with children;**
- (d) **there are adequate medical and health facilities for all persons;**
- (e) **there is equal pay for equal work without discrimination on account of sex, and that adequate and satisfactory remuneration is paid to all persons in employment; and**
- (f) **the care and welfare of the aged, young and disabled shall be actively promoted and safeguarded”.**

4.22 Issue – Persons with Disability

Current context

Section 8(3)(f) of the 1991 Constitution states:

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

Observation

- A. The language should be replaced to reflect modern terminology used for persons with disability.
- B. The State should ensure that the undertakings outlined in Part V of the Persons with Disability Act 2011 should be implemented in full.

The 1991 Constitution uses the term “disabled” instead of the phrase “persons with disability”, which is used in the Persons with Disability Act 2011. The long title to the Act describes it as “Being an Act to establish the National Commission for Persons with Disability, to prohibit discrimination against persons with disability, achieve equalization of opportunities for persons with disability and to provide for other related matters.”

Part V of the Persons with Disability Act 2011 outlines the rights and privileges of persons with disability which includes, the right to free education, protection from discrimination in educational institutions, courses to be introduced in public educational institutions, provision of free medical services, compulsory screening at health centres, prohibition of denial of employment, protection from discrimination in employment, employer to retain or redeploy employee, discriminatory contracts void, tax deductions for employers of persons with disability, right to barrier-free environment, access to public transport, adjustment orders, right of access to public premises, services and amenities, sports and recreation, voting access and organizations to register.

The CRC had several meetings with the Persons with Disability Commission during which the Commission urged the CRC to update the language throughout the revised Constitution as a

matter of priority as the current phrase is unacceptable. Terms such as “disabled” and “handicapped” should be removed and replaced with the term “persons with disability.”

This view was endorsed in a submission from the African Youth with Disabilities network Sierra Leone (AYWDN).⁶³

The Sierra Leone community in Kenya reminded the CRC that “the rights of minority and other vulnerable people, including those with disabilities, should be protected and should be provided for in the Constitution. The rights of minority and vulnerable people including those with disabilities should be protected and enshrined in the Constitution.”⁶⁴

The CRC agreed that the terminology used in the 1991 Constitution is inappropriate, outdated and in contradiction with the Persons with Disability Act 2011.

The United Nations Convention on the Rights of Persons with Disabilities launched on 6th December 2006 states that the phrase “persons with disability” should be adopted. The Convention recognises the rights of persons with disability to have equal access to the social, economic, and particularly in the area of health and education.⁶⁵

The Convention encourages States and signatories to the Convention to enable persons with disability to fully enjoy all human rights and fundamental freedoms.

The CRC was grateful for the expert guidance from the Persons with Disability Commission in this regard, as well as the concordant views of AYWDN and accepts their recommendation.

4.23 Recommendation

The CRC recommends replacing the term “disabled” with “persons with disability” as being a more appropriate and modern phrase. In addition, it urges the Government to ensure all pronouncements and commitments made in domestic legislation and the international arena are fully upheld and implemented.

The revised section 8(3)(f) should therefore read as follows:

“the care and welfare of the aged, young and persons with disability shall be actively promoted and safeguarded”.

4.24 Issue - Social Security and Social Assistance

Current Context

Section 8(3) of the 1991 Constitution states:

⁶³ African Youth With Disabilities Network position paper page 3 para 3

⁶⁴ Members of the Sierra Leone Community in Kenya position paper page 6

⁶⁵ United Nations Convention on the Rights of Persons with Disability, page 3, para 5

“(3) The State shall direct its policy towards ensuring that—

- a. every citizen, without discrimination on any grounds whatsoever, shall have the opportunity for securing adequate means of livelihood as well as adequate opportunities to secure suitable employment;
- b. conditions of service and work are fair, just and humane and that there are adequate facilities for leisure and for social, religious and cultural life;
- c. the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused, and in particular that special provisions be made for working women with children, having due regard to the resources of the State;
- d. there are adequate medical and health facilities for all persons, having due regard to the resources of the State;
- e. there is equal pay for equal work without discrimination on account of sex, and that adequate and satisfactory remuneration is paid to all persons in employment; and
- f. the care and welfare of the aged, young and disabled shall be actively promoted and safeguarded.”

Observation

The revised Constitution should make provision for social security and social assistance to be given to persons who are unable to support themselves or their dependents.

The objectives of the Ministry of Social Welfare Gender and Children’s Affairs (MSWGCA), the National Commission for Social Action and National Social Security and Insurance Trust are to provide social security and social assistance to the specific sections of society.

The MSWGCA is mandated to assess, evaluate and address the welfare of vulnerable groups. In addition, the MSWGCA must ensure that the rights of children are in accordance with Government’s current policies and international Conventions.

The National Social Security and Insurance Trust (NASSIT) is the statutory public insurance trust which administers Sierra Leone’s National Pension Scheme. NASSIT was established “to provide retirement and other benefits to meet the contingency needs of workers and their dependents and to provide other related matters”. The Trust is autonomous and is a State body.

The Scheme is financed from contributions made by employers and employees. The social insurance system covers all employees in the public and private sector, and is mandatory for all employers to ensure that their workers are registered with the scheme. The self-employed can be covered on a voluntary basis.

Social protection is specified in one of the pillars of the National Commission for Social Action (NaCSA). Established by the National Commission for Social Action Act 2001, the functions of

NaCSA are laid down in section 11: “The object for which the Commission is established is to provide and otherwise engage in social relief programmes and to promote community-based demand-driven and sustainable development activities leading to the alleviation of poverty and improvement in the speed, quality and impact of development initiatives in cooperation with non- governmental organizations, relevant ministries, private sector partners and other interested parties”.

NaCSA’s mission is “To promote community-based, demand-driven and sustainable social and economic activities leading to the alleviation of poverty, reduction in the threat of renewed conflict and improvement in the speed, quality and impact of development initiatives, while also providing social protection to vulnerable groups, in collaboration with other stakeholders in the country’s development endeavours”.⁶⁶

NaCSA is a semi-autonomous government agency which augments the work of social sector Ministries and Agencies and local authorities in delivering social services to deprived and remote communities across the country.

Social protection is also a pillar in the AfP. It includes policies and programmes designed to help individuals improve resilience against the impact of loss of income and consumption capacity, and ensure equity through equal opportunities to services. In addition, the Commission played a leading role in the development of the Strategy and Implementation plan for rolling out the social protection policy.⁶⁷

NaCSA recommended to CRC during a consultative meeting held on 05 October 2014 that a new provision should be added in the revised Constitution relating to social security and social assistance to persons unable to support themselves and their dependents.

The CRC also took into account Article 22 of the Universal Declaration of Human Rights 1948 which states:

“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

The CRC also reviewed constitutions from other countries including Kenya, South Africa and Sweden:

Section 43(1) to (3) of the Kenyan Constitution 2010 provide for social security, as follows:

“43. (1) Every person has the right-

⁶⁶ <http://www.nacsa.gov.sl/about-nacsa/>

⁶⁷ <http://www.nacsa.gov.sl/social-protection/>

- (a) to the highest attainable standard of health, which includes the right to healthcare services, including reproductive health care;
- (b) to accessible and adequate housing, and to reasonable standards of sanitation;
- (c) to be free from hunger, and to have adequate food of acceptable quality;
- (d) to clean and safe water in adequate quantities;
- (e) to social security; and
- (f) to education.

(2) A person shall not be denied emergency medical treatment.

(3) The State shall provide appropriate social security to persons who are unable to support themselves and their dependants.”

Section 27 of the Constitution of South Africa 1996 also makes provision for social security as follows:

“27. Health care, food, water and social security

(1) Everyone has the right to have access to-

- (a) health care services, including reproductive health care;
- (b) sufficient food and water; and
- (c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

(3) No one may be refused emergency medical treatment.”

Article 2 of the Constitution of Sweden includes provision for social security:

“Public power shall be exercised with respect for the equal worth of all and the liberty and dignity of the individual. The personal, economic and cultural welfare of the individual shall be fundamental aims of public activity. In particular, the public institutions shall secure the right to employment, housing and education, and shall promote social care and social security, as well as favourable conditions for good health.”

During the CRC engagement with Parliamentarians, the issue of social security and social assistance was discussed and it was unanimously agreed that there should be a provision for social security in the revised Constitution.⁶⁸

In addition, the CRC received a position paper from the Salone Organisation for the Welfare of the Aged (SOWA) in collaboration with NASSIT Pensioners' Association, Sierra Leone ex Servicemen's Association, Sierra Leone Pensioners Union, the National Association for Assistance to Senior Citizens, and the National Social Safety Net.

The position paper stated that: "the failure of the current 1991 Constitution in making specific provisions for the protection of the human rights of older people coupled with the failure on the part of successive governments to legislate a National Social protection Strategy; has been largely responsible for the indifference of governments with regards to their welfare obligations and responsibilities of the aged. The status quo if maintained has serious repercussions for older people".⁶⁹

SOWA made the following detailed recommendations:

"If you ask any group of older people at any time anywhere, what their most pressing concerns are, they would tell you, Good Health, Financial Security, Inclusion and Independence.

In that light, after extensive consultations, we the representatives of the aged in Sierra Leone submit that under mentioned issues be included as part of a dedicated provision for safeguarding the rights and welfare needs of the aged in the Constitution of Sierra Leone.

1. Health Facilities

- Free healthcare facilities extended to cover the aged
- Geriatric wards to be provided in every District Hospital
- Training of geriatric specialist nurses
- Mobile medical outreach teams to reach out to the home-bound aged
- Institution of feeding programs for the vulnerable aged.
- Provision of free eye, ear and dental care for the aged.

2. Financial Security

- Provision of monthly financial subsidy to vulnerable aged.
- Free transport for the elderly on Government transportation system

⁶⁸ Consolidated Input from Parliamentarians and CRC members to Consider Chapter 2 13th February 2014 page 3

⁶⁹ SOWA position paper page 1

3. Free Housing Facilities

- Free housing facilities for vulnerable aged.
- Provision of resource and recreational centres for the aged.

4. General issues

- The social protection policy be enacted into law
- A national policy on ageing be developed by law
- National commission for the aged
- Prohibit discrimination against the elderly
- The aged be given priority in queues
- Any verbal or physical assault on an elderly be a criminal offence
- Government to provide financial support to welfare organizations for the aged.
- Local Governments to factor the welfare of the aged in their development plans
- Government institutes special welfare fund (SWF) for the aged
- Mining/private companies contribute to the SWF for the aged as part of their corporate social responsibility.⁷⁰

4.25 Recommendations

The CRC evaluated all the available information, and placed weight on the recommendations made by NaCSA. The CRC also acknowledged the position paper submitted by SOWA in collaboration with partner associations.

The CRC recommends that comprehensive policies must be developed and implemented to ensure that the needs of elderly citizens are respected and observed.

After substantive deliberations on all the issues and observations, the CRC recommends that there should be a new provision for social security and social assistance. Section 8(3)(g) should therefore read:

⁷⁰ SOWA position paper pages 4 and 5

“The State shall provide appropriate social security and social assistance to persons who are unable to support themselves and their dependants and parliament shall enact legislation to that effect.”

4.26 Theme - Educational Objectives

Current context

In relation to its obligations relating to ensuring there are equal rights and adequate educational opportunities for all its citizens, section 9(1) of the 1991 Constitution states:-

“9. (1) The Government shall direct its policy towards ensuring that there are equal rights and adequate educational opportunities for all citizens at all levels by-

- (a) ensuring that every citizen is given the opportunity to be educated to the best of his ability, aptitude and inclination by providing educational facilities at all levels and aspects of education such as primary, secondary, vocational, technical, college and university;
- (b) safeguarding the rights of vulnerable groups, such as children, women and the disabled in security educational facilities; and
- (c) providing the necessary structures, finance and supportive facilities for education as and when practicable.”

The current legislation in relation to education is the Education Act 2004, section 3(3) of which provides:

“Basic education shall be, to the extent specified by the Minister by statutory instrument, free in government assisted primary and junior secondary schools and private schools shall not frustrate the right to basic education conferred by subsection (2) by charging fees that are, in the opinion of the Minister, unreasonable.”

In addition, section 7(1) of the Act states:

“Junior secondary school (JSS) constitutes the three years of schooling after primary school and forms part of the formal basic education in Sierra Leone; and shall, accordingly, be compulsory and free to the extent specified by the Minister under subsection (3) of section 3.”

Sierra Leone is a signatory to the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), which entered into force on 3 January 1976.

Article 10(1) of the ICESCR states that: “the States Parties to the present Covenant recognize that: the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.”

In addition, Article 13 of the ICESCR emphasizes that:

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - a Primary education shall be compulsory and available free to all;
 - b Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - c Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - d Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - e The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.⁷¹

4.27 Issue – Free and Compulsory Education

A. Free and compulsory education for all.

⁷¹ International Covenant on Economic, Social and Cultural Rights, Articles 10 and 13

- B. Proposed changes to delete the phrase “as and when practicable” from section 9(1)(c) and 9(2)(c) of the Constitution.

Observation

There was a great demand throughout the country for free education to be provided, and for the principle that the government should be held accountable for this.

In 2007, the PTC Report received recommendations from a number of stakeholders that the provisions in Chapter II be made justiciable, especially issues of prime importance in particular education and health. The PTC Report states:

“This Chapter is to be amended by the addition of items of State responsibility which were considered important both by the Commission and some of those who made representations on the amendment of some of the existing list. We, the Commission, after extensive discussions, decided that these principles should not be made justiciable⁷².”

Instead, the PTC Report proposed amendments in relation to education as follows:

“Section 9(1)(c) of the 1991 Constitution reads:

The Government shall direct its policy towards ensuring that these are equal rights and adequate education opportunities for all citizens at all levels by providing the necessary structures, finance and supportive facilities for education as and when practicable.

Proposed amendment: by the deletion of the words “as and when practicable.”

Section 9(2)(c) of the 1991 Constitution reads:

The Government shall strive to eradicate illiteracy, and to this end, shall direct its educational policy towards achieving free senior secondary education as and when practicable.

Proposed amendment: by the deletion of the words “as and when practicable”.

The recommendation in the PTC Report was discussed at length during the CRC engagement with Parliamentarians, and they agreed unanimously on the deletion of the phrase “as and when practicable.”⁷³

The Governance Stakeholder’s Coordination Forum (GSCF) position paper recommended the adoption of a provision on the right to education after they had examined the Ghanaian and

⁷² PTCR page 20

⁷³ Consolidated Input from Parliamentarians and CRC members 13th February 2014 page 3

South Sudanese models, stating that international best practice needs to be clearly captured under State policy within the revised Constitution.⁷⁴

The Constitution of Ghana 1992 states:-

“25. (1) All persons shall have the right to equal educational opportunities and facilities and with a view to achieving the full realisation of that right-

- (a) Basic education shall be free, compulsory and available to all
- (b) Secondary education in its different forms, including technical and vocational means, and in particular, by the progressive introduction of free education
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular, by progressive introduction of free education
- (d) Functional literacy shall be encouraged or intensified as far as possible
- (e) The development of a system of schools with adequate facilities at all levels shall be actively pursued.

(1) Every person shall have the right, at his own expense to establish and maintain a private school or schools at all levels and of such categories and in accordance with such conditions as may be provided by law.”

South Sudan

The provisions on the right to education and the right to health in section 29 of the transitional Constitution of the Republic of South Sudan 2011 state:-

“29 (1) is a right for every citizen and all levels of government shall provide access to education without discrimination as to religion, race, ethnicity, and health, status including HIV/AIDS, gender, and disability

(2) All levels of government shall promote education at all levels and shall ensure free and compulsory education at the primary level, they shall also provide free literacy eradication programs.”

During the CRC’s engagement with political parties, the view was reinforced that the right to education, together with the right to health, are human rights, and therefore the people of Sierra Leone should have those rights.

⁷⁴ GSCF position paper pages 15 - 16

During a consultation meeting in Bo, Sierra Leone, the All Political Parties Youth Association (APPYA) emphasised that “free health and education must be mentioned under State Policy and also included in the Human Rights provisions of Chapter III to make it justiciable”.⁷⁵ In addition, the All Political Parties Women’s Association (APPWA) called for free and equal opportunity of education for women and girls from primary school to University, with adequate teaching and learning materials. APPWA also called on the Government to establish and support adult education and skills training centres at district and chiefdom levels to promote women and girls’ education, adding that the law should be enforced against teachers who violate the teachers’ code of conduct⁷⁶.

During the nationwide consultations held from 4th to 25th June, 2015, the citizens of Sierra Leone were enthusiastic in their calls that free, quality education must be guaranteed in the revised Constitution.

The Sierra Leone Women’s (SLW) position paper “Many Messages, One Voice” called for a constitutional right to compulsory free education and training for women and girls at primary, secondary and tertiary levels. The paper added that it should be the responsibility of the Government to provide the means and methods, taking into account information technology, education and communication, to ensure that every person has the right and opportunity to be educated. The paper also recommended that there shall be protection by Government of school girls/teenage mothers and other vulnerable persons (including children in conflict with the Law), to access continuous, quality education and training.⁷⁷

Many submissions reiterated the call for free education. The Society for Peace and Development during their youth dialogue symposium on the constitutional review process called for “availability of good, free education for youth and for the establishment of Technical and Vocational Institution for underprivileged youth”⁷⁸.

The National Council of Paramount Chiefs (NCPC) during a Consultative Dialogue with CRC held in Bo in July 2015 commented “There is no caveat to state responsibilities in the provision of educational facilities.”

During diaspora engagements in Ghana and Kenya, free and quality education and health-related rights and provisions in the Constitution also dominated the discussion. Members of the Sierra Leonean community in Kenya stated that: “education being a key driver of progress and development of any human society must be made accessible to all Sierra Leoneans, at all levels, from early childhood to tertiary education. The national government should strive to develop a knowledge society by investing in education, promoting innovation through research and scientific activities, with massive state investment in this sector, and the Constitution should address it as a fundamental right of all Sierra Leoneans”.

⁷⁵ Political Parties Engagement with CRC Report page 11

⁷⁶ Political Parties Engagement with CRC Report page 5

⁷⁷ Sierra Leone Women’s position paper “Many Messages, One Voice” page 9

⁷⁸ Society for Peace and Development report on the Youth Dialogue

They also recommended that “the Constitution should declare education as a right of Sierra Leoneans and define mechanisms directing the State to ensure that these rights are enforced, through massive state investment in human resource development”⁷⁹.

The position paper of the Campaign for National Unity-Sierra Leone (CNU-SL) advocated for access to quality and free education for all Sierra Leoneans: “It is widely recognized that education plays a key role in democratic and economic transformation processes. Hence, the revised Constitution must be able to address the issue of education as a fundamental right of all Sierra Leoneans. All Sierra Leoneans, at all ages, from early primary, secondary, college and university education must have access to quality education. This is importance in order to prepare the next generation of leadership based on informed and enhanced knowledge society. Respective government must spend substantive amount of national budget on investing in youth education, promoting innovation ideas through research and scientific activities”.

In their recommendations, they emphasised that “the revised Constitution should clearly indicate education as a right of all Sierra Leoneans, not a privilege as it is currently enshrined in the 1991 Constitution. The new constitution should define the structures and mechanisms directing the State to ensure that these rights are enforced, through massive state investment, provision of student loans, for example, as part of our medium to long term efforts in building both intellectual capita and human resource capital.”⁸⁰

The Port Loko Women’s Association Women’s position paper also reiterated that free education should be a human right.⁸¹

In their position paper, the Revolutionary United Front Party (RUF) called for “free education for all children between the ages of three and eighteen.”

During the CRC engagement with the youth between 9th and 24th June 2014, it was again emphasised by the participants that the right to free and quality education should be a human right:⁸²

The youth also called for free compulsory education for all Sierra Leoneans up to senior secondary school level, adding that the statement ‘as and when practicable’ must be deleted from section nine (9) two (2) (C) of the Constitution.”⁸³

Stakeholders submitted that the Constitution should have a separate and distinct chapter setting out the human rights of every person in Sierra Leone and should include the right to shelter, health and education as basic human rights.⁸⁴

⁷⁹ Members of the Sierra Leone Community in Kenya position paper pages 4-5

⁸⁰ CNU-SL position paper, page 7

⁸¹ Port Loko District Women’s position paper page 2

⁸² Youth Engagement with CRC Report page 2, para 3

⁸³ Youth Engagement with CRC Report page 5

⁸⁴ Summary Report of Public Consultation with the CRC 2015 page 24, para 1

4.28 Recommendations

The CRC took particular note of the submissions and position papers received during engagements with specific stakeholders, and also the views expressed during the nationwide consultations.

The CRC endorses the PTC Report recommendation to delete the phrase “as and when practicable” from section 9(1) and 9(2).

The amended section 9(1) and 9(2) should therefore read as follows:

9. (1) The Government shall direct its policy towards ensuring that there are equal rights and adequate educational opportunities for all citizens at all levels by—

- (a) ensuring that every citizen is given the opportunity to be educated to the best of his/her ability, aptitude and inclination by providing educational facilities at all levels and aspects of education such as primary, secondary, vocational, technical, college and university;**
- (b) safeguarding the rights of vulnerable groups, such as children, women and persons with disability in securing educational facilities; and**
- (c) Providing the necessary structures, finance and supportive facilities for education.**

(2) The Government shall strive to eradicate illiteracy, and to this end, shall direct its educational policy towards achieving—

- (a) free adult literacy programmes;**
- (b) free compulsory basic education at primary and junior secondary school levels;**
- (c) And free senior secondary education.**

Proposed amendment of section 9(3)

The CRC also took into consideration that the current section 9(3) also needed to be updated to bring it in line with international best practices.

The CRC was mindful of the TRC recommendations on human rights protection which state:

“Under this heading, the Commission seeks to promote the creation of a human rights culture in Sierra Leone. A rights culture is one in which there is knowledge and recognition of the basic

rights to which all human beings are entitled. A rights culture demands that we respect each other's human rights, without exception.”⁸⁵

The CRC therefore recommends that the government should introduce courses in schools, colleges other learning institutions on developments in the field of human rights and conflict prevention and management. The CRC therefore recommends the following amendment to section 9(3):

“The Government shall promote the learning of indigenous languages and the study and application of modern sciences, foreign languages, technology, human rights, education, conflict management and commerce”.

4.29 Theme - Obligations of the Mass Media

Current context

Section 11 of the 1991 Constitution deals with obligations of the mass media, and states:-

“11. The press, radio and television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Constitution and highlight the responsibility and accountability of the Government to the people.”

In addition, the Right to Access Information Act, 2013 was passed on 31st October 2013, the long title of which describes it as “being an Act to provide for the disclosure of information held by public authorities or by persons providing services for them and to provide for other related matters.”

However, sections 27 and 33 of the Public Order Act 1965 are still in force making defamation and seditious libel criminal offences, punishable by imprisonment, a fine or both.

Observation

- A. Call for a chapter on the media in the revised Constitution.
- B. Strengthening constitutional provisions on press freedom.

“In 2013, Parliament passed the Right to Access Information Act. Media rights advocates lauded the legislation—which includes penalties for government agencies that fail to comply with its provisions—as an essential instrument in ensuring greater government transparency and accountability.

⁸⁵ TRC Volume 2 Chapter 3 page 125 para 45

The Media in Sierra Leone is regulated by the Independent Media Commission (IMC), whose members are appointed by the President on the advice of the Sierra Leone Association of Journalists (SLAJ) and subject to the approval of Parliament, according to the Independent Media Commission (Amendment) Act of 2006. The IMC provides an alternative to litigation under the Public Order Act; aggrieved parties can register complaints with the commission, which grants them a hearing. If the IMC agrees that a complaint of defamation or falsehood is valid, it can request that the offending media outlet publish a retraction and an apology, or it can levy a fine. The IMC can also summon editors at its own discretion. The body has generally demonstrated independence from the government⁸⁶.”

There have been concerns expressed about the continuation of the provisions still extant in the Public Order Act 1965 which at section 33 states:

“33. (1) any person who—

- a) Does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention; or
- b) Utters any seditious words; or
- c) Prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or
- d) Imports any seditious publication, unless he has no reason to believe that it is seditious,

shall be guilty of an offence and liable for a first offence to imprisonment for a term not exceeding three years, or to a fine not exceeding one thousand Leones or to both such imprisonment and fine, and for a subsequent offence shall be imprisoned for a term not exceeding seven years, and every such seditious publication shall be forfeited to the Government⁸⁷.

The CRC took note of the current legislation in the Right to Access Information Act 2013 and the Public Order Act 1965, and is of the view that all the elements of legislation should be harmonised.

4.30 Recommendations

In view of all expert meetings, position papers, submissions from media practitioners, journalists and the general public, the CRC recommends a new chapter titled “Information, Communication and the Media”.

⁸⁶ <https://freedomhouse.org/report/freedom-press/2015/sierra-leone> Legal Environment

⁸⁷ Section 33 of the Public Order Act 1965

The chapter will detail provisions on freedom of the press, media freedom and independence, no State interference, the establishment, composition and the functions of an Independent Media Commission.

Therefore section 11 on Obligations of the Mass Media will remain the same in the revised Constitution.

4.31 Theme - Enhancement of National Culture

Current context

Section 12 of the 1991 Constitution deals with the promotion of national culture, and states:-

“12. The Government shall—

- (a) promote Sierra Leonean culture such as music, art, dance, science, philosophy, education and traditional medicine which is compatible with national development;
- (b) recognize traditional Sierra Leonean institutions compatible with national development;
- (c) protect and enhance the cultures of Sierra Leone; and
- (d) Facilitate the provision of funds for the development of culture in Sierra Leone.”

The Government established a Ministry of Tourism and Culture (MoTC) and the National Tourist Board (NTB) to promote national culture and encourage tourism in the country. The MoTC has been working on different approaches to promote Sierra Leone’s culture through music, art, dance and artifacts, and has developed five strategic reports and tourism strategic action plans, in addition to the National Tourism Development Strategy. These include:-

- A. Tourism Development Study: Pannell Kerr Foster Associates – 1982.
- B. Diagnostic Trade Integration Study: Integrated Framework for Trade-Related Technical Assistance to the Least Developed Countries. Tourism Development in Sierra Leone –World Bank 2005.⁸⁸

4.32 Observation

Sierra Leone has a unique blend of cultural traditions; its people are vibrant, exuberant and expressive, and their cultural values, traditions and belief systems are widely practised and respected. A variety of food, flamboyant clothing, jewelry, hand-made crafts, lively festivals and the performing arts are expressions of that culture.

⁸⁸ <http://welcometosierraleone.sl/document/tourism-strategic-action-plan-sierra-leone>

The CRC received a position paper from the MoTC, and during the consultations, there was an overwhelming call to add dress as a national culture.

The CRC notes that the position paper of the MoTC highlighted very significant issues to affirm the commitment made in section 12, and therefore reproduces them:

“These provisions are very limited in scope and do not fully take into account all the cultural resources of the country. In addition to the ones already listed in the current constitution, “Cultural resources” in this context refer to, historic and archaeological sites, building, structures and objects listed or eligible for listing as national monuments and relics. These resources constitute an important component for our development as a people and nation, and as such, their study, effective protection, preservation and promotion should be given adequate prominence in the new constitution. Also, the recommended amendment of the constitution considers only dress code while silent about cuisine and cultural festivals and shows as means of exhibiting cohesion and national identity.”

In a separate position paper, the Monuments and Relics Commission (MRC) submitted that:

- “It should be a national policy to study, protect, preserve and promote Sierra Leone’s cultural resources that are of national significance for the inspiration and benefit of current and future generations. This is in line with the commission’s mandate, which is to “provide for the preservation of ancient, historical and natural monuments, and other objects of archaeological, ethnographical, and historical, or other scientific interest”. This should be added to section 12(a) of the 1991 Constitution.
- The word “adequate” should be added to the funds for the development of culture in Sierra Leone. This fund should be named “Art and Culture Development Fund”.
- Monument and relics are significant national assets and should be fully protected.

The constitution should enshrine severe penalties that must be imposed on anyone willfully damaging these assets.

- A Cultural Impact Assessment (CIA) must be a necessary condition before the start of any major economic enterprise in the country, such as industrial mining and agriculture. This will ensure sustainable development that is environment friendly.
- The MRC must be the clearing house for CIA studies.
- In promoting the indigenous languages, there is the need to strengthen the training of trainers in the Teachers Training Colleges.
- For fair distribution of proceeds from natural resources, pre-determined revenue of the ministry of Tourism and cultural Affairs should be set aside for development purposes instead of all being held in the consolidated funds.

In effect, to fulfill Chapter II, section 12 and Chapter II, section 9(3) of the 1991 Constitution, the reviewed constitution must enshrine the following to enhance the protection, preservation and promotion of culture in Sierra Leone:

- Consideration of a suggestion made during the second review of the national culture policy in 2010 of a standalone ministry to gain the required attention culture deserves. The name suggested was “Ministry of Culture and National Orientation” with a mandate to promote culture and ensure patriotism, cohesion and national identity through community informal civic education and productive indigenous practices.
- To effectively facilitate the promotion of culture, the constitution should make provision for the setting up of commissions on copyright, Intellectual Property and related Right (operates with the steering committee on copyright; Collecting society) as well as, Media, performing Arts, fine Arts and Craft (Sierra Leone center of the international Theatre institute Guild of fine Arts and Crafts) while the monument and relics commission protects the tangible and intangible cultural heritage (National Museum Railway Museum).
- Additionally, in the area of land the Constitution should provide for the vesting of all existing and potential land within which heritage monuments and relics are located to the Ministry.
- The replacement of the term “traditional” to “indigenous” would be more appropriate where indicates in the Constitution”⁸⁹.

4.33 Recommendation

The CRC gave due consideration to recommendations from the public, the position papers of the MoTC and the MRC, the and the PTC Report recommendation regarding strengthening section 12 by adding “dress” in section 12(a).

The proposed new section 12 should therefore read as follows:-

Enhancement of National Culture – Section 12

“The Government shall—

- (a) promote Sierra Leonean culture such as music, art, dance, dress, science, philosophy, education and traditional medicine which is compatible with national development;**
- (b) recognize traditional Sierra Leonean institutions compatible with national development;**
- (c) protect and enhance the cultures of Sierra Leone; and**
- (d) Facilitate the provision of funds for the development of culture in Sierra Leone.”**

⁸⁹ Ministry of Tourism and Culture position paper pages 1 -3

4.34 Theme - Duties of the Citizen

Current context

Section 13 of the 1991 Constitution, duties of the citizens, states:

“13. Every citizen shall—

- (a) abide by this Constitution, respect its ideals and its institutions, the National Flag, the National Anthem and authorities and offices established or constituted under this Constitution or any other law;
- (b) cultivate a sense of nationalism and patriotism so that loyalty to the State shall override sectional, ethnic tribal or other loyalties;
- (c) protect and preserve public property and prevent the misappropriation and squandering of funds belonging to the Government, local authorities or public corporations;
- (d) help enhance the power, prestige and good name of the State and to defend the State and render national service as may be required;
- (e) respect the dignity and religion of other individuals, and the rights and interests of others;
- (f) make positive and useful contributions to the advancement, progress, and well-being of the community, wherever he resides;
- (g) work conscientiously in a lawful and chosen occupation and abstain from any activity detrimental to the general welfare of others;
- (h) ensure the proper control and upbringing of his children and wards;
- (i) participate in and defend all democratic processes and practices; and
- (j) Render assistance to appropriate and lawful agencies in the maintenance of law and order.”

Observation

Issue – National Currency, Pledge, tax obligations, and safeguarding the environment

- A. Adding ‘National Currency’ and ‘National Pledge’, in line with the PTC Report.
- B. Adding the following new paragraphs:-
 - (k) Satisfy all tax obligations
 - (l) Protect and safeguard the environment.

4.35 Recommendations

The CRC recommends adding ‘National Currency’ and ‘National Pledge’ to section 13(a). This recommendation is in line with the PTC Report. The proposed amendment of section 13(a) is therefore as follows:-

“Every citizen shall—

- (a) abide by this Constitution, respect its ideals and its institutions, the National Flag, the National Anthem, National Currency, National pledge and authorities and offices established or constituted under this Constitution or any other law;**

The CRC also recommends adding the following two new subsections, in line with the PTC Report:

(k) Satisfy all tax obligations

(l) Protect and safeguard the environment

4.36 Theme - Fundamental Principles not Justiciable

Current context

Section 14 of the 1991 Constitution (Fundamental Principles not Justiciable) specifically excludes the provisions contained in Chapter II – Fundamental Principles of State Policy – from being justiciable.

Section 14 of the 1991 Constitution states:-

“14. Notwithstanding the provisions of section 4, the provisions contained in this Chapter shall not confer legal rights and shall not be enforceable in any court of law, but the principles contained therein shall nevertheless be fundamental in the governance of the State, and it shall be the duty of Parliament to apply these principles in making laws.”

Section 4 reads:

“Fundamental Obligations of the Government

“4. All organs of Government and all authorities and persons exercising legislative, executive or judicial powers shall conform to, observe and apply the provisions of this Chapter.”

Section 4 therefore confirms that the Government is bound by the principles contained within the chapter on Fundamental Obligations of State Policy, but the effect of section 14 is that if any organ of the Government fails to uphold any of the principles set out in Chapter II (sections 5 to 13), no legal action can be taken to force the Government to fulfill any of its obligations regarding: government of the people (section 5), political objectives (section 6) economic

objectives (section 7), social objectives (section 8), educational objectives (section 9), foreign policy objectives (section 10), enhancement of national culture (section 12), and duties of the citizen (section 13).

4.37 Issue – Justiciability of Fundamental Principles of State Policy

Many position papers received from organisations and bodies representing stakeholders' interests called for section 14 to be made justiciable. The general public demanded that the government should be held accountable if it failed to deliver its obligations under the Constitution, particularly in the areas of education, health and other basic human rights.

In the report of a CRC two-day engagement with women held in Bo on 6th and 7th March 2014, it was said that the right to education and health are “currently placed under Chapter II which is not that binding because what if Government failed to adhere to this because of one reason or another, no one can hold them responsible⁹⁰.” It was suggested that it should be placed amongst the binding provisions of the Constitution so that if the government reneged on its duties there would be a legal remedy.

During the Political Parties Engagement in Freetown on 24th June 2014, it was also emphasized that the State should take responsibility for providing basic human rights and, in particular, that health and education should be made justiciable.

During a consultative session with the CRC, the Sierra Leone Market Women's Association (SLMWA) similarly recommended that in the revised Constitution there should be a provision for the enforcement of quality service delivery and accountability in Chapter II of the Constitution⁹¹.

At a two-day consultative session held with the All Political Parties Youth Association (APPYA) in Bo, it was recommended that education and health matters should be made justiciable by including these themes in Chapter III as well as Chapter II of the 1991 Constitution⁹².

The National Commission for Democracy (NCD) in its position paper advocated that “Social, Economic and Cultural rights be made justiciable: Just as the Constitution recognises fundamental human rights as justiciable, the NCD is recommending the same acknowledgment for social, economic and cultural rights. It is strongly believed that such a shift will increase accountability and voice in the country”⁹³.

The Child Rights Coalition, Sierra Leone in their position paper provided detailed justification about the issue of justiciability, and made the following arguments in this regard:-

⁹⁰ Report on the 2 Day Women's Conference at the Bo District Council Hall on 6th – 7th March 2014 page 9

⁹¹ Political Parties Engagement with CRC Report page 3

⁹² All Political Parties Youth Association Engagement with CRC Report

⁹³ NCD position paper page 7

“Justiciability

The lack of justiciability in the rights and freedoms outlined in the Constitution is a grave problem because it prevents the people from holding the government accountable for unjust violations. All public Offices and leaders must be answerable to its people. If ones freedoms and rights have been or is likely to be contravened, they should have the right to apply to an appropriate court and order compensation, legal remedy or any other redress. There should be an independent and impartial tribunal to judge such as cases to avoid any bias and unjust decisions. If there are no checks and balances on the government, the government would have free rein to violate anyone’s rights and freedoms without fear of consequences. There must be a medium through which the rules can be justifiable in order to make them enforceable, and an independent, impartial tribunal that is easily accessible by the people is one route by which that can happen. Furthermore, if a party is aggrieved by any decision of the court, he/she should be able to appeal to the next court.

Parliament should make laws for the enforcement of the rights and freedoms under the constitution. During this, the people should be able to hold them accountable by requesting that they report on the measures they’ve adopted to give effect to the rights and progress on the enforcement of rights. According to the African Charter, countries have to submit reports on the measures they’ve adopted and progress they’ve made in the enjoyment of these rights within two years of entry and afterwards, every three years. This type of transparency allows the people and other countries to hold the sierra Leonean government accountable for their promises and duties as protectors of citizens’ rights and freedoms”.

Enforceability

“While it is very important to have the rights and freedoms expressed in a way that promotes government accountability, it is equally important that these rights and freedoms can be enforced. An explicit provision within the Constitution before the given rights and freedoms are to be justiciable and the importance of justiciability is explained above. But, what ensures that justiciable rights and freedoms are enforced is an independent judiciary. Judicial independence means that courts and judges of the country are self-governed and free from undue influence and control by the other branches of government such as the executive. They have the authority, expertise, and impartiality that is required when presiding over issues of imposed on a right and freedom in a way that is fair and presents an equal opportunity for citizens to present their case as well as the government to defend them through demonstrable justification. Judicial independence and enforceability promote standards of justice and fairness that are above what is currently found in the Constitution. Judicial remedy of any actions or laws deemed unconstitutional must be obeyed by the branches of government and therefore ensure that the Constitution is complied with Enforcement of the constitution through an independent and impartial judiciary ensures that the rule of law and the supreme law of the land is respected and held above all government actors and promotes the principles of justice and fairness”.

Expansive rights

“The current Constitution has a number of rights and freedoms that are granted but it is not as expansive and broad as it should be. Other African and international constitutions as well as international standards provides more expansive, all-encompassing rights that protect every facet of a citizens life. Many of our recommendations are based on such a model, where more rights are granted. In addition to that, these rights should be guaranteed so as to best protect its citizens. There must be an explicit statement that guarantees these rights and freedoms. If they are violated, then the people should have an accessible means to hold the government accountable, which leads into the aforementioned recommendation⁹⁴.”

The issue of justiciability was also widely debated during the nationwide consultations and there was overwhelming support for the proposal that government should be held accountable for providing basic needs.

Stakeholders outlined that the constitutional duties of government to the citizens of Sierra Leone should include implementing policies to eradicate illiteracy, create favourable working conditions and employment opportunities without favour or discrimination.

The people of Sierra Leone called on the government to provide basic needs such as education, health, shelter and portable water, and said that the government should have enough resources available to meet its obligations and provide for its citizens. Stakeholders recommended that it should be the constitutional duty of government, the Legislature, and the Judiciary to continue to report to Parliament annually. They also submitted that Paramount Chiefs and other traditional leaders should have a role in also holding government accountable to its mandate⁹⁵.

The CRC took due consideration of the analysis of the responses to the CRC’s questionnaire and public submission forms, which gave a very clear view of the public of Sierra Leone that the provisions contained in Chapter II should be justiciable.

During the consultation process when the question was asked: “should there be a provision that would help citizens to enforce these rights against the Government through the formal legal system?” The results revealed that the majority (90%) of the respondents agreed with the question that there should be a provision to help citizens enforce their rights through the formal legal system.⁹⁶

The Citizens for Constitutional Change in their position paper on the justiciability of Chapter II stated the following:-

⁹⁴ Child Rights Coalition Sierra Leone Position Paper pages 6-7

⁹⁵ Summary Report of Public Consultations by the CRC 2015

⁹⁶ “Out of 1,285 respondents 1,244 replied “Yes” and 41 disagreed with the question. The regional response to the question was also overwhelming. In the Western Area, out of the 343 people who responded to this question, 332 people replied yes and only 11 disagreed. In the North, out of 452 people who responded, 437 agreed with the question with only 15 saying no. In the South and East respectively, the response was equally overwhelming where in the South out of 316,303 responded yes with a mere 13 disagreeing and in the East out of 174, only 2 said no and 172 said yes.

“In 1996, Sierra Leone became a signatory of the International Covenant on Economic, Social and Cultural Rights (ICESCR). A multilateral treaty adopted by the United Nations General Assembly in 1966, this document commits its states parties to work toward the granting of economic, social and cultural rights to individuals, particularly through legislation. The rights specified in the document include the rights to work under “just and favorable conditions”, to social security, to family life (including the protection of children), an adequate standard of living, health, education, and participation in cultural life. Many of these rights are spoken of in general terms, while others are provided with more specificity.

Duty on States to Entrenched Economic, Social and Cultural Rights

Article Two of the Covenant imposes a duty on all parties to “take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measure”. This article recognizes that each state party faces its own challenges to guaranteeing the socio-economic rights of its citizens and that all states parties are limited by the resources they have. Article Two requires state party governments to act as best they are able within their means toward the promotion and guarantee of the rights outlined in the treaty.

“The Sierra Leone Constitution

In 1991 (the year the civil war started), Sierra Leone ratified a new constitution. This constitution amended and repealed the constitution of 1978. Unfortunately, while the constitution made progressive changes in various areas, it still does not meet the obligations Sierra Leone has under the ICESCR.

The second chapter of the constitution addresses the rights of citizens, including their socio-economic rights. Section seven discusses the “Economic Objectives” of the constitution, while section eight focuses on its “Social Objectives”. These two sections provide the right to “engage in any economic activity” in work conditions that are “just, fair, and humane”, and provide for non-discriminatory pay.

This chapter also imposes the duty on the government to create policies that provide its citizens the opportunity for “securing adequate means of livelihood”. The government also has the duty to work toward agriculture policies that ensure “self-sufficiency in food production”, and health rights are provided by requiring the government to ensure “there are adequate medical and health facilities for all persons, having due regard to the resources of the state”. In terms of education, the constitution provides that the government will ensure that “every citizen is given the opportunity to be educated to the best of his ability” and that the government “shall strive to eradicate illiteracy.”

However, the rights listed in sections seven and eight are inadequate. Though the constitution provides for protection of the right to move to any location one wants, for example, there is no fundamental right to housing mentioned in the constitution. The briefly-mentioned agricultural policy does not guarantee a citizens’ right to food. Furthermore, each of the rights outlined in

these sections are not guaranteed (woefully lacking is any mention of “every citizen is guaranteed the right to . . .” present in other constitutions). The rights mentioned are not recognized their fundamental nature, instead describing the government’s vague role to provide policies that work toward those objectives.

Moreover, most of the rights outlined in the Sierra Leone constitution are limited in their reach due to the language used. These rights are provided for only under the context of “due regard to the resources of the state” or only being provided to the people “when practicable”. These statements aren’t interpreted elsewhere in the constitution, thereby providing the government the constitutional right to neglect to provide the rights outlined in the constitution with the reasoning that there simply aren’t resources to do. While the constitution requires the government to work toward providing these rights, it is not clear who decides when doing so is “practicable”.

Expunge Section 14 of the 1991 Constitution

An even bigger issue, however, is that all of the rights outlined in the second chapter of the constitution are limited by the final section of that chapter, section fourteen, which strips them of any real power. This section reads: “. . . the provisions contained in this chapter shall not confer legal rights and shall not be enforceable in any court of law . . .” meaning that under the current constitution, the rights provided are not justiciable. There is thus no way for citizens to challenge the government’s lack of provisions or programs in place that work toward the objectives are outlined therein. Citizens have no legal authority to hold their government legally accountable for not providing the rights they are granted in the constitution.

Section fourteen has the effect of not guaranteeing any citizens socio-economic rights, which is inconsistent what the ICESCR provides. While the ICESCR does not require governments to guarantee the rights outlined in the treaty, it does require governments to work, particularly with legislative measures, toward providing those rights. The current Sierra Leone constitution outlines rights that the government values, but provides no mechanisms for which the government can be held accountable if they don’t provide them. This inconsistency between the two documents weakens the strength of both, and results in a lack of citizen’s empowerment to demand their rightful socio-economic rights.

Therefore, there is every need for the reviewing committee to expunge section 14 of the 1991 Constitution and also to add section 7 and 8 of the same document to chapter three of the constitution.

Comparative Analysis: A Case Study: South Africa

Not all African nations struggle in the same way to unite their obligations under the ICESCR and their individual constitutions. South Africa provides a good case study into the way in which the ICESCR documents should be applied in a state’s constitution. The South African constitution expressly states the rights their citizens are guaranteed in their Bill of Rights. For example, chapter 26(1) of the South African constitution reads “everyone has the right to have

access to adequate housing”. 26(2) then reads: “The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.” The right is thus guaranteed to all citizens, and the government’s obligations to provide for this right are clearly outlined.

Most importantly, the rights in the South African constitution are justiciable, meaning that citizens can sue the government when they don’t provide for said rights. In the case Government of the Republic of South Africa v. Grootboom, the court expressly held this, adding that “the fact that socio-economic rights will almost inevitably give rise to [budgetary] implications does not seem to us to be a bar to their justiciability.” Grootboom was a case where a group of homeless citizens, including women and children, had erected shacks to live in on private property simply because they had nowhere else to live. They sued the government for failing to comply with the constitutional right to housing when the property owner tried to kick them off his land. In their opinion, the court analysed whether the overall government policy in place to help homeless people was reasonable, and held that it was not. The court held that a “reasonable part” of South Africa’s housing budget must be devoted to “providing relief for those in desperate need”, but left to the government the task of determining the precise allocation.

In Soobramoney v. Minister of Health, on the other hand, a terminally ill man was refused dialysis under a hospital policy that prioritized treatment for non-terminal patients due to lack of resources. Soobramoney sued the government, saying that the hospital’s policy violated his right to health care and to emergency medical treatment under chapter two, section 27 of the Bill of Rights of the South African Constitution. The court rejected the emergency medical treatment argument, holding that dialysis in this case did not qualify as emergency medical treatment. Though they admitted that the hospital policy forced difficult decisions on poor, terminally ill patients, they held that a different hospital policy would not serve the public interest. It was thus within the right of the government to allow the policy.

In a final seminal case, Minister of Health v. Treatment Action Campaign, a South African AIDS advocacy group, the Treatment Action Campaign (TAC), brought suit charging that the government violated the constitution's right to health care. The government was not widely providing pregnant women an AIDS anti-retroviral drug called Nevirapine, which was proven to help protect unborn children from HIV transmission from their HIV-positive mothers. The court held that the policy in place to provide the drug was inadequate to meet the needs of poor pregnant women. The court required the government “to devise and implement a more comprehensive policy that will give access to health care services to HIV- positive mothers and their new-born children, and will include the administration of Nevirapine where that is appropriate.”

Avoiding the Path of Quebec

As Part II of the Present Constitution of Sierra Leone standards, it has no enforcement powers. This is akin to a special case in Canada that ought to be avoided in its entirety when considering social economic rights provisions in the constitution. For comparative purposes, this part of our Position Paper introduces foreign constitutional orders, which expressly provide for economic and social rights but, like the Sierra Leone constitution, is limited in scope and interpretation.

Starting with the Charter Quebécoise, the quasi-constitutional human rights charter of the Canadian province of Quebec. The Charter Quebécoise is unique in that it features a distinct chapter devoted to economic, social and cultural rights. In this instance, the rights in this chapter do not, however, enjoy supremacy over other provincial legislation.

Furthermore, their scope is expressly limited to what is provided by for by the law, meaning other provincial legislation. Thus, these rights do not serve as a standard against which all other legislations is to be examined, but rather depend on the legislation in order to fill them with meaning. As consequence, the Quebec judiciary is hesitant to infer any individual entitlement against the state from these provisions, threatening them as general principles without tangible values. Only in exceptional circumstances have claimants succeeded to plead on of these rights in the absence of other legislation granting them what they desired.

In recent years, the insignificance of the Quebec Charter's economic and social rights was challenged in the case of *Gosselin v Quebec (Attorney General)* pertaining to the question of whether the amount of social welfare benefit for young welfare recipient respected the rights to an acceptable standard of living. While the majority of the Supreme Court judges upheld the inferior status of the charter's social rights on appeal, the various opinion expressed in the judgment, as well as the assessment made by the judge of first instance, give value insight into the theoretical and methodological features of economic and social.

Conclusion

These three cases illustrate the way in which the judicial branch can work alongside and in conjunction with the executive and legislative branches in a system of transparency and accountability to ensure citizens socio-economic rights. In none of these cases did the judicial branch overstep their bounds in separation of powers. Instead, citizens were empowered to hold the government legally accountable for not providing them what their constitution promises them. The court was able to interpret the constitution as it applied to the specifics of the cases at hand and require the government to respond with policy changes. The result is a constitution in which citizens can put their faith, and a judicial system that citizens utilize to get what they are promised from the government. In Sierra Leone, both of these are nothing more than dreams, as citizens are not granted the power to hold their government accountable.

The Right to work; the right to fair condition of employment, the right to form and join trade unions, the right to social security, the right to protection of the family, the right to an adequate standard of living , including the right to food, clothing and housing; the right to health, the right to education, and the right to cultural education are internationally recognised rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1993, the Vienna World Conference on Human Rights reiterated that ---⁹⁷

... All human rights are universal, indivisible, interdependent and interrelated

⁹⁷ World Conference on Human Rights: Vienna Declaration and Program of Action Part 1, para 5 UN Doc. A/CONF 157/23

This means that civil and political rights as well as ESC rights have to be treated in equal manner, on the same footing, and with the same emphasis.⁹⁸

Citizens for Constitutional Change also emphasized that the emerging constitution should put significant emphasis on the priority for the constitution to protect human rights. The need for a constitution that respects and guarantees these rights is particularly important after the devastating conflict that ripped the nation apart. The protection of basic socio-economic rights is fundamental to the protection of human rights, particularly when the vast majority of citizens in the country live in abject poverty. As the South African Constitutional Court said in *Grootboom*, “there can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied those who have no food, clothing or shelter.”

Additionally, there is a clear nexus between the government providing citizens their basic socio-economic needs and citizens exercising their civil and political rights. Socio-economic rights are the foundational basis for all other human rights, and thus it is imperative that they are guaranteed by the constitution. This guarantee, however, has no meaning without justiciability. A constitution that promises certain provisions and is signed by a government that cannot be held accountable for actually providing them is not a strong constitution in which citizens can put their faith. Empowering citizens to demand what they deserve through the justiciability of the rights provided in their constitution would be a fundamental shift toward progress in Sierra Leone.⁹⁹

Youth Arise also made firm recommendations in relation to the justiciability of Chapter II of the Constitution: “Notwithstanding the provisions of Section 4, the provisions contained in this Chapter shall not confer legal rights and shall not be enforceable in any court of law, but the principles contained therein shall nevertheless be fundamental in the governance of the State, and it shall be the duty of Parliament to apply these principles in making laws. Youth Arise holds the view that since such fundamental rules are applied in making laws as a duty, justice must be ensured that is legally binding, especially in delivering government’s main objectives as enshrined in the constitution.”¹⁰⁰

The position paper of the Campaign for Good Governance entitled “A Citizens’ Position paper” made the following observations:

“Fundamental principles of state policy

Background

Chapter 2 of the 1991 constitution lays the “fundamental principles of state policy”. Under it the republic of Sierra Leone is declared to be “a state based on the principles of freedom,

⁹⁸ Cooman, F (ed) 2006, *Justiciability of economic and social rights* Antwerp. Intersentia page 2

⁹⁹ Citizens for Constitutional Change. position paper pages 1-9

¹⁰⁰ Youth Arise position paper page 3

democracy, and justice”. The fundamental principles of state policy also lay out the political, economic social, educational and foreign policy objectives of the state of Sierra Leone. The fundamental principles oblige the state to promote national integration and unity. The fundamental principles of state policy spell out the obligations of the mass media, the obligations of the government to promote sierra Leonean culture, and the duties of the citizen.

The issues

Maintaining Fundamental principles in a reviewed constitution where it is not enforceable

The 1991 constitution has also been criticized on account of the fact that it does not make fundamental principles of state policy enforceable. It means that no one can hold government to account where the obligations set are compromised or not met. On the contrary the constitution clearly states that nobody can take the state to court for not meeting any of the established principles. Some people have suggested that it adds no value for the review constitution to keep the sections on fundamental principles of state policy right; and therefore consideration should be given removing it.

There are counter arguments however that the reviewed constitution should still keep the fundamental principles of state policy even where there are no provisions for enforcement. Those who hold this view argue that it the policy that sets the frame of the state’s approach to issues. Instead of removing it, the reviewed constitution should in fact elaborate what the state of Sierra Leone really stands for, and what the country values are.

Calls have also been made for the fundamental principles of state policy to include environmental and natural resources protection. Considerations are now also been given to include the right to health and basic education; and the social protection of retirees, senior citizens and the physically and mentally challenged as fundamental principles of state policy.

What the people are saying

We garner that the people are asking that:

A separate chapter be maintained for fundamental principles, and made enforceable”¹⁰¹

Although there was a clear and persistent call from the people of Sierra Leone that the government needed to be able to be held to account for its actions, there were also alternative proposals to the solution being through the avenue of justiciability.

The PTC Report had reviewed this point and came to the following conclusion:

“This Chapter is to be amended by the addition of items of state responsibility which were considered important both by the Commission and some of those who made representations on

¹⁰¹ A Citizens’ position paper-The Campaign for Good Governance, pages 3-4 para 3.1

the amendment of some of the existing list. We, the Commission, after extensive discussions, decided that these principles should not be made justiciable. They are codes of conduct for the Executive, the Legislature, the Judiciary and the Public.”¹⁰²

Similarly, GSCF agreed with the PTC Report for reasons of practicability and suggested an alternative route and made the following findings:

“A key question remains what would happen if the obligations in Chapter II should be made justiciable. If the principles do become justiciable will the courts be further clogged up with cases or will government become paralysed and indecisive over what action it should take, constantly looking over its shoulder to the courts for guidance on policy and implementation?”

There is a legitimate concern that our judiciary that is neither accustomed to, nor trained for evaluating non-legal matters may be overburdened to breaking point if they are required to pass judgment on whether the state is complying adequately or at all with the principles of states policy in addition to ensuring the protection of fundamental human rights and all their dispute resolution functions.

There certainly is justification for maintaining the distinction between Chapter II and III. The PTRC reports that after extensive discussion it took the same view and decided not to recommend that Chapter II be made justiciable.

GSCF proposed that, there are alternative ways to achieve accountability for, compliance with and implementation of Chapter II and the principles of state policy other than justiciability. One route is via increased public awareness of and education on existence and significance of the principles themselves and of the constitution in general. Moreover, as well as building a culture of respect for the rule of law and compliance amongst the general citizenry; parliament should be empowered to perform its scrutiny and accountability function rigorously in this area.

In addition, the directive to parliament in section 14 of the 1991 Constitution to take account of the principles in Chapter II in their work should be extended to the executive and judiciary which should be required to demonstrate how they also take these principles into account in decision-making and executive action¹⁰³.”

In an individual submission, Mr. Owen Moriba Momoh Kai Combey, a citizen of the Republic of Sierra Leone, also recommended repealing Section 14:

“I hereby propose that our new constitution must adequately provide for institutions and procedures for the judicial (third party) protection of fundamental rights of citizens and other individuals within the jurisdiction of the Republic of Sierra Leone. This would include the repeal of Section 14 of the 1991 Constitution, which provides that the “Fundamental Principles of State Policy” are not justiciable. This is a complete mockery of the State’s commitment to its own avowed principles. The provisions in this Chapter shall confer legal rights that shall be

¹⁰² PTCR page 20 para 32

¹⁰³ GSCF Report pages 10 and 11

enforceable in any court of law in the land, and Parliament shall also apply the principles therein in making other laws”.

4.38 Recommendations

The CRC considered all of the representations, submissions and arguments concerning section 14, Fundamental Principles not Justiciable, including the PTC Report and the GSCF positions. The CRC also debated the matter at length. In addition, the CRC reviewed modern constitutions, in particular Kenya, Ghana and South Africa. As a result, the CRC recommends that section 14 of Chapter II shall not only serve as a guiding principle but should also be made justiciable.

The proposed wording of section 14 should therefore read as follows:-

“The principles contained in this Chapter are fundamental in the governance of the State.”

5 CHAPTER FIVE

THE RECOGNITION AND PROTECTION OF HUMAN RIGHTS AND FREEDOMS OF THE INDIVIDUAL

5.1 Introduction

Generally, the national framework on human rights is based on the principles laid down in the Universal Declaration of Human Rights 1948 (UDHR), and is usually dealt with either as chapter on human rights or as a Bill of Rights.

Rules and provisions in the human rights chapter are sometimes justiciable in courts of law and sometimes merely aspirational and oratory.

Justiciability concerns the limits upon legal issues over which a court can exercise its judicial authority¹⁰⁴. It includes the legal concept of standing, which is used to determine if the party bringing the action is the appropriate party to do so¹⁰⁵. Essentially, justiciability seeks to address whether a court possesses the ability to provide adequate resolution of the dispute; where a court feels it cannot offer such a final determination, the matter is not justiciable. For example, article 38 of South Africa's Constitution, in the Bill of Rights explicitly renders all rights justiciable.

National constitutions embrace international law in several ways. First, the constitution's comprehensive Bill of Rights is drawn entirely from several human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights. South Africa is the best model in this regard.

A chapter on Human Rights or Bill of Rights is expansive, incorporating a range of civil and political rights, as well as economic, social and cultural rights.

Implicit in this comprehensive embrace of rights is the notion that rights are interdependent, and that civil and political rights reinforce social and economic rights, and vice-versa.

5.2 Historical Background

The Colonial Era: the Protectorate 1896 – 1961

¹⁰⁴ May, Christopher N.; Ides, Allan (2007). Constitutional Law: National Power and Federalism (4th ed.)

¹⁰⁵ Flast v. Cohen, 392 U.S. 83, 100 (1968) (“[W]hen standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue, and not whether the issue itself is justiciable.”).

During the 19th century, the territory of the colony around Freetown remained small although treaties of friendship were made with neighbouring chiefs along the coast. However the British realised that they needed the wealth of the inland area to make the port of Freetown viable. The British were also concerned about the French expanding its borders in neighbouring Guinea.

During the 1880s, Britain agreed borders with both French Guinea and independent Liberia, and in 1896 declared that the rest of Sierra Leone outside the colony of Freetown as a Protectorate.

The declaration of a Protectorate enraged many of the inland chiefs, who were not consulted on the matter: “the colonial history of Sierra Leone was not placid. The indigenous people mounted several unsuccessful revolts against British rule and Krio domination.”¹⁰⁶

One of the central pillars of colonisation was tax. The European powers did not want Africa to be a drain on their treasuries, and they wanted the colonies to pay their own way. They also wanted people to enter into the cash economy.

Following the imposition of a Hut Tax by the British in 1898, 24 indigenous chiefs signed a petition explaining that the tax was a burden on residents that adversely affected their societies. This was ignored by the British.

Post-Independence Era

The introduction of human rights in the Constitution started with the 1961 Independence Constitution with a chapter entitled Protection of Fundamental Rights and Freedoms of the Individual. The provisions contained in this chapter were replicated in the Constitution of Sierra Leone 1971 (the 1971 Constitution).

The one-party constitution, the Constitution of Sierra Leone 1978 (the 1978 Constitution), also retained all of the human rights provisions contained in the preceding two constitutions. In addition, the 1978 Constitution for the first time made provision relating to a “State of Emergency”, detailing where and how this provision may override certain human rights once a state of emergency had been declared.

5.3 Current context

Chapter III of the 1991 Constitution – The Recognition and Protection of Fundamental Human Rights and Freedoms of the Individual - sets out the present constitutional provisions, limitations and clawbacks relating to human rights.

The 1991 Constitution almost exactly replicates the wording contained in the 1961, 1971 and 1978 Constitutions. Notably it keeps intact the clawback provisions relating to a state of emergency and also the provisos limiting protection from discrimination.

¹⁰⁶ <http://freetown.usembassy.gov/history.html>

There are various commissions, ministries and government bodies that have human rights brief in their mandate in Sierra Leone, including the following:-

The Human Rights Commission of Sierra Leone (HRCSL)

The Human Rights Commission of Sierra Leone (HRCSL) was established by an Act of Parliament in 2004 in accordance with the recommendation by the Lomé Peace Accord 1999 and following an observation and an imperative recommendation by the TRC.

HRCSL is an independent, national human rights institution that commenced operations in December 2006; its statutory mandate is to protect and promote human rights and to advise Government on draft legislation that may affect human rights¹⁰⁷. Its functions include reviewing existing legislation and advising the Government on compliance with such legislation and with international treaty obligations¹⁰⁸.

HRCSL's vision of "A Sierra Leone where a culture of human rights prevails and the people respect the rule of law and live in peace and dignity" sets the context in which the HRC-SL undertakes its functions¹⁰⁹.

HRCSL has been recognized as complying with the Paris Principles, as defined at the International Workshop on National Institutions for the Promotion and Protection of Human Rights October 1991, and has been accredited as "A" status by the UN International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

The Ministry of Social Welfare, Gender and Children's Affairs

This Ministry is at the centre of child protection and women's issues and is particularly concerned with protection against child trafficking and women's empowerment and gender equality:

"Our mission is to ensure that social development and the rights of all Sierra Leoneans especially women and children are protected and promoted in general and that those socially marginalized, disadvantaged, less privileged including the aged, the disabled, whether as groups, individuals, family units and the needy in our communities are equitably and adequately supported"¹¹⁰.

The National Commission for Persons with Disability

"The Persons with Disability Commission was established in Sierra Leone in 2012, as a result of the Persons with Disability Act 2011, described in the long title of the Act as "an Act to

¹⁰⁷ Section 7 of the Human Rights Commission of Sierra Leone Act 2004

¹⁰⁸ Human Rights Commission of Sierra Leone position paper 2015 page 1

¹⁰⁹ Human Rights Commission of Sierra Leone position paper 2015 page 1

¹¹⁰ Minister of Social Welfare, Gender and Children's Affairs website <http://mswgca.gov.sl/>

establish a National Commission for Persons with Disability, to prohibit discrimination against persons with disability, achieve equalization of opportunities for persons with disability and to provide for their related matters”.¹¹¹

The National Commission for Social Action

The National Commission for Social Action (NaCSA) is another Commission established to foster programmes relating to expansive rights including economic development to ensure a right to food and a reasonable standard of living.

The Office of the Ombudsman

The Office of the Ombudsman was established by the Ombudsman Act 1997. Section 7 of the Act deals with the functions of the Ombudsman: it gives the office the power to investigate a complaint made by any person who claims to have suffered injustice as a result of any maladministration. It also gives him the onus to take appropriate action to remedy, correct or reverse the act complained of through such means as are fair, proper and effective¹¹².

The National Commission for Children

The National Commission for Children was established by the Child Rights Act 2007: “the commission is charged with the responsibility to monitor and coordinate the Convention on the Rights of the Child and Part Three of the Children’s Act, improving the condition or welfare of the children of Sierra Leone as well as advising government on policies that are compatible to the Child Rights Commission”.¹¹³

The National Youth Commission

The National Youth Commission Act 2009 established the National Youth Commission (NYC), in compliance with a TRC recommendation. One of the functions of the NYC is to empower the youth to develop their potential, creativity and skills for national development.¹¹⁴

The NYC’s mandate relates to the expansive human rights for the youth.

Gender-related Legislation

The three “Gender Acts” were all enacted on 14 June 2007, and were intended to enhance human rights promotion and protection for women.

¹¹¹ The State House website Communications Unit, <http://216.38.58.143/index.php/component/content/article/529-qi-will-promote-the-interest-of-persons-with-disability>

¹¹² See section 7 of the Ombudsman Act 1997

¹¹³ State House Website <http://www.statehouse.gov.sl/index.php/contact/1367-president-koroma-urges-national-childrens-commission>

¹¹⁴ See National Youth Commission Act 2009

The three Acts are titled the Domestic Violence Act, the Registration of Customary Marriage and Divorce Act, and the Devolution of Estates Act. These three laws aimed to domesticate international commitments and obligations, in particular the Convention on the Elimination of all forms of Discrimination against Women (CEDAW): “this marks an enormous landmark in the efforts to achieve parity between men and women in Sierra Leone. Until now could not seek legal redress for grievances because of the poor state of the law.”¹¹⁵

The Child Rights Act 2007

The Child Rights Act 2007 lays down the fundamental principle set out in many international conventions that:

“(1) The fundamental principle to be applied in the interpretation of this Act shall be that the short and long-term best interests of the child shall be a primary consideration in any decision or action that may affect the child or children, as a group.

(2) In determining the best interests of the child, a person, court or other authority shall take into account the following factors-

a) The following other general provisions of the Convention [on the Rights of the Child]

(i) Non-discrimination in the respect accorded each child in the enjoyment of his rights;

(ii) The right to life and maximum survival and development;

(iii) Respect for the views of the child; and

(iv) The spirit of the entire Convention and the Charter.”¹¹⁶

The Child Rights Act 2007 established the National Commission for Children. The Act also sets 18 years as the minimum age for marriage, and gives a child the right to refuse betrothal or marriage.

The 2007 Child Rights Act supersedes all other national laws related to children’s rights (including the Young Persons Act of 1960) and is considered compatible with the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. It incorporates clauses from the Convention on the Rights of the Child prohibiting “cruel, inhuman or degrading’ treatment of children”.

International Conventions and Covenants signed by Sierra Leone

¹¹⁵ Centre for Accountability and Rule of Law website <http://www.carl-sl.org/home/reports/298-sierra-leone-parliament-passes-the-gender-bills-into-law>

¹¹⁶ Section 3(1) and (2) of the Child Rights Act 2007

1. The African Charter on Human and Peoples Rights (the Banjul Charter)
2. Convention on the Elimination of all forms of Discrimination against Women (CEDAW) including the optional protocol
3. The International Covenant on Civil and Political Rights including the optional protocol and the second optional protocol aimed at abolishing the death penalty.
4. The International Convention on the Elimination of all forms of Racial Discrimination
5. The International Covenant on Economic, Social and Cultural Rights
6. The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment including the Optional Protocol
7. The Convention on the Rights of the Child including two Optional Protocols
8. The International Convention of all Migrants Workers and the Members of their Families
9. The African Charter on the Rights and Welfare of the Child
10. Convention on the Rights of Person's with Disability¹¹⁷

5.4 Dimensions of the Issues

Sierra Leone is committed to respecting, protecting, promoting and fulfilling its international obligations in relation to human rights in the revised Constitution.

“The Republic of Sierra Leone is a member of the United Nations and the African Union. It has ratified many UN Human Rights Conventions and thus has made binding international commitments to adhere to the standards laid down in these universal human rights documents.”¹¹⁸

In as far as Sierra Leone has ratified the Optional Protocols to UN Human Rights Conventions or has accepted the competence of the corresponding UN Treaty Bodies, Sierra Leoneans can invoke their human rights through these bodies”.¹¹⁹

The work on the human rights chapter was largely guided by the imperative recommendations of the TRC and international Treaties and Conventions signed and ratified by Sierra Leone. In addition, calls from civil society, human rights organisations, women's groups, political parties, and expert feedback on the state of human rights in the 1991 Constitution and national

¹¹⁷ For details of international human rights treaties ratified by Sierra Leone, see Bibliography

¹¹⁸ www.claiminghumanrights.org/sierraleone.html page 1

¹¹⁹ www.claiminghumanrights.org/sierraleone.html page 1

legislation have helped the CRC to frame substantive recommendations for consideration. The CRC's views were also informed by the position paper of the HRCSL.

The TRC report emphasized that national framework and national laws need to be amended “to promote the creation of a human rights culture in Sierra Leone. A rights culture is one in which there is knowledge and recognition of the basic rights to which all human beings are entitled. A rights culture demands that we respect each other's human rights, without exception¹²⁰”.

On the importance of the rule of law, the TRC report states that: “the rule of law signifies a society in which law is supreme. The running of state institutions, the relationship between the rulers and the ruled, interactions amongst and between individuals or corporate bodies; they should all be done according to law. The rule of law opposes the arbitrary rule of powerful men and women. The basic principles of the rule of law include equality before the law of the land: an impartial and independent judiciary; an accessible justice system; irrevocable constitutional guarantees; and respect for human rights and fundamental freedoms. Other important components of the rule of law are due process and fair legislative mechanisms that do not discriminate against particular groups in the society.”¹²¹

Chapter III of the 1991 Constitution consists of fifteen sections. The CRC was overwhelmed with proposals to amend almost every section of the chapter, including the title of the chapter.

The CRC seriously considered the recommendation in the PTC Report that the word “fundamental” should be deleted from the marginal note and the title of this chapter on the grounds that all human rights are fundamental. However, it was suggested that the chapter should be named as “the Bill of Rights”.

As well as involving national stakeholders, the CRC engaged with international experts and institutions such as United Nations Development Program, United Nations High Commission for Refugees and International Legal Resource Centre of American Bar Association to give their views on the human rights provisions.

The CRC recognised the recommendations made in the position papers submitted by political parties, civil society organisations, human rights and women's organisations, and the HRCSL. The CRC took particular note of the recommendations contained in the PTC Report and the submissions and recommendations received during the nationwide public consultations, inputs from Members of Parliament including various position papers and national expert recommendations.

The CRC was also assisted by the fact-finding mission to Ghana and Kenya in October and November 2015, facilitated and supported by United Nations Development Program.

The CRC endorsed the proposal of the HRCSL to ensure that the language in the revised Constitution is clear and straightforward so as to make it accessible to all Sierra Leoneans.

¹²⁰ Truth and Reconciliation Commission Report (TRC) Volume II Chapter III page 126 para 45

¹²¹ Truth and Reconciliation Commission Report (TRC) Volume III page 62 para 78

The CRC paid particular attention to the preamble of the International Covenant on Civil and Political Rights which reads: “in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, . . . these rights derive from the inherent dignity of the human person, . . . in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.”¹²²

Human Dignity

Adding human dignity including expanding and strengthening section on human life in the constitution has been a long standing recommendation both by the TRC and The United Nations Integrated Office in Sierra Leone (UNIOSIL) prior to Peter Tucker Constitutional Review Commission.

The inclusion of human dignity was repeatedly advocated during the review process, and recommended for inclusion in the State Policy and Human Rights chapter of the revised Constitution. The PTC Report emphasized the need for a right to life and hence had strongly recommended to repeal the death penalty.

Public Emergency

The public emergency provisions in the Constitution were an area of concern and interest to various stakeholders. In addition, the TRC strongly recommended that emergency powers in the Constitution should conform to international human rights principles.

Protection from Discrimination

Protection from discrimination, particularly those set out in section 27 of Chapter III of the 1991 Constitution, has been a contentious issue, and all women and human rights groups have been calling for repeal of certain provisions of that section that are considered discriminatory. Freedom of expression was also a topic which attracted a lot of debate.

Demonstrable Justification

Demonstrable justification ensures that the powers conferred on a government actor or body by statute cannot be construed to be limitless or without legal justification. It prevents corruption and helps to ensure that principles of justice and fairness require. The issue of demonstrable justification was raised by several civil society organisations who called for the Canadian model provision to be included in the human rights chapter.

Limitations and Clawbacks in the 1991 Constitution

¹²² International Covenant on Civil and Political Rights- Preamble

Limitation and clawback provisions in the 1991 Constitution were questioned by legal experts and right groups. Many provisions within the Constitution give explicit rights, only to have them restricted in subsequent sections.

In its position paper, the Child Rights Coalition stated “If the Constitution is to be the supreme law of the land and applicable to all, there must be a restriction on the number of limitations placed on the given rights and freedoms. Any limitations on any given rights or freedoms must be demonstrably justifiable in the court of law. Even when a provision states that a limitation may be imposed for reasons such as public order, this still gives enormous powers to the government without them having to justify it. Reducing the number of limitations in general within the Constitution will greatly restrict the government’s arbitrary power.”¹²³

Justiciability

The CRC received many submissions on the justiciability of Chapters II and III of the 1991 Constitution. The lack of justiciability in the rights and freedoms outlined in the Constitution is of serious concern because it prevents the people from holding the government accountable for violations.

Expansive Rights

Strengthening the human rights chapter in line with international principles and modern constitutionalism was extensively discussed, and the CRC received a wide range of suggestions and recommendations for the rights and freedoms granted in the Constitution to be broadened.

In its position paper, the Child Rights Coalition stated “other African and international constitutions provide more expansive, all-encompassing rights that protect every facet of a citizen’s life. Many of our recommendations are based on such a model, where more rights are granted. In addition to that, these rights should be guaranteed so as to best protect its citizens. There must be an explicit statement that guarantees these rights and freedoms. If they are violated, then the people should have an accessible means to hold the government accountable, which leads into the aforementioned recommendation.”¹²⁴

Group Rights (Marginalised or Vulnerable Groups)

Right groups demonstrated great interest in highlighting gaps in the Constitution with regard to group rights, particularly for vulnerable groups that include: women, persons with disability, and minorities.

Language Simplification

The CRC was reminded by various stakeholders and people that rather than using legally complex and technical language, the revised Constitution must be written in simple language.

¹²³ The Child Rights Coalition Sierra Leone position paper pages 6-7

¹²⁴ The Child Rights Coalition Sierra Leone position paper page 8

5.5 Theme - Human Rights and Freedoms of the Individual

Current context

The title of Chapter III of the 1991 Constitution is “The Recognition and Protection of Fundamental Human Rights and Freedoms of the Individual”.

Issue – Renaming the Chapter

- A. The term “fundamental” should be deleted from the title.
- B. Renaming the chapter as a “Bill of Rights”.

Observation

The PTC Report recommended that the word “fundamental” should be deleted from the title of Chapter III on the grounds that all human rights are fundamental.

The CRC was mindful of the calls in expert opinions and position papers, and from the people of Sierra Leone throughout the public and stakeholder consultations that the wording of all of the revised Constitution should be simplified.

The NCD echoed this suggestion, stating that the objective is to make the document reader-friendly and easily accessible to all citizens: “The commission believes that if our position is realised it would make our constitution practical and understandable by a larger number of citizens. We have taken into consideration that a large bulk of the citizens only has access to basic education and therefore a highly technical legal language will limit the potentials of their education to fully understand by themselves the objectives, principles and provisions of the new constitution.”¹²⁵

The Conference of Principals of Secondary Schools (CPSS) Kono District wrote: “Human Rights provide a set of performance standards against which the Government and other actors can be held accountable.”¹²⁶

The Sierra Leonean community in Kenya stated: “given the importance of the constitution in Sierra Leone we recommend that it should be written in simple language and be readable and understandable by the majority of Sierra Leoneans including those with average reading skills.”¹²⁷

¹²⁵ NCD position paper page 11

¹²⁶ Conference of Principals of Secondary Schools (CPSS)-Kono position paper, page 3, para 3

¹²⁷ Sierra Leonean residents of Kenya position paper, page 22, para 7

They also went on to recommend that “the Constitution be written in simple, clear and readable language, understandable by the majority of Sierra Leoneans, including those with average reading skills. User friendly versions should also be produced, especially to enable young people even in primary schools to be able to grasp, and be familiar with the essence and content of the Constitution”.

The National Disabled Women’s Forum commented that the greatest protectors of the Constitution were the people of Sierra Leone but that it was impossible to protect the Constitution if it cannot be understood. They also recommended that the Constitution should be taught to all children from primary school level and should also be available in Braille, audio, picture and other formats.¹²⁸ The Women’s Forum Sierra Leone echoed this point.¹²⁹

The Sierra Leone Labour Congress (SLLC) in its position paper recommended that a comprehensive chapter on human rights should be added in the revised Constitution as a Bill of Rights.

5.6 Recommendations

The CRC agreed with the recommendation made in HRCSL’s position paper regarding the text of the revised Constitution that: “there is a strong need for the CRC to make the current review process and its final outcome document genuinely accessible to all Sierra Leoneans.”¹³⁰

The CRC noted that the Sierra Leone Women had also reiterated this call: “the Constitution should be in simple language, accessible and available to all”¹³¹, and Port Loko Women’s Association Women’s had emphasised that “it was a right to know the constitution and its content.”¹³²

Having reviewed all the submissions, the CRC recommends that the title be amended in line with the PTC Report recommendation. In addition, the CRC considered a second option of renaming Chapter III as “the Bill of Rights”. The CRC therefore proposes the following two options for the title of Chapter III of the revised Constitution:

Option I:

“The Recognition, Protection, and Promotion of Human Rights and Freedoms of the Individual”

Or

¹²⁸ National Disabled Women’s Forum position paper page 1 para 2

¹²⁹ Women’s Forum (Sierra Leone) page 3 bullet point 4

¹³⁰ HRCSL position paper page 5 para 7

¹³¹ Sierra Leonean Women’s position paper page 6 para 3

¹³² Port Loko Women’s position paper, page 2, para 4

Option II:

“The Bill of Rights”

5.7 Theme - Human Rights and Freedoms of the Individual

Current context

Section 15 of the 1991 Constitution states:

“**15.** Whereas every person in Sierra Leone is entitled to the fundamental human rights and freedoms of the individual, that is to say, has the right, whatever his race, tribe, place of origin, political opinion, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following-

- (a) life, liberty, security of person, the enjoyment of property, and the protection of law;
- (b) freedom of conscience, of expression and of assembly and association;
- (c) respect for private and family life, and
- (d) protection from deprivation of property without compensation;

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others, or the public interest.”

Issue – Simplifying the Language

The preamble and section 15(a) need to be rephrased in order to simplify its scope and language. Given that human rights are fundamental, they must be easily understood and accessible in effect to all.

Observation

The International Legal Resource Centre (ILRC) expert paper recommended that section 15 should be streamlined in its language to make it consistent with the human rights provisions of the International Covenant on Civil and Political Rights 1966 (ICCPR).

The HRCSL recommended that Economic, Social and Cultural Rights (ESC Rights) should be included in the Constitution, in particular the rights to education, health, food and reasonable

standard of living, “which responds to our collective demand for an end to the poverty that has blighted this nation since colonization. The Commission also strongly endorsed PTRC on the inclusion of the right to human dignity in the Constitution”.¹³³

The Peoples Movement for Democratic Change (PMDC) in its position paper recommended that free healthcare be guaranteed for pregnant women, lactating mothers, and minors (that is those under eighteen and if in tertiary institutions up to the age of twenty two), and for persons sixty five years and above. This should be an entrenched clause in the Constitution¹³⁴.

The position paper from the Technical Working Group (TWG) supporting the implementation of the Voluntary Guidelines for the Responsible Governance of Tenure of Lands, Fisheries and Forest in the Context of National Food Security (VGGT) also supported the right to food to be included in the revised Constitution¹³⁵.

The essence of human rights in a country was summed up in a submission made following the Conference of Principals of Secondary Schools (CPSS), Kono:

“Human Rights strengthen good governance frameworks, they require going beyond the ratification of human rights treaties, integrating human rights effectively in legislation of state policy and practise, establishing the promotion of justice as the aim of the rule of law; understanding that the credibility of democracy depends on the effectiveness of its response to peoples’ political, social and economic demands.”¹³⁶

The CRC studied the submission made by the Sierra Leone Bar Association (SLBA) on the right to food. It proposed that “food and nutritional security (is) one of the basic human needs of post 2015.”¹³⁷

The submission of the Governance Stakeholders Coordination Forum (GSCF) urged that everyone had the right “to be free from hunger and to have adequate food of acceptable quality” as well as education, the right to health care and adequate housing.”¹³⁸

The Open Society Initiative for West Africa (OSIWA) in its submission reported that a one-day national consultative engagement was held on the 24th August, 2015 with the African Youth with Disability Network- Sierra Leone (AYDN-SL), the Disability Awareness Action Group (DAAG) in collaboration with the Ministry of Social Welfare Gender and Children’s Affairs (MSWGCA), the National Commission for Persons with Disability (NCPD) and the Sierra Leone Union on Disability Issues (SLUDI) on the constitutional review process for persons with

¹³³ HRCSL page 7 para 9

¹³⁴ PMDC position paper, pages 1-2

¹³⁵ Technical Working Group of VGGT page 4

¹³⁶ CPSS position paper page 4 para 2

¹³⁷ The Sierra Leone Bar Association position paper page 1 para 2

¹³⁸ GSCF position paper, page 15 para 7.7.4

disabilities across the country. OSIWA proposed that the preamble to section 15 should include disability.¹³⁹

Oxfam's position paper commented that:-

“Oxfam in collaboration with the 50/50 women's group in Sierra Leone are one of the many civil society groups that have had sessions to educate the Sierra Leonean womenfolk in and around the country on the constitution review process. These education dialogue sessions/workshops have been especially tailored for the 80% of community and unlettered women nationwide. As a result the views of thousands of individual women and women's groups have been captured and this paper represents the unique expressions of some of these women in the most recent training sessions conducted for young women in tertiary institutions in the western area and women from diverse groups in Pujehun district.”¹⁴⁰

Relating to the language of the Constitution, the women recommended that the language of the Constitution should be gender neutral and refer to “she” as well as “he” in the entire document. It was further recommended that “the constitution is to be in simple language, accessible and available to all even those not literate in English. The citizens are to be granted the right to own and lead constitutional review processes in the future. The women are recommending that it be made clear that all citizens have the right to know and own a copy of the constitution.”¹⁴¹

In relation to section 15(c), the position paper further commented that “respect for Privacy and Family life shall not be used to foster or condone Sexual and Gender Based Violence (SGBV) or impunity for SGBV.” The position paper also called for “all Rights and Obligations contained in Chapter 3 to remain completely justiciable “by individual or class actions.”

In the same submission, it was recommended that the free healthcare are for under-fives, and lactating mothers should be extended to include Ebola survivors and all categories of students. It was also recommended that Chapter III of the Constitution should include the right to health, including sexual and reproductive health and rights. Sexual and reproductive health services and age-appropriate education on such services must be available in all schools as a right.¹⁴²

The submission also proposed that there should be free and compulsory education for girls and boys up to tertiary institution level:

“The right to compulsory free life-enhancing education and training for women and girls at primary, secondary and tertiary levels is recommended. The definition of education is to include the recognition that every Sierra Leonean has a right to appropriate, relevant, life enhancing education and training that will enable them to lead a decent life and contribute to family, community and national development. It should be the responsibility of the government to provide the means and methods, taking into account technology and IEC availability to ensure

¹³⁹ OSIWA position paper page 1

¹⁴⁰ Oxfam in partnership with the 50/50 Group of Sierra Leone position paper on women's rights page 1

¹⁴¹ Oxfam in partnership with the 50/50 Group of Sierra Leone position paper on women's rights page 3

¹⁴² Oxfam in partnership with the 50/50 Group of Sierra Leone position paper on women's rights page 8

that every person has the right and opportunity to be educated. It is also recommended that there shall be pro-active protection by government of the right of pregnant school girls/ early mothers and other vulnerable persons (including children in conflict with the law) to access continuous, quality education and Training.”¹⁴³

Access to education and health should be made justiciable

The position paper of the Sierra Leone’s Women called for access to education and health to be made justiciable and for the right to health including sexual and reproductive health. It also called for the right for compulsory free life-enhancing education and training for women and girls at primary, secondary and tertiary levels: “the definition of education shall include recognition that every Sierra Leonean has the right to appropriate, relevant, life enhancing education and training that will enable them to live a decent life and contribute to family, community and national development”. The position paper also stated that there should be proactive protection by the government of the rights of pregnant school girls/early mothers and other vulnerable persons (including children in conflict with the law) to access continuous quality education and training.¹⁴⁴

The Sierra Leone Women urged that the revised Constitution should recognise and protect women’s rights specifically (including those rights in international instruments signed or ratified by the state of Sierra Leone) and make all justiciable. The position paper emphasised that the provisions relating to respect for privacy and family life should not be used “to foster or condone Sexual and Gender Based Violence (SGBV) or impunity for SGBV.”¹⁴⁵

WASH-Net called for peoples’ rights to include “health care, primary education, food and shelter.”¹⁴⁶

Youth Arise in their position paper stated that the provisions of Chapter III should be clear in the recognition of rights and protection of freedoms, and they must be fully taken into account in the national policy framework and governance.¹⁴⁷

Port Loko Women’s Association suggested that the following rights be adopted in the human rights chapter of the revised Constitution, and that these should be justiciable: the right to education and the right to health (particularly reproductive health rights).¹⁴⁸

The CRC took note that the right to food was formally recognised by the United Nations in the Universal Declaration on Human Rights 1948. In addition, Sierra Leone has signed and ratified a number of international treaties in relation to the right to food, including the International Convention on the Right to Economic, Social and Cultural Rights, article 11 of which states:

¹⁴³ Oxfam in partnership with the 50/50 Group of Sierra Leone position paper on women’s rights pages 8, 9

¹⁴⁴ Sierra Leone Women’s position paper “Many Messages, One Voice” page 9

¹⁴⁵ Sierra Leone Women’s position paper “Many Messages, One Voice” page 10

¹⁴⁶ WASH-Net Proposals from Civil Societies in Sierra Leone

¹⁴⁷ Youth Arise position paper page 3

¹⁴⁸ Port Loko Women Association’s position paper, page 2, para 4

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

Further, at public consultations, stakeholders submitted that the Constitution should have a separate and distinct chapter setting out the human rights of every person in Sierra Leone and should include the right to shelter, health and education.¹⁴⁹

5.8 Recommendations

The CRC debated the views expressed in various position papers and paid attention to public opinion calling for an extension on what should be considered as basic human rights in a modern society.

The CRC recognised the importance of upholding and advancing a human rights culture as a catalyst to the wellbeing of the country and its people, and the CRC considers that human rights have a direct impact on the development index of Sierra Leone.

The CRC therefore proposes the following amendment to section 15 of the 1991 Constitution:

“Human Rights and freedoms of the Individual

15. 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 race, tribe, place of origin, political opinion, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following-

- (a) life, liberty, security of person, the enjoyment of property, the protection of the law, the protection of the environment, education, health, food, dignity and shelter.**
- (b) freedom of conscience, of expression and of assembly and association;**
- (c) respect for private and family life, and**
- (d) protection from deprivation of property without compensation;**

the subsequent provisions of this chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

¹⁴⁹ Summary Report of Public Consultations 2015 page 24

5.9 Theme - Protection of Right to Life

Current context

Section 16 of the 1991 Constitution states:

“**16.** (1) No person shall be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the laws of Sierra Leone, of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case, that is to say—

- (a) for the defence of any person from unlawful violence or for the defence of property; or
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
or
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence; or
- (e) if he dies as a result of a lawful act of war.”

Issue – Repeal of the Death Penalty

The death penalty should be abolished in Sierra Leone.

Observation

The death penalty remains on the statute books in Sierra Leone under the 1991 Constitution and also the Criminal Procedure Act 1965 for treason, murder and aggravated robbery.

“In 2010, there were 13 prisoners on death row. Recent presidential pardons contributed to emptying death row - according to Amnesty International, there were no prisoners on death row by the end of 2012. A man was sentenced to death in 2013 (the first death sentence since 2011) and was the only person under sentence of death until recently. In May 2014, however, Minister of Justice Franklyn Bai Kargbo told the United Nations that Sierra Leone intended to abolish

capital punishment in law and that the death sentences of the country's last death row prisoners had been commuted to life imprisonment."¹⁵⁰

The CRC recognised the imperative recommendation made by the TRC that the death penalty should be abolished and that section 16 of the 1991 Constitution should be amended accordingly.¹⁵¹

Sierra Leone also accepted the recommendation from the United Nations Human Rights Council during the Universal Periodic Review process in 2011 to abolish the death penalty subject to constitutional review. It placed weight on the fact that Sierra Leone has made a commitment to review its position on the death penalty to the United Nations Office of the High Commission of Human Rights (OHCHR).¹⁵²

The CRC noted that Sierra Leone is classified as a de facto abolitionist state with a moratorium on the death penalty being in effect for more than 10 years¹⁵³. It also noted that the government voted in favour of a motion calling for a universal moratorium of the death penalty in a recorded vote at the UN General Assembly on 18th December 2014.¹⁵⁴

During consultations with Parliamentarians, they were in favour of abolishing the death penalty completely. The CRC also took account of numerous position papers including that of the HRCSL that had been received, and the responses from nationwide consultations where there was a clear majority call for the abolition of the death penalty.

HRCSL recommended that "section 16(1) of the Constitution of Sierra Leone, 1991 (the Constitution) be amended to incorporate the principle that the right to life is inviolable. The new section 16(1) should enshrine the right that every human being shall be entitled to respect for his or her life and the integrity of his or her person. It should state that no person shall be punishable by death". HRCSL further recommended the abolition of the death penalty and the immediate repeal by Parliament of all laws authorising the use of capital punishment.¹⁵⁵

The CRC took cognizance of the imperative recommendation made by the TRC that the death penalty should be abolished and Section 16 of the 1991 Constitution amended accordingly: "respect for human dignity and human rights must begin with respect for human life. Everyone has the right to life. A society that accords the highest respect for human life is unlikely to turn on itself. Respect for human life and dignity does not only mean a prohibition on the taking of the lives of others. It also means protecting all persons from violence and harm, whether this be

¹⁵⁰ <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Sierra+Leone> page 1

¹⁵¹ TRC Volume 2 Chapter III page 126 paras 53-56

¹⁵² OHCHR report Moving Away from the Death Penalty Oct 2012 page 4 para 1

¹⁵³ Cornell Law School, Death Penalty Data Base Sierra Leone <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Sierra+Leone>

¹⁵⁴ UN Official Document Page 17/31 http://www.un.org/en/ga/search/view_doc.asp?symbol=A/69/PV.73

¹⁵⁵ HRCSL position paper page 7 para 17

on the streets or in the home. A duty rests on the State to provide adequate security to all Sierra Leoneans¹⁵⁶”.

In 2012, President Dr. Ernest Bai Koroma announced that "it is now government policy that the death penalty now operates as life imprisonment."

The former Attorney-General and Minister of Justice, Hon. Franklyn Bai Kargbo, on May 2nd 2014, told the United Nations Committee against Torture that Sierra Leone would shortly abolish the death penalty. Addressing a public hearing session of the Committee in Geneva, Mr. Kargbo said that his office has received firm instructions from the President on the issue”.

He also said that the human rights record of the country is good and continues to improve, having regard to the recent history of the country. He further urged that the government of Sierra Leone be commended for making human rights a priority thread that runs right through the Agenda for Prosperity.”

The CRC considered the question: “Why is it important for Sierra Leone to accede to the United Nations Protocol to abolish the death penalty?”

Sierra Leone is an abolitionist country in practice. The last execution in Sierra Leone took place in 1998.

The TRC found that the Sierra Leonean Civil War "resulted in the demeaning of human life and dignity," and that "the State must now set the example by demonstrating that it places the highest value on all human life. These conclusions lead the Commission to recommend the Sierra Leonean government abolish the death penalty "without delay." ¹⁵⁷

Civil Society Organisations in Sierra Leone have been very vocal in relation to the abolition of the death penalty:

“Centre for Accountability and Rule of Law (CARL) commends the Peter Tucker Report’s recommendation regarding changes in the application of the death penalty whereby it would be reviewed by Parliament every five years with a view to ultimately abolishing it, and that treason shall no longer be an offence punishable by death if there is no loss of life. It is however of the view that these recommendations do not go far enough:

i. First, CARL recommends that the death penalty be totally abolished for all offences. This is an imperative recommendation of the TRC Report, meaning that the government is required to implement it immediately or as soon as possible.

ii. If the death penalty is mandatory for murder, there is scope for huge injustice in that the nature of murders varies enormously. The United Nations Human Rights Committee is clear on this issue, and has stated as follows: “the automatic and mandatory imposition of the death

¹⁵⁶ Truth and Reconciliation Commission (TRC) Report Volume II Chapter III page 127-128 paras 53-55 and 58

¹⁵⁷ <http://www.worldcoalition.org/media/resourcecenter/SierraLeone-EN.pdf> page 1

penalty constitutes an arbitrary deprivation of life, in violation of article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), in circumstances where the death penalty is imposed without any possibility of taking into account the defendant's personal circumstances or the circumstances of the particular offence." Moreover, the death penalty being a mandatory punishment for murder constitutes inhuman or degrading punishment, as decided in the case of Susan Kigula in Uganda of 10 June 2005, where the Constitutional Court of Uganda ruled that the automatic nature of the death penalty in Uganda for murder and other cases amounted to inhuman punishment as it did not provide the individuals concerned with the opportunity to mitigate their death sentences. If the penalty remains mandatory, Sierra Leone will continue to fail in its obligation to comply with Article 7 of the ICCPR which states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."¹⁵⁸

CARL recommended that the Constitution reinforces citizens' right to life by prohibiting capital punishment.

The NCD in its position paper recommended the abolition of the death penalty in the revised Constitution. "The Commission believes that the country should adhere to the TRC recommendations and abolish the death penalty."¹⁵⁹

In addition, the NCD supported the view of the PTC Report that "(b) the death penalty should be abolished in all cases of treason or other crimes of a political nature which does not directly cause the death of another person(s), and replaced by life imprisonment. (c) That Parliament shall review the death penalty every two (2) years with a view to its abolition."

Numerous other position papers reiterated the call by HRCSL for the abolition of the death penalty.

5.10 Recommendation

The CRC thoroughly debated the issue of the death penalty from the early stages of the review process. As a result, a question on the death penalty was put to public for national discussion during the consultation exercise from 2014 to 2016. Sierra Leoneans were highly divided on this issue: 60% said that the death penalty should be retained for murder because of the rise of cliques and gangsters in the country; 40% suggested that the death penalty should be abolished completely.

During the final CRC plenary discussion, members decided to vote on the issue. The result was as follows: 23 members voted to retain the death penalty, and 18 members voted to abolish it. The CRC also took account of the Parliamentarians' recommendation to abolish the death penalty.

¹⁵⁸ Ratified by Sierra Leone on 23 August 1996

¹⁵⁹ The National Commission for Democracy (NCD) position paper, page 10

Based on these divergent opinions, and taking account also of the government's commitment to abolish the death penalty, the CRC proposes two options to be considered:

Option I:-

“16. (1) Every person has the right to life. No person shall be deprived of his/her life.”

Or

Option II:-

“Protection of right to life

Section 16 of the 1991 Constitution states:

16. (1) No person shall be deprived of his/her life intentionally except in execution of the sentence of a court in respect of a criminal offence under the laws of Sierra Leone, of which she/he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if she/he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case, that is to say—

- (a) for the defence of any person from unlawful violence or for the defence of property; or**
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or**
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or**
- (d) in order to prevent the commission by that person of a criminal offence; or**
- (e) if she/he dies as a result of a lawful act of war.”**

5.11 Theme - Protection from Arbitrary Arrest and or Detention

Current context

Section 17 of the 1991 Constitution states:

“17. (1) No person shall be deprived of his personal liberty except as may be authorised by law in any of the following cases, that is to say —

- (a) in consequence of his unfitness to plead to a criminal charge; or**

- (b) in the execution of a sentence or order of a Court whether in Sierra Leone or elsewhere in respect of a criminal offence of which he has been convicted; or
- (c) in the execution of an order of the High Court or the Court of Appeal or the Supreme Court or such other court as may be prescribed by Parliament on the grounds of his contempt of any such court or of another court or tribunal or commission of inquiry as the case may be; or
- (d) in the execution of an Order of a court made in order to secure the fulfilment of any obligation imposed on him by law; or
- (e) for the purpose of bringing him before a court or tribunal, as the case may be, in execution of the order of a court; or
- (f) upon reasonable suspicion of his having committed or of being about to commit a criminal offence; or
- (g) in the case of a person who has not attained the age of twenty-one years, for the purpose of his education or welfare; or
- (h) for the purpose of preventing the spread of an infectious or contagious disease; or
- (i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community; or
- (j) for the purpose of preventing the unlawful entry of that person into Sierra Leone, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Sierra Leone or the taking of proceedings thereto.

(2) Any person who—

- (a) is arrested or detained shall be informed in writing or in a language that he understands at the time of his arrest, and in any event not later than twenty-four hours, of the facts and grounds for his arrest or detention;
- (b) is arrested or detained shall be informed immediately at the time of his arrest of his right of access to a legal practitioner or any person of his choice, and shall be permitted at his own expense to instruct without delay a legal practitioner of his own choice and to communicate with him confidentially.

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

- (a) within ten days from the date of arrest in cases of capital offences, offences carrying life imprisonment and economic and environmental offences; and
- (b) within seventy-two hours of his arrest in case of other offences;

and if any person arrested or detained in such a case as is mentioned in the said paragraph (f) is not tried within the periods specified in paragraph (a) or (b) of this section, as the case may

be, then without prejudice to any further proceedings which may be brought against him he shall be released either unconditionally or upon reasonable conditions, including in particular, such conditions as are reasonably necessary to ensure that he appears at a later date for trial or proceedings preliminary to trial.

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

Issue - To Discourage Arbitrary Arrest or Detention

Observation

The TRC made strong comments relating to the importance of protection from arbitrary arrest or detention as a human right that should not be violated in any circumstance: “the deprivation of liberty is a serious infringement of human rights. It is, however, legitimate when sanctioned by rules and laws which accord with principles of fairness and due process. Arbitrary arrest and detention without trial cannot be tolerated in a just and democratic society.”

There are several persons detained under “safe custody detention” in clear violation of international law. No provision in Sierra Leonean law provides for such detention. In these circumstances the rule by law has been replaced by the rule of decree.

Several of the detainees have been held in detention without charge or trial since 2000. The detention of such persons constitutes a gross and unjustifiable violation of their human rights. The Commission recommends the immediate release of all persons held in “safe custody detention”. The Commission further recommends that such detention never be resorted to again.

It is not possible to engage in a serious discourse on human rights and the rule of law in Sierra Leone, while such violations of human rights persist.”¹⁶⁰

“CARL submits that the clauses on personal liberty in the 1991 Constitution be simplified to read as follows: “no person shall be deprived of his personal liberty without due process of law.” The remaining subsections setting out the reasons by virtue of which a person can be deprived are unnecessary to spell out in such depth in a Constitution, and would be sufficiently encompassed by the above phrase.”¹⁶¹

The CRC paid attention to an individual submission made by Dr Sylvia Olayinka Blyden on the issue of fair trial. In her position paper she elaborated that “for the new Constitution to make trial by judge alone in criminal prosecution cases to be absolutely illegal (I repeat, absolutely illegal!!) unless with the expressed, signed consent of the Accused.” She reiterated that “currently, the 1991 Constitution guarantees the right to a free and fair trial

¹⁶⁰ TRC Report Volume II Chapter III page 128 paras 59-61

¹⁶¹ CARL position paper, page 6

but this most important universal human right has been derogated from in the current version of the Criminal Procedure Act which mandates the State to order & automatically receive a trial by judge alone of accused suspects; even in the face of objection by the Accused(s).

As a result, the fate of accused persons is removed from a jury of their peers and transferred to just one man. This makes a mockery of Justice as the "one man", though an Honourable Judge, is pliable to perverting justice. The recent shameful reports of Corrupt Judges caught in shameless acts of corruption (in and out of the country), is recalled.

I submit that all Accused persons should be given the option to reject trial by judge alone and go for trial by jury if they so desire.

I submit this right to choose trial by jury and reject Trial by Judge alone, should be entrenched into the Constitution.

This eliminates the bad blood that can arise in the face of patently obvious perversion of Justice. There are many recent examples of such. The case of Haja Afsatu Kabba's conviction by "Judge Alone" is the most classical one of contemporary times. Though that particular very questionable conviction has been since overturned and squashed, it remains an indelible stain on our national conscience. Let our new constitution remove the ability for one man (just one man) alone to determine the culpability of an Accused - unless the Accused prefers it so."¹⁶²

5.12 Recommendations

The CRC recommends accepting the recommendation in the PTC Report to reduce the age from twenty-one to eighteen, and to reduce the period for which a person is detained from ten days to seven days, and from seventy-two to forty eight hours.

The CRC also endorses the recommendation made by the PTC Report that a person unlawfully detained should be entitled to a public apology as well as compensation from the appropriate public authority or person be specified by law. It also suggests adding a new subsection (5).

The amended section 17 should therefore read as follows:-

“(1) No person shall be deprived of his personal liberty except as may be authorised by law in any of the following cases, that is to say —

(g) in the case of a person who has not attained the age of eighteen years, for the purpose of his/her education or welfare;”

Section 17 (3), (4) and (5):

“(3) Any person who is arrested or detained in such a case as is mentioned in paragraph (e)

¹⁶² Dr Sylvia Olayinka Blyden position paper page 1

or (f) of subsection (1) and who is not released shall be brought before a court of law—

- (a) within seven days from the date of arrest in cases of capital offences, offences carrying life imprisonment and economic and environmental offences; and
- (b) within forty eight hours of his/her arrest in case of other offences;

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

(4) Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person.

(5) The appropriate authority or person referred to in subsection 4 means an appropriate authority or person specified by law

5.13 Theme - Protection of Freedom of Movement

Current context

Section 18 of the 1991 Constitution states:

“18. (1) No person shall be deprived of his freedom of movement, and for the purpose of this section the said freedom means the right to move freely throughout Sierra Leone, the right to reside in any part of Sierra Leone, the right to enter or leave Sierra Leone, and immunity from expulsion from Sierra Leone.

(2) Any restriction on a person's freedom of movement which is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

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

- (a) which is reasonably required in the interests of defence, public safety, public order, public morality, public health or the conservation of the natural resources, such as mineral, marine, forest and other resources of Sierra Leone, except in so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

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

- (c) for the imposition of restrictions on the acquisition or use by any person of land or other property in Sierra Leone; or
- (d) for the imposition of restrictions upon the movement or residence within Sierra Leone of public officers or members of a defence force; or
- (e) for the removal of a person from Sierra Leone to be tried outside Sierra Leone for a criminal offence recognised as such by the laws of Sierra Leone, or to serve a term of imprisonment outside Sierra Leone in the execution of the sentence of a court in respect of a criminal offence of which he has been convicted; or
- (f) for preventing the departure from Sierra Leone of a person who is reasonably suspected of having committed a crime or seeking to evade the fulfilment of an obligation imposed on him under the civil law or to evade military service:

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

(g) for restricting vagrancy.

(4) If —

- (a) any person whose freedom of movement has been restricted by virtue only of such a provision as is referred to in paragraph (a) of subsection (3) so requests at any time during the period of that restriction not earlier than thirty days after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal, established by law, comprising not more than three persons from amongst persons of not less than fifteen years' standing entitled to practice in Sierra Leone as legal practitioners;
- (b) Any tribunal has been set up under paragraph (a), the Chairman of that tribunal shall be appointed by the Chief Justice, and the two other members of the tribunal shall be nominated by the Sierra Leone Bar Association.
- (5) On any review by a tribunal in pursuance of subsection (4) of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity of expediency of continuing that restriction to the authority by whom it was ordered, but unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with such recommendations.”

5.14 Issue - To add “National Security” before “Defence”

Observation

In an individual submission, Mr. Owen Moriba Momoh Kai Combey, a citizen of Sierra Leone, proposed an amendment to the proviso to section 18 so that the word ‘indigenous’ should be replaced with ‘citizen’.

Currently the proviso of section 18 reads as follow: “Provided that no court or other authority shall prohibit any such person from entering into or residing in any place to which he is indigenous...”. Mr. Combey proposed the following:

“Provided that no court or other authority shall prohibit any such person from entering into or residing in any place to which he is a citizen.”

5.15 Recommendations

The CRC took into consideration proposals within the CRC to broaden the national security aspect of the Constitution (this is discussed later in the national security chapter of this report), and was of the view that the phrase “national security” should be added to relevant sections of the Constitution.

The CRC therefore recommends that the phrase “national security” should be added to section 18(3)(a) before the word “defence.”

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

(h) which is reasonably required in the interests of national security, defence, public safety, public order, public morality, public health or the conservation of the natural resources, such as mineral, marine, forest and other resources of Sierra Leone, except in so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;”

The CRC also endorses Mr. Combey’s proposal and therefore recommends that the proviso should read as follows:

“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.”

5.16 Theme - Protection from Inhuman Treatment

Current Context

Section 20 of the 1991 Constitution states:-

“20. (1) No person shall be subject to any form of torture or any punishment or other treatment which is inhuman or degrading.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any kind of punishment which was lawful immediately before the entry into force of this Constitution.”

Issue – To Discourage Inhumane or Degrading Treatment

Observation

CARL made a substantive observation and recommendation in its position paper, which states that: “as things stand, the imposition of all forms of inhumane or degrading treatment or punishment violates the 1991 Constitution except, under Section 20(2), where such treatment or punishment was lawful immediately before the coming into force of that Constitution. Corporal punishment was lawful at that time and is thus lawful under the 1991 Constitution, and indeed is still practised widely in schools and homes. It does not make sense that most people are protected from inhumane or degrading treatment or punishment, but that children, who are society’s weakest and most impressionable members should be allowed to be treated in such a way”.

“Moreover, the use of violence in schools legitimizes the use of violence as a means of control. The unintended implication could be that hurting others is acceptable behaviour and encourages the use of physical force and humiliation of others more generally in society. Every child has the right to be protected from abuse and degradation. As such, CARL advocates that Section 20(2) be expunged. The abolition of corporal punishment is an imperative recommendation of the TRC. The Constitution should also guarantee the right of access to information, including all information held by the government.”¹⁶³

5.17 Recommendations

The CRC recommends deleting section 20(2) because it is obsolete. Section 20 should therefore read as follows:-

“20. No person shall be subject to any form of torture or any punishment or other treatment which is inhuman or degrading.”

5.18 Theme - Protection from Deprivation of Property

Current Context

Section 21 of the 1991 Constitution states:-

¹⁶³ CARL position paper, pages 7- 8

“21. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

- (a) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilization of any property in such a manner as to promote the public benefit or the public welfare of citizens of Sierra Leone; and
 - (b) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having any interest in or right over the property; and
 - (c) provision is made by law applicable to that taking of possession or acquisition—
 - (i) for the prompt payment of adequate compensation; and
 - (ii) securing to any person having an interest in or right over the property, a right of access to the court or other impartial and independent authority for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled and for the purpose of obtaining prompt payment of that compensation.
- (2) Nothing in this section shall be construed as affecting the making or operation of any law in so far as it provides for the taking of possession or acquisition of property—
- (a) in satisfaction of any tax, rate or due;
 - (b) by way of penalty for breach of the law whether under civil process or after conviction of a criminal offence
 - (c) as an incident of a lease, tenancy, mortgage charge, bill of sale, pledge or contract;
 - (d) by way of the vesting or administration of trust property, enemy property; *bona vacantia*, property of prohibited aliens, or the property of persons adjudged or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate or incorporate in the course of being wound up;
 - (e) in the execution of judgements or orders of courts;
 - (f) by reason of such property being in a dangerous state or liable to cause injuries to the health of human beings, animals or plants;
 - (g) in consequence of any law with respect to the limitation of actions;

- (h) for so long only as such taking possession may be necessary for the purposes of any examination investigation, trial, or inquiry, or, in the case of land, the carrying out thereon--
 - (i) of work of soil conservation or the conservation of other natural resources; or
 - (ii) of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable or lawful excuse refused or failed to carry out.
- (3) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property or the compulsory acquisition in the public interest in or right over property, where that property, interest or right is held by a body corporate which is established directly by any law and in which no moneys have been invested other than moneys proved by Parliament or by the Legislature of the former Colony and Protectorate of Sierra Leone.
- (4) Any such property of whatever description compulsorily taken possession of, and any interest in, or right over, property of any description compulsorily acquired in the public interest or for public purposes, shall be used only in the public interest or for the public purposes for which it is taken or acquired.
- (5) Where any such property as is referred to in subsection (4) is not used in the public interest or for the public purposes for which it was taken or acquired, the person who was the owner immediately before the compulsory taking or acquisition, as the case may be, shall be given the first option of acquiring that property, in which event he shall be required to refund the whole or such part of the compensation as may be agreed upon between the parties thereto; and in the absence of any such agreement such amount as shall be determined by the High Court.”

Issue – To add “National Security” Before “Defence”

5.19 Recommendations

The CRC recommends adding the phrase “national security” in relevant sections of Chapter III.

Under Section 21(1)(a), the phrase “national security” should be added before the word “defence”.

Section 21(1)(a) should therefore read as follows:-

“(a) the taking of possession or acquisition is necessary in the interests of national security, defence, public safety, public order, public morality, public health, town and country planning, the development or utilization of any property in such a manner as to promote the public benefit or the public welfare of citizens of Sierra Leone”

The words “the former Colony and Protectorate of Sierra Leone” should be deleted from section 21(3). It should therefore read as follows:-

“(3) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property or the compulsory acquisition in the public interest in or right over property, where that property, interest or right is held by a body corporate which is established directly by any law and in which no monies have been invested other than monies provided by Parliament.”

5.20 Theme - Protection for Privacy of Home and Other Property

Current Context

“22. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises, or interference with his correspondence, telephone conversations and telegraphic and electronic communications.

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

- (a) in the interest of defence, public safety, public order, public morality, public health, town and country planning, or the development or utilization of any property in such a manner as to promote the public benefit; or
- (b) to enable any body corporate established directly by any law or any department of the Government or any local authority to enter on the premises of any person in order to carry out work in connection with any property or installation which is lawfully on such premises and which belongs to that body corporate or to the Government or to that authority, as the case may be; or
- (c) for the purpose of protecting the rights and freedoms of other persons; or
- (d) for the purpose of executing any judgement or order of a court; or
- (e) for the purpose of affording such special care and assistance as are necessary for the health, safety, development and well-being of women, children and young persons, the aged and the handicapped;

and except in so far as that provision or, as the case may be, the thing done under authority thereof is shown not to be reasonably justifiable in a democratic society.”

Issue – To replace “Handicapped” with “Persons with Disability”

Observation

OSIWA and other stakeholders recommended replacing the word “handicapped” with the phrase “persons with disability”.

In its submission, OSIWA stated that “section 22(2)(e) allows affirmative action for the purpose of affording special care and assistance as are necessary for the health, safety, development and well-being of women, children, and young persons, the aged and **the handicapped**; and except in so far as that provision or as the case may be the thing done under authority thereof is shown not to be reasonably justifiable in a democratic society. **Proposal – replace ‘persons with disability.’**”¹⁶⁴

5.21 Recommendations

The CRC recommends adding the phrase “national security” in relevant sections of Chapter III. In section 22(2)(e) of the 1991 Constitution, the word “handicapped” should be replaced with the phrase “persons with disability”, and a new paragraph (f) should be added to section 22(2) to strengthen privacy-related matters.

Under Section 22(2)(a) the phrase “national security” should be added before the word “defence”.

Section 22(2)(a) should therefore read as follows:-

“(a) in the interest of national security, defence, public safety, public order, public morality, public health, town and country planning, or the development or utilization of any property in such a manner as to promote the public benefit;”

Section 22(2)(e) should therefore read as follows:-

“(e) for the purpose of affording such special care and assistance as are necessary for the health, safety, development and well-being of women, children and young persons, the aged and persons with disability”;

Paragraph (f) should be added to section 22(2) to read as follows:-

“(f) for the protection of home, communications, property and privacy, Parliament shall enact legislation to that effect.”

¹⁶⁴ OSIWA report page 1

5.22 Theme - Provision to Secure Protection of Law

Current Context

Section 23 of the 1991 Constitution states:

“**23.** (1) Whenever any person is charged with a criminal offence he shall unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Any court or other authority prescribed by law for the determination of the existence or extent of civil rights or obligations shall be independent and impartial; and where proceedings for such determination are instituted by or against any person or authority or the Government before such court or authority, the case shall be given fair hearing within a reasonable time.

(3) All proceedings of every court and proceedings relating to the determination of the existence or the extent of civil rights or obligations before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public:

Provided that the court or other authority may, to such an extent as it may consider necessary or expedient in circumstances where publicity would prejudice the interest of justice or interlocutory civil proceedings or to such extent as it may be empowered or required by law so to do in the interest of defence, public safety, public order, public morality, the welfare of persons under the age of twenty-one years or the protection of the private lives of persons concerned in the proceedings, exclude from its proceedings, persons other than the parties thereto and their legal representatives.

(4) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved, or has pleaded guilty:

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection, to the extent that the law in question imposes on any person charged as aforesaid the burden of proving particular facts.

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

- (a) shall be informed at the time he is charged in the language which he understands and in detail, of the nature of the offence charged;
- (b) shall be given adequate time and facilities for the preparation of his defence;
- (c) shall be permitted to defend himself in person or by a legal practitioner of his own choice;
- (d) shall be afforded facilities to examine in person or by his legal practitioner the witnesses called by the prosecution before any court and to obtain the attendance

and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

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

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

- (6) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall if he so requires, and subject to the payment of such reasonable fee as may be prescribed by law, be given within a reasonable time, and in any event not more than three months after trial, a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.
- (7) No person shall be held to be guilty of a criminal offence on account of any act or omission which did not, at the time it took place, constitute such an offence.
- (8) No penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.
- (9) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence:

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

- (10) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of any provisions of this section, other than subsections (7) and (8), to the extent that the law in question authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists before or during that period of public emergency.
- (11) In paragraphs (c) and (d) of subsection (5), the expression "legal practitioner" means a person entitled to practise as a Barrister and Solicitor of the High Court."

Issue – Right to Remain Silent and Age Requirement

Observation

The Sierra Leone Women’s position paper “Many Messages, One Voice” calls for SGBV to be prohibited in the revised Constitution. It calls for all rights of victims and survivors of violence to be given equal and full protection under the law.¹⁶⁵

CARL’s position paper suggested that the right to remain silent should be added to section 23 of the Constitution:

“The 1991 Constitution makes no provision for the right of persons accused in criminal proceedings to remain silent. This is a fundamental element of an accused person’s fair trial rights, such that elsewhere it is considered necessary to enshrine it in the Constitution. The South African Constitution, for example, provides for the right to remain silent, and not to testify during proceedings and also for the right not to be compelled to give self-incriminating evidence (at section 35(3) subsections (h) and (j)).

CARL submits that similar provisions be incorporated into the Sierra Leone Constitution and suggests that the most appropriate place for such a provision would be to make a new subsection 23(5)(f).

Furthermore, there should be a provision that statements made under duress or torture or without the presence of a counsel should be inadmissible in court. The Liberian Constitution, for example, clearly articulates in Article 21(c) that “any admission or other statements made by the accused in the absence of such counsel shall be deemed inadmissible as evidence in a court of law.” In terms of statements made under duress or torture, Article 12 of the Declaration Against Torture¹⁶⁶, Article 15 of the Convention Against Torture¹⁶⁷ and Article 69(7) of the Rome Statute of the International Criminal Court¹⁶⁸ all guarantee that evidence obtained through coercive means such as torture may not be used as evidence in any proceedings”.

CARL further emphasised in its position paper that legal aid should be added to section 23 of the revised Constitution:

¹⁶⁵ Sierra Leone Women’s position paper “Many Messages, One Voice” page 10

¹⁶⁶ “Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.”

¹⁶⁷ “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

¹⁶⁸ “Evidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if:

a) The violation casts substantial doubt on the reliability of the evidence; or
b) The admission of the evidence would be antithetical”

“Provision should be made in the Constitution stating that indigent accused persons shall be entitled to financial support for their legal defence, funded by the State. Article 14(3)(d) of the ICCPR guarantees a defendant the right “to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.” Moreover, both the South African and Liberian Constitutions articulate similar guarantees¹⁶⁹. Although a Legal Aid law has been promulgated in Sierra Leone, the Constitution needs to recognize the right of all indigent persons’ access to justice. CARL also recommends that the new Constitution strengthens the stature of the Legal Aid Board so that it is able to provide the services that a Public Defender’s Office provides in other countries. Such a provision should be inserted in the Sierra Leone Constitution at Section 23(5)(c)”.

Concerning the treatment of prisoners, CARL proposes that: “provision should be made in the revised Constitution for the treatment of prisoners. Other Constitutions contain such provision, including the Constitution of South Africa. This should be inserted as a new subsection 23(12), to read as follows:

23(12) “Everyone who is detained, including every sentenced prisoner and detained person awaiting trial, has the right:

- a. to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
- b. to communicate with, and be visited by, that person's
 - (i) spouse or partner;
 - (ii) next of kin;
 - (iii) chosen religious counsellor; and
 - (iv) Chosen medical practitioner”¹⁷⁰

Oxfam and the 50/50 Group recommended that “the provision to secure protection of the law-victims and survivors of violence (especially of SGBV) are to be given equal and full

¹⁶⁹ Article 35(3) of the South African Constitution states: “Every accused person has the right to a fair trial, which includes the right –

- (g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly.”

Article 21(j) of the Liberian Constitution reads:

“The right to counsel and the rights of counsel shall be inviolable. There shall be no interference with the lawyer-client relationship. In all trials, hearings, interrogatories and other proceedings where a person is accused of a criminal offense, the accused shall have the right to counsel of his choice; and where the accused is unable to secure such representation; the Republic shall make available legal aid services to ensure the protection of his rights.”

¹⁷⁰ CARL position paper, pages 8-10

recognition and protection under the law. Impunity for SGBV is to be expressly condemned by the Constitution.”¹⁷¹

5.23 Recommendations

The CRC recommends adding “national security” before the word “defence” in the proviso to section 23(3), and also endorses the recommendation made in the PTC Report to reduce the age from twenty one to eighteen in the proviso to section 23(3).

It should therefore read as follows:-

“(3) All proceedings of every court and proceedings relating to the determination of the existence or the extent of civil rights or obligations before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public:

Provided that the court or other authority may, to such an extent as it may consider necessary or expedient in circumstances where publicity would prejudice the interest of justice or interlocutory civil proceedings or to such extent as it may be empowered or required by law so to do in the interest of national security, defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings, exclude from its proceedings, persons other than the parties thereto and their legal representatives.”

Section 23(10) of the 1991 Constitution should be deleted, and a new subsection should be added, dealing with the right to remain silent.

The new subsection should read as follows:-

“Everyone who is detained, including every sentenced prisoner and detained person awaiting trial, has the right:

(a) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and

(b) to communicate with, and be visited by, that person's

(i) spouse or partner;

(ii) next of kin;

(iii) chosen religious counsellor; and

¹⁷¹ Oxfam and 50/50 position paper on women’s rights page 8

(iv) chosen medical practitioner.”

(v) Legal counsel

5.24 Theme - Protection of Freedom of Conscience

Current context

Section 24 of the 1991 Constitution states:

“24. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience and for the purpose of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom either alone or in community with others and both in public and in private to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or if he is a minor the consent of his parent or guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or to attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) No religious community or denomination shall be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

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

(a) in the interest of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedoms of other persons including the right to observe and practice any religion without the unsolicited intervention of the members of any other religion;

and except in so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.”

Observation

The Sierra Leone Women's position paper "Many Messages, One Voice", and also Oxfam and the 50/50 Group, affirm the view that everybody should be free to practice their religion, and calls for the Constitution to permit wearing the hijab in public and any other lawful expression of faith and religion to protect against discrimination. The position paper also states that in order to implement the protection of freedom of conscience, no State function should take place on Fridays, Sundays or any other day observed as a holy day for any religion¹⁷². The paper also states that the Government should be pro-active to maintain religious balance and harmony, for example having minimum distances between churches and mosques.¹⁷³

The Rastafarian Movement of Sierra Leone (Twelve Tribes of Israel (TTI), Bobo Ashanti, Wise Men from the East and Willing Souls) in their position paper stated that "religious tolerance expressed in the practice and observance of our religious rights" should be added to section 24(3) of the Constitution.

They continued that "in effect, to fulfill Chapter III (24) of the 1991 Constitution, the reviewed constitution must crucially consider the following to enhance the protection, preservation and promotion of Freedom of Conscience as a right-based goal."¹⁷⁴

5.25 Recommendations

The CRC believes that Sierra Leone is a tolerant society, and neither section 24 nor any other law prohibits any religious or cultural practices. However, the views expressed in the position papers above are indicative of regional and global trends whereby religious and cultural practices are under pressure due to certain extreme groups. The CRC therefore recommends that any future law or policy must ensure that Sierra Leone tradition of religious tolerance remains intact.

The CRC recommends adding "national security" before the word "defence" in section 24(5)(a), which should therefore read as follows:-

"(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes a provision which is reasonably required—

(a) in the interest of national security, defence, public safety, public order, public morality or public health;"

¹⁷² Sierra Leone women's position paper "Many Messages, One Voice" page 10

¹⁷³ Oxfam and 50/50 position paper on women's rights page 9

¹⁷⁴ The Rastafarian Movement of Sierra Leone position paper page 5

5.26 Theme - Protection of Freedom of Expression and the Press

Current Context

Section 25 of the 1991 Constitution states:

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

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

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

(a) which is reasonably required—

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the telephony, telegraphy, telecommunications, posts, wireless broadcasting, television, public exhibitions or public entertainment; or

(b) which imposes restrictions on public officers or members of a defence force;

and except in so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.”

Observation

The TRC commented on the importance of the principle of freedom of expression: “freedom of expression is the lifeblood of a democracy. A culture of public debate and tolerance for dissenting ideas is the sign of a vibrant and healthy democracy. Restrictions on the freedom of expression represent a fearful State; it reflects a State that has no confidence in its ability to promote and disseminate its doctrines in the marketplace of ideas.

A free press ranks alongside an independent judiciary as one of the most important counter forces to the excesses of both the public and private sectors. The media should be free of

political patronage. The degree to which the media is independent is the degree to which it can perform an effective public watchdog function on the conduct of public officials and powerful individuals in society. Laws establishing "freedom of expression" require support and enforcement from the courts. Without an independent judiciary, press freedom cannot be maintained.

The use of sedition and defamation proceedings under the criminal law does not bode well for freedom of expression in Sierra Leone. These provisions are the leftovers of a long gone colonial era. In many countries, laws on sedition and criminal libel have been either formally or effectively abandoned.

The only circumstances in which criminal sanctions on free speech can be justified is where an intention to incite violence or lawless conduct has been demonstrated beyond a reasonable doubt and where there is a real risk that violence will ensue.”¹⁷⁵

In an individual submission, Mr. Owen Moriba Momoh Kai Combey, a citizen of Sierra Leone stated that “it will be ill-advised to retain the control of the media – the watchdog of the government - in the hands of the Chief Executive of the government. Otherwise, arbitrariness will always result”.

5.27 Recommendations

The CRC recommends that the establishment and operation of media houses should be regulated by the Independent Media Commission (IMC), and this is referred to in the proposed new chapter on media in the revised Constitution. In consequence of the new chapter, the CRC recommends the following amendments to section 25(1) and (2) of the 1991 Constitution.

Section 25(1) of the 1991 Constitution should be amended as follows:-

“25. (1) Except with his/her own consent, no person shall be hindered in the enjoyment of his/her freedom of expression.

(1) Expression includes the freedom to hold opinions and to receive and impart ideas and information without interference with his correspondence.”

5.28 Theme - Protection of Freedom of Assembly and Association

Current Context

Section 26 of the 1991 Constitution states:

¹⁷⁵ TRC, Volume 2 Chapter III, page 132

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

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

(a) which is reasonably required—

(i) in the interests of defence, public safety, public order, public morality, public health, or provision for the maintenance of supplies and services essential to the life of the community; or

(ii) for the purpose of protecting the rights and freedoms of other persons; or

(b) which imposes restrictions upon public officers and upon members of a defence force; or

(c) which imposes restrictions on the establishment of political parties, or regulates the organisation, registration, and functioning of political parties and the conduct of its members;

and except in so far as that provision, or as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.”

Observation

The issue of freedom of assembly and association was discussed in the PTC Report, which also made a recommendation on it. In addition, the CRC received a position paper from the Movement for Social Progress (MSP), in which the MSP recommended that labour and rights of workers are not adequately catered for in the 1991 Constitution to guarantee workers’ rights. They also said that there was need to protect workers and democratisation of trade unions.¹⁷⁶

5.29 Recommendations

The CRC endorses the recommendation of the PTC Report to add two new paragraphs to section 26(1), to read as follows:-

¹⁷⁶ MSP position paper page 2

26. (1)(a) Every Trade Union, employers' organizations and employers has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining.

(b) National legislation may recognize union security of tenure contained in collective agreements.

5.30 Theme - Protection from Discrimination

Current Context

Protection from discrimination

Section 27 of the 1991 Constitution states:-

“**27.** (1) Subject to the provisions of subsection (4), (5), and (7), no law shall make provision which is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7), and (8), no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

(3) In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) shall not apply to any law so far as that law makes provision—

(a) for the appropriation of revenues or other funds of Sierra Leone or for the imposition of taxation (including the levying of fees for the grant of licenses); or

(b) with respect to persons who are not citizens of Sierra Leone; or

(c) with respect to persons who acquire citizenship of Sierra Leone by registration or by naturalization, or by resolution of Parliament; or

(d) with respect to adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law; or

(e) for the application in the case of members of a particular race or tribe or customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or

- (f) for authorising the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency; or
 - (g) whereby persons of any such description as mentioned in subsection (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society; or
 - (h) for the limitation of citizenship or relating to national registration or to the collection of demographic statistics.
- (5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it makes provision with respect to qualifications for service as a public officer or as a member of a defence force or for the service of a local government authority or a body corporate established directly by any law or of membership of Parliament.
- (6) Subsection (2) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provisions of law as is referred to in subsection (4) or (5).
- (7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) may be subjected to any restriction of the rights and freedoms guaranteed by sections 18, 22, 24, 25 and 26 being such a restriction as is authorised by subsection (3) of section 18, subsection (2) of section 22, subsection (5) of section 24, subsection (2) of section 25 or subsection (2) of section 26, as the case may be.
- (8) The exercise of any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person under or by this Constitution or any other law shall not be enquired into by any Court on the grounds that it contravenes the provision of subsection (2).”

5.31 Observation

Issue - Protection from Discrimination

Section 27 should be repealed in its entirety and replaced with a new section that expressly prohibits discrimination.

The CRC was very conscious of the fact that the provisions relating to protection from discrimination need to be modernised.

The CRC considered in depth all the comments and recommendations made in the consultations, and noted that appropriate legislation had been introduced to deal with discriminatory practices. The CRC conceded that an updated list of recognised human rights and non-discriminatory provisions was necessary, and that certain provisions of section 27 need to be repealed.

The TRC recommended repealing all the discriminatory gender provisions of section 27: “we have also recommended affirmative action in favour of women and the disabled.”¹⁷⁷

The CRC also noted that there may be an inherent contradiction between the inclusion of the prohibition of discrimination on grounds of sex (which was only inserted in subsection 27(3) as a ground for discrimination in the Constitution) and the continuation of section 27(4)(d) which largely applies to gender issues.

The CRC took careful note that the PTC Report had recommended that section 27 should be repealed and replaced.¹⁷⁸

The CRC was mindful that the TRC had made an imperative recommendation on the discriminatory provisions of section 27:

“To the extent that customary law is inconsistent with Chapter III of the Constitution, courts should be empowered to declare it unconstitutional. This recommendation requires the repeal of sections 27(4)(d) and (e) of the Constitution which exempts certain areas of the law such as adoption, marriage and divorce from protection against discrimination. This is an imperative recommendation.”¹⁷⁹

In its position paper, CARL stated that: “the passage of the laws also marked an innovative collaboration between government and civil society. While the bills were first championed by the Parliamentary Human Rights Committee with support from UNDP, numerous other partners provided support, including extensive legal input from the newly-formed Human Rights Commission and considerable logistical support from an informal coalition of civil society organisations known as the Taskforce on the Gender Bills. The Sierra Leone Court Monitoring Programme has played a central role in this taskforce.

The Registration of Customary Marriage and Divorce Act provides that children cannot marry below the age of 18 and introduces the requirement that both parties must consent. It provides that women are entitled to acquire and dispose of property in their own right, and that dowries do not have to be returned in the event of divorce or separation. It also enables women to apply for child maintenance if a father refuses to take responsibility for his child. In addition, customary marriages and divorces will have to be registered, like other marriages, and this will enable people to prove their marital status if their spouse denies responsibility.

¹⁷⁷ PTCR page 13 para 28

¹⁷⁸ PTCR pages 36 - 39

¹⁷⁹ TRC Volume 2 Chapter III, page 137, para 108

The Domestic Violence Act introduces both a new offence of domestic violence and the legal instrument of protection orders to regulate violent relationships, including, if necessary, excluding men from the home. The Act will also require the Government to provide temporary safe homes for victims of domestic violence.

The Devolution of Estates Act will introduce considerable changes to the economic standing of women, as most wealth in Sierra Leone is inherited. Whereas currently if someone dies without a will, the estate usually reverts to the deceased person's parents and brothers, with the enactment of the new law, the majority will devolve to the wife and children. The Act will also end the widespread practice of wife inheritance whereby women are forced to marry their husband's brother. However, it will not provide for unmarried partners if one of the partners is already married, and people must therefore be warned of the dangers of cohabiting with someone who may have separated from their former partner but is not yet divorced. In addition dependants may not apply to vary a will, so people must be conscious that if they make a will they must update it regularly.

The enactment of these laws is a huge step forward, but implementation will nevertheless be an uphill struggle. While the Government will be formally responsible for the process, it will be up to civil society to be dynamic in supporting government efforts and ensuring that the rights enshrined in the new Acts are realised.¹⁸⁰

Sierra Leone became a signatory to and ratified the CEDAW in 1988 with no reservations, and signed the optional protocol in 2002.

CEDAW

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

¹⁸⁰ CARL website <http://www.carl-sl.org/home/reports/298-sierra-leone-parliament-passes-the-gender-bills-into-law>

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;¹⁸¹

A recommendation by the American Bar Association suggested repealing section 27 and replacing it with the following, which is based on the international treaties and constitutions to which Sierra Leone is a signatory:

“(1) Every person is equal before the law and has the right to equal and protection equal benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Every person shall have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

(6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

(7) Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need.”¹⁸²

Various position papers called for a review of section 27:

In its submission, HRCSL stated “the protection against Discrimination provided in section 27 needs to be clarified and strengthened by amendment/elimination of Section 27(4). The provisions on Affirmative Action to address all kinds of inequality and marginalization also need to be reinforced.”¹⁸³

Women’s Forum (Sierra Leone) reiterated that section 27(4)(d) and (e) were regarded as a major source of discrimination against women.¹⁸⁴ They went on further to urge that the international human rights instruments and conventions to which Sierra Leone is a signatory should now all be ratified and also domesticated. The Women’s Forum acknowledged that some action had been taken but that more needed to be done. In particular, they said: “What should be expunged

¹⁸¹ Article 1 and Article 2(a), (e) and (f)

¹⁸² ABA/UNDP International Legal Resource Centre pages 29 -30

¹⁸³ HRCSL position paper page 9 para 22

¹⁸⁴ Women’s Forum position paper page 2 para 1

from the 1991 Constitution we have said over and over again is section 27 (4) d. Giving the cow and holding the rope does not make for sincerity of purpose.”¹⁸⁵

The National Disabled Women’s Forum called for the Constitution to guarantee respect for all Sierra Leoneans, especially women with disabilities. They suggested that section 27 should prohibit discrimination.¹⁸⁶

Sierra Leone Women’s position paper made many recommendations on section 27: “all provisos to section 27 to be closely reviewed. Section 27 (4) (d) & (e) are to be expunged. “Nah for Pull Dem Fiyo Fiyo.”¹⁸⁷

Sierra Leone Women also wanted all discrimination against women with regard to access to land and all sexual and discriminatory language to be expressly prohibited.

The position paper went on to call for this section to be expanded to prohibit discrimination based on disability, marital status, pregnancy, current or former health status and other situations, similar to provisions made in Kenya’s 2010 Constitution.

The position paper also called for confirmation to be given to the State’s obligation to provide affirmative action. In particular, it recommended that the Constitution should include a minimum 50% quota for women’s participation at all levels in the public and private sector and spheres.¹⁸⁸

Oxfam and the 50/50 Group also made recommendations to address ambiguities in section 27, in particular subsection (4)(d) and (e): “we recommend a clear and unequivocal Prohibition of all Forms of Discrimination against women in public or private life.”

Port Loko Women’s Association recommended that “the principle of non-discrimination in political and public life to be strengthened and made more effective.”¹⁸⁹

ENCISS Implementing Partners’ position paper recommended that section 27 be critically looked into.¹⁹⁰

The position paper of Civil Society Organisations (CSO) reiterated the call: “Expunge Section 27 of the 1991 Constitution in its entirety as it clearly discriminates against women on the grounds of customary practices.”¹⁹¹

OSIWA along with a group of stakeholders recommended that discrimination must be prohibited both in public and private domain. They stated “section 27(2) Prohibition of

¹⁸⁵ Statement made to CRC by the President of Women’s Forum page 2

¹⁸⁶ National Disabled Women’s Forum position paper page 1 para 6 and 7, page 2 para 8

¹⁸⁷ Sierra Leone Women’s position paper “Many Messages, One Voice” page 10

¹⁸⁸ Sierra Leone Women’s position paper “Many Messages, One Voice” page 11

¹⁸⁹ Port Loko Women’s Association page 1

¹⁹⁰ ENCISS Implementing partners position paper page 3 para 6

¹⁹¹ CSO position paper page 4

discriminatory treatment limited only to persons in public office or public authority. Proposal – to extend this prohibition in both public and private domain”

Sierra Leone People’s Party (SLPP) Women’s Wing submitted that “All forms of discrimination against women must be abolished in the Constitution.”¹⁹²

Youth Engagement with the CRC in Bo city recommended that “Any provision that discriminates against other people should be removed”¹⁹³. The position paper of the National Youth Commission also called for a provision prohibiting discrimination on grounds of youth.¹⁹⁴

Mr. Owen Combey in his individual submission to the CRC also expressed concerns relating to the discriminatory provisions in section 27 and recommended that the Constitution should make no provision for discrimination among citizens on the basis of race or type of citizenship.

In the Summary Report of the CRC, it was noted that stakeholders expressed the view that “Any words or phrases that suggest discrimination on the grounds of sex in any circumstances should be expunged from the constitution” and that “Discriminatory provisions in customary law should be void and of no legal effect.”¹⁹⁵

5.32 Recommendations

The CRC carefully considered all the submissions and recommendations, including the PRC Report and the TRC. Therefore, the CRC proposes a new section 27, which should read as follows:-

“27.

- (1) Every person is equal before the law and has the right to equal protection and benefit of the law.**
- (2) Equality includes full and equal enjoyment of all rights and fundamental freedoms. Women and men have the rights to equal treatments including the rights to equal opportunities in political, economic, cultural and social spheres.**
- (3) A person may not be discriminated against on the grounds of race, colour, ethnic origin, religion, creed, social or economic status.**
- (4) For the purposes of this section discriminates means to give different treatment to different persons attributable or mainly to their respective description by race, sex,**

¹⁹² SLPP Women’s Wing position paper page 2

¹⁹³ Youth Engagement with CRC –Bo page 5 point 3

¹⁹⁴ National Youth Commission position paper page 5 para 3.1

¹⁹⁵ Summary Report of Public Consultations by CRC page 26

pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

- (5) Neither the state nor any person shall discriminate against any other on any of the grounds specified in section 5.**
- (6) The state shall take legislative and other measures to implement the principle that not more than two thirds of the members of elective or appointive bodies shall be of the same gender**
- (7) Nothing in this section shall prevent Parliament from enacting laws that are necessary to provide for the implementation of policies and programmes aimed at addressing social, economic, and educational imbalances in the Sierra Leonean society.”**

5.33 Theme - Enforcement of Protective Provisions

Current Context

Enforcement of protective provisions

Section 28 of the 1991 Constitution states:

“28. (1) Subject to the provisions of subsection (4), if any person alleges that any of the provisions of sections 16 to 27 (inclusive) has been, is being or is likely to be contravened in relation to him by any person (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person, (or that other person), may apply by motion to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction—

- (a) to hear and determine any application made by any person in pursuance of subsection (1); and
- (b) to determine any question arising in the case of any person which is referred to in pursuance of subsection (3), and may make such order, issue such writs, and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of any of the provisions of the said sections 16 to 27 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any court other than the Supreme Court, any question arises as to the contravention of any of the provisions of sections 16 to 27 inclusive, that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court.

(4)(a) The Rules of Court Committee may make rules with respect to the practice and procedure of the Supreme Court for the purposes of this section;

(b) Parliament may confer upon the Supreme Court such powers in addition to those conferred by this section as may appear to Parliament to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by this section.

(5) Parliament shall make provision—

(a) for the rendering of financial assistance to any indigent citizen of Sierra Leone where his right under this Chapter has been infringed, or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim; and

(b) for ensuring that allegations of infringements of such rights are substantial and the requirement or need for financial or legal aid is real.

(6) The Supreme Court—

(a) consisting of not less than five Justices of the Supreme Court shall consider every question referred to it under this Chapter for a decision, and, having heard arguments by or on behalf of the parties by Counsel, shall pronounce its decision on such question in open court as soon as may be and in any case not later than thirty days after the date of such reference;

(b) shall for the purposes of this Chapter, give its decision by a majority of the Justices of that Court and such decision shall be pronounced by the Chief Justice or any other of the Justices as the Court shall direct.”

Observation

The PTC Report recommended that section 28 be re-arranged to read as follows:

“1. If in any proceedings in any court other than the Supreme Court, any question arises as to the contravention of any of the provisions of Sections 16– 27 inclusive, that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court.

(a) The Rules of Court Committee may make rules with respect to the practice and procedure of the Supreme Court for the purposes of this section;

(b) Parliament may confer upon the Supreme Court such powers in addition to those conferred by this section as may appear to Parliament to be necessary and desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by this section.

2. Parliament shall make provisions –

(a) for the rendering of financial assistance to an indigent citizen of Sierra Leone where his right under this Chapter has been infringed, or with a view to enabling him to engage the services of a legal practitioner to prosecute his claims;

(b) for ensuring that allegation of infringements of such rights are substantial and the requirement or need for financial or legal aid is real.

3. The Supreme Court –

(a) consisting of not less than five Justices of the Supreme Court shall consider every question referred to it under this Chapter for decisions, and, having heard arguments by or on behalf of the parties by Counsel, shall pronounce its decision on such question in open court as soon as may be and in any case not later than thirty days after the date of such reference.¹⁹⁶

The Sierra Leone Women’s position paper “Many Messages, One Voice” recommended that all human rights complaint cases are referred in the first instance to an expanded and empowered to HRCSL for determination. HRCSL should be required to sit regularly in every district headquarter town for the hearing and determination of such cases. All human rights violation cases should be free and that provision is made for class actions to be brought to support women to seek redress¹⁹⁷.

With regard to Section 28 Oxfam and 50/50 Group endorsed the PTC Report recommendations and stated that “there should be the Enforcement of Protective Provisions; in line with the PTRC recommendation that ALL Human Right complaint cases under Chapter 3 are to go to an expanded and empowered Human Rights Commission in Sierra Leone first, for determination with any appeal to the Supreme Court. The HRCSL shall be required to sit regularly in every District headquarter town for the hearing and determination of cases of alleged violation of human rights. Further to that, all such alleged human rights violation cases should be free as is the position now with HRCSL cases. Further provision is to be made for class actions to be brought to support women to seek redress¹⁹⁸”.

5.34 Recommendations

The CRC after careful deliberations recommended that section 28 should stay as is in the 1991

Section 28

“28. (1) Subject to the provisions of subsection (4), if any person alleges that any of the provisions of sections 16 to 27 (inclusive) has been, is being or is likely to be contravened in

¹⁹⁶ PTC Report, pages 34 and 35

¹⁹⁷ Sierra Leone Women’s position paper “Many Messages, One Voice” page 11

¹⁹⁸ Oxfam and 50/50 Group position paper on women’s rights page 10

relation to him by any person (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person, (or that other person), may apply by motion to the Supreme Court for redress.

(3) The Supreme Court shall have original jurisdiction—

- (c) to hear and determine any application made by any person in pursuance of subsection (1); and
- (d) to determine any question arising in the case of any person which is referred to in pursuance of subsection (3), and may make such order, issue such writs, and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of any of the provisions of the said sections 16 to 27 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any court other than the Supreme Court, any question arises as to the contravention of any of the provisions of sections 16 to 27 inclusive, that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court.

(4)(a) The Rules of Court Committee may make rules with respect to the practice and procedure of the Supreme Court for the purposes of this section;

(b) Parliament may confer upon the Supreme Court such powers in addition to those conferred by this section as may appear to Parliament to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by this section.

(7) Parliament shall make provision—

- (c) for the rendering of financial assistance to any indigent citizen of Sierra Leone where his right under this Chapter has been infringed, or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim; and
- (d) for ensuring that allegations of infringements of such rights are substantial and the requirement or need for financial or legal aid is real.

(8) The Supreme Court—

- (c) consisting of not less than five Justices of the Supreme Court shall consider every question referred to it under this Chapter for a decision, and, having heard arguments by or on behalf of the parties by Counsel, shall pronounce its decision on such question in open court as soon as may be and in any case not later than thirty days after the date of such reference;

- (d) shall for the purposes of this Chapter, give its decision by a majority of the Justices of that Court and such decision shall be pronounced by the Chief Justice or any other of the Justices as the Court shall direct.”

5.35 Theme - Public Emergency

Current context

Section 29 of the 1991 Constitution states:

“29. (1) whenever in the opinion of the President a state of public emergency is imminent or has commenced, the President may, at any time, by Proclamation which shall be published in the *Gazette*, declare that—

- (a) a state of public emergency exists either in any part, or in the whole of Sierra Leone; or
 - (b) a situation exists which, if it is allowed to continue, may lead to a state of public emergency in any part of or the whole of Sierra Leone.
- (2) The President may issue a Proclamation of a state of public emergency only when—
- (a) Sierra Leone is at war;
 - (b) Sierra Leone is in imminent danger of invasion or involvement in a state of war; or
 - (c) there is actual breakdown of public order and public safety in the whole of Sierra Leone or any part thereof to such an extent as to require extraordinary measures to restore peace and security; or
 - (d) there is a clear and present danger of an actual breakdown of public order and public safety in the whole of Sierra Leone or any part thereof requiring extraordinary measures to avert the same; or
 - (e) there is an occurrence of imminent danger, or the occurrence of any disaster or natural calamity affecting the community or a section of the community in Sierra Leone; or
 - (f) there is any other public danger which clearly constitutes a threat to the existence of Sierra Leone.
- (3) Every declaration made under subsection (1) shall lapse—
- (a) in the case of a declaration made when Parliament is sitting at the expiration of a period of seven days beginning with the date of publication of the declaration; and
 - (b) in any other case, at the expiration of a period of twenty-one days beginning with the date of the declaration,

unless it has in the meantime been approved by or superseded by a Resolution of Parliament supported by the votes of two-thirds of the Members of Parliament.

- (4) A declaration made under subsection (1) may at any time before being superseded by a Resolution of Parliament be revoked by the President by Proclamation which shall be published in the *Gazette*, and all measures taken thereunder shall be deemed valid and lawful and shall not be enquired into by any court or tribunal.
- (5) During a period of public emergency, the President may make such regulations and take such measures as appear to him to be necessary or expedient for the purpose of maintaining and securing peace, order and good government in Sierra Leone or any part thereof.
- (6) Without derogating from the generality of the powers conferred by subsection (5) and notwithstanding the provisions of this Chapter, the regulations or measures may, so far as appears to the President to be necessary or expedient for any of the purposes mentioned in that subsection—
 - (a) make provision for the detention of persons, the restriction of the movement of persons within defined localities, and the deportation and exclusion of persons other than citizens of Sierra Leone from Sierra Leone or any part thereof;
 - (b) authorise—
 - (i) the taking of possession or control on behalf of the Government of any property or undertaking;
 - (ii) the acquisition on behalf of the Government of any property other than land;
 - (c) authorise the entering and search of any premises;
 - (d) amend any law, suspend the operation of any law, and apply any law with or without modification:

Provided that such amendment, suspension or modification shall not apply to this Constitution:

- (e) provide for charging, in respect of the grant or issue of any license, permit, certificate or other document for the purpose of the regulations, such fees as may be prescribed by or under the regulations;
- (f) provide for payment of compensation and remuneration to persons affected by the regulations;
- (g) provide for the apprehension, trial and punishment of persons offending against the regulations;

(h) provide for maintaining such supplies and services as are, in the opinion of the President, essential to the life and well-being of the community:

Provided that nothing in this subsection shall authorise the making of regulations during a period of public emergency for the trial of persons who are not members of defence forces by military courts.

- (7) The payment of any compensation or remuneration under the provisions of such regulations shall be a charge upon the Consolidated Fund.
- (8) Regulations made under this section shall apply to the whole of Sierra Leone or to such parts thereof as may be specified in the regulations.
- (9) Regulations made under this section may provide for empowering such authorities or persons as may be specified in the regulations to make Orders and Rules for any of the purposes for which the regulations are authorised by this Constitution to be necessary or expedient for the purposes of the regulations.
- (10) (a) Every regulation or measure taken under this section and every order or rule made in pursuance of such a regulation shall, without prejudice to the validity of anything lawfully done thereunder, cease to have effect ninety days from the date upon which it comes into operation unless before the expiration of the period, it has been approved by resolution passed by Parliament.
(b) Any such regulation, order or rule may, without prejudice to the validity of anything lawfully done thereunder at any time be amended or revoked by the President.
- (11) Subject to the provisions of subsections (7) and (8) of section 23, every regulation made under this section and every order or rule made in pursuance of such a regulation shall have effect notwithstanding anything inconsistent therewith contained in any law; and any provision of a law which is inconsistent with any such regulation, order or rule shall, whether that provision has or has not been amended, modified or suspended in its operation under any Act, cease to have effect to the extent that such regulation, order or rule remains in force.
- (12) A declaration made under subsection (1) that has been approved by or superseded by a resolution of Parliament in pursuance of subsection (2) shall, subject to the provisions of subsection (3), remain in force as long as that resolution remains in force.
- (13) A resolution of Parliament passed for the purpose of this section shall remain in force for a period of twelve months or such shorter period as may be specified therein:

Provided that any such resolution may be extended from time to time by a further such resolution, supported by the votes of two-thirds of Members of Parliament, each extension not exceeding twelve months from the date of the resolution effecting the extension; and any such resolution may be revoked at any time by a resolution supported by the votes of a simple majority of all the Members of Parliament.

- (14) Any provision of this Section that a declaration made under subsection (1) shall lapse or cease to be in force at any particular time is without prejudice to the making of a further such declaration whether before or after that time.
- (15) Every document purporting to be an instrument made or issued by the President or other authority or person in pursuance of this section, or of any regulation made thereunder and to be signed by or on behalf of the President or such other authority or person, shall be received in evidence, and shall, until the contrary be proved, be deemed to be an instrument made or issued by the President or that authority or person.
- (16) The President may summon Parliament to meet for the purpose of subsection (2) notwithstanding that Parliament then stands dissolved, and the persons who were Members of Parliament immediately before the dissolution shall be deemed, for those purposes, still to be Members of Parliament but subject to the provisions of section 79 of this Constitution (which relates to the election of the Speaker of Parliament), without prejudice to the provisions of section 85 of this Constitution (which relates to the prolongation of the life of Parliament during a period of public emergency). Parliament shall not when summoned by virtue of this subsection transact any business other than debating and voting upon a resolution for the purpose of subsection (2).
- (17) During a period of detention—
- (a) if any person who is detained in such a case as is mentioned in paragraph (a) of subsection (6) and who is not released so requests at any time not earlier than thirty days after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law, comprising not more than three persons from amongst persons of not less than fifteen year's standing entitled to practise in Sierra Leone as legal practitioners;
 - (b) the Chairman of the tribunal, set up under paragraph (a) shall be appointed by the Chief Justice, and the two other members shall be nominated by the Sierra Leone Bar Association;
 - (c) on any review by a tribunal in pursuance of *paragraph (a)* of the case of any detained person, the tribunal may make recommendations concerning the NECessity or expediency of continuing his detention to the authority by whom it was ordered, but unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendation.
- (18) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the taking during a period of a state of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists immediately before and during that period of a state of public emergency.”

5.36 Observation - Reduction in the Time of a State of Emergency

- A. Non-derogable human rights should not be violated during public emergencies.
- B. The language should be simplified to ensure clarity.

Emergency Powers

The TRC noted that governments tend to use emergency powers to deny human rights to its citizens. The TRC therefore recommended that: “The imposition of emergency powers inevitably results in the denial of human rights. Emergency provisions have been used to silence political opponents who posed challenges to different regimes. The resort to emergency powers to deal with political opposition is a sign of failure on the part of the government to govern effectively.

Emergency powers should be used only as a last resort to deal with a genuine state of emergency in which the life of the nation is actually threatened by war, insurrection, natural disaster or other public emergency; and emergency powers are required to restore peace and order.

The current Constitution of Sierra Leone devotes more space to taking away the rights of citizens than to ensuring their respect and Section 29, which provides for public emergencies, is the best example of this.

The United Nations Human Rights Committee has attempted to prepare guidelines for the use of states of emergencies. The Committee declares that even in a state of emergency:

“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Furthermore, during a state of emergency, judicial remedies must be available so that citizens can contest the legality of special measures, including detention.”¹⁹⁹

The TRC recommends that all emergency measures must be subject to judicial review by the Courts of Sierra Leone. Any superior court of record should be able to decide on the validity of a declaration of a state of emergency and any extension of a declaration of a state of emergency. No clause should be permitted to stand, which prevents the courts from reviewing any measure taken in terms of a public emergency. No law made under a public emergency should permit the indemnifying of the state or any person, in respect of any unlawful act. These recommendations require the partial repeal of sections 29(4) and (6) of the Constitution²⁰⁰.

The PTC Report recommended that the Constitution should be amended to ensure that even where a state of emergency exists, the President will not derogate from the human rights that are internationally accepted and identified as non-derogable under any circumstances. This includes

¹⁹⁹TRC Volume 2 Chapter three page 126

²⁰⁰ TRC Volume 2 Chapter three page 129 paras 64-68

the right to life, the prohibition of torture, the principle of legality in the field of criminal law and the freedom of thought, conscience and religion²⁰¹.

In its position paper, the GSCF²⁰² made a clear recommendation with regard to section 29:

“Section 29 of the 1991 Constitution is another fundamentally important part of the Bill of Rights that needs to be overhauled. This section contains the Public Emergency provisions and concern has been expressed whether existing safeguards of civil liberties are strong enough since this is an area prone to abuse by the executive arm of government.”

It should be noted that PTRC, urged on by UNIOSIL and HRCSL, recommended that certain human rights be made non-derogable even in a state of emergency. The PTRC recommended a new subsection which reads as follows:

“Where a state of emergency exists, the President will not derogate from (i.e. suspend) the recognised international requirements pertaining to certain human rights which have been identified in Article 4(2) of the United Nations International Covenant on Civil and Political rights as non derogable in any circumstances, such as the right to life, the prohibition on torture, the principle of legality in the field of criminal law and freedom of thought, conscience and religion.”

There was also a call from the GSCF for more safeguards against what appear to be unusually wide powers given to the president to declare a state of emergency: “Section 29 is a classic example of obscure language combining with confused layout and format to prevent ordinary citizens accessing their rights. The Sierra Leonean provisions are actually not more draconian than those of comparable countries such as Ghana, Kenya and South Sudan but the language is so convoluted that it is hard at first glance to ascertain the true extent of the presidential powers under a state of emergency and the parliamentary checks and balances to those powers.

A comparative review of our 1991 constitution as against the constitutions of the countries specified above noted against slavery and sex discrimination non-derogable and guarantees a citizen’s right to civil litigation during a state of emergency. Guarantee of human rights during a state of emergency is the most significant protection that can be provided that the grounds on which an emergency may be declared are narrowest and most precise in our section 29 and our constitution requires a presidential declaration of a state of emergency to be approved by a two-thirds majority of MPs as against a simple majority in the case of Ghana. Parliamentary powers to revoke or amend a presidential declaration of emergency vary very little in the constitutions reviewed.

²⁰¹ PTRC page 42

²⁰² The GSCF is a group of International Non-Government Organizations, National Non-Governmental Organizations and Civil Society Organizations, comprising OXFAM, Action Aid International Sierra Leone, Christian Aid, Trocaire, Campaign for Good Governance (CGG), Network Movement for Justice and Development (NMJD), IBIS and Open Society Initiative for West Africa (OSIWA)

However, the PTRC recommendation for certain rights to be non-derogable in an emergency is much more limited than the similar provision in the CRSS which makes prohibitions to citizens so it is vital that the PTRC recommendation is further amended to the standards of the CRSS provisions before adoption by the CRC.”²⁰³

The Revolutionary United Front Party (RUF) also emphasised that “not all human rights are to be suspended in public emergencies as recommended by the TRC report, volume II chapter III page 127.”²⁰⁴

The Sierra Leone Women’s position paper “Many Messages, One Voice” urged that there should be a new constitutional provision that requires a full Parliament to debate any state of emergency at least once a week until it is lifted to ensure prompt scrutiny and actions on emerging issues and public concerns²⁰⁵. Sierra Leone Women also strongly supported the PTC Report recommendation that non derogable rights should not be suspended even during a state of emergency.

They further suggested that during a state of emergency, detentions should automatically and regularly be reviewed by HRCSL throughout the public emergency. The position paper called for HRCSL to be authorised to inspect all police stations and other places of detention during a public emergency²⁰⁶.

The CRC also took into consideration Oxfam and 50/50 Group recommendations that the public emergency should be discussed in Parliament on regular basis during the state of emergency. They also recommended that constitutional provision should ensure that a full Parliamentary debate should take place during a state of emergency at least once a week until it is lifted to ensure prompt scrutiny and action on emerging issues and public concerns:

“During a Public Emergency, restriction of Citizens “Constitutional and Human Rights, including freedom of conscience, movement, speech etc. is permitted and persons (including women) were detained for long periods recently without explanation or review. This is of concern to women. There is therefore a strong support of PTRC recommendation that there are particular rights that should not be suspended (i.e. Non-Derogable) during a Public Emergency: including protection from torture, right to life, principles of legality in the field of criminal law, freedom of thought, conscience and religion.”

There was further recommendation that the section 27 ban on discrimination on grounds of gender and disability should be non-derogable. It was also recommended that there should be an establishment of a Forensic Analysis Crime Detection agency in the Constitution.

CARL in its position paper emphasised that laws and regulations made in times of public emergency should be consistent with Sierra Leone’s obligations under international law that

²⁰³ GSCF position paper pages 18-19

²⁰⁴ RUF position paper page 4

²⁰⁵ Sierra Leone Women’s position paper “Many Messages, One Voice” page 11

²⁰⁶ Sierra Leone Women’s position paper “Many Messages, One Voice” page 12

apply to states of emergency. This should be enshrined throughout all the provisions in Section 29 which deal with public emergencies:

“CARL recommends that all emergency measures should be subject to judicial review by the courts of Sierra Leone. The United Nations Human Rights Committee states that, “during a state of emergency, judicial remedies must be available so that citizens can contest the legality of special measures, including detention.”²⁰⁷

CARL further recommended that a new clause should be inserted stating that no law made under a public emergency should permit the indemnifying of the state or any person, in respect of any unlawful act.²⁰⁸

5.37 Recommendation

The CRC endorses the recommendation made in the PTC Report to add a new paragraph to subsection (6), as follows:-

“(i) Where a state of emergency exists, the President will not derogate from the recognized international requirements pertaining to certain human rights, such as the right to life, the prohibition of torture, the principles of legality in the field of criminal law, and the freedom of thought, conscience and religion.”²⁰⁹

The CRC also recommends that the period within which Parliament must pass a resolution approving a declaration of a state of emergency should be reduced from twelve months to three months. Section 29(13) should therefore be amended as follows:-

“(13) A resolution of Parliament passed for the purpose of this section shall remain in force for a period of three months or such shorter period as may be specified therein:

Provided that any such resolution may be extended from time to time by such a further resolution, supported by the votes of two-thirds of Members of Parliament, each extension not exceeding three months from the date of the resolution effecting the extension; and any such resolution may be revoked at any time by a resolution supported by the votes of a simple majority of all the Members of Parliament.”

5.38 Theme - Additional Recommendations in the Human Rights Chapter

Based on popular demand during the nationwide consultations, the CRC recommends that the following rights should be incorporated as new human rights provisions: the right to the

²⁰⁷ CARL position paper page 8

²⁰⁸ CARL position paper page 9

²⁰⁹ See Article 4(2) of the United Nations International Covenant on Civil and Political Rights

environment; rights of the aged; persons with disability; rights of the child; and protection of socio-economic rights.

5.39 Right to the Environment

“Everyone has the right

(a) to an environment that is not harmful to his/her health or well being

(b) to have the environment protected for the benefit of the future generation through reasonable legislative and other measures that--

i. prevent pollution and ecological degradation

ii. promote conservation and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”

5.40 Rights of the Aged

“The State shall provide welfare facilities for the aged such as medical care, housing and transportation.”

5.41 Persons with Disability

“1. Persons with disability shall be entitled-

(a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;

(b) to have the right to access housing, educational facilities, medical care, employment, transportation and other required facilities designed to overcome constraints arising from the persons condition.

2. Political parties shall take action to include persons with disability in all their activities and programmes, including the awarding of symbols to contest elections.

3. There shall be separate seats in Parliament and local councils for persons with disability, to be contested amongst them and occupied by them, to participate in national debates and promote their interest through affirmative action.

4. Inclusion of the National Commission for Persons with Disability (NCPD) in the Constitution.”

5.42 Right of the Child

“A child’s best interest is of paramount importance; all means should be taken to protect children from all forms of exploitation and abuse.”

5.43 Protection of Socio-economic Rights

“Every person has the right-

- (a) to highest attainable standard of health;**
- (b) to affordable housing and hygienic standards of sanitation;**
- (c) to be free from hunger and to have food of acceptable quality;**
- (d) to clean and safe drinking water;**
- (e) to social security; and education.”**

6 CHAPTER SIX

CITIZENSHIP

6.1 Introduction

A national constitution should clearly set out the rights and responsibilities of both its citizens and the three branches of the state, the Executive, the Legislature and the Judiciary. The prerequisite is that there needs to be a definition of who is or who may become a citizen who can enjoy the specified rights and be obliged by the attending responsibilities. Citizenship guarantees political rights and also defends against arbitrary discrimination. “Citizenship in law is a legal bond between the State and the individual and is the basis for other rights including right to diplomatic protection by the State.”²¹⁰

The CRC was mindful of the fact that citizenship is a matter of national importance and should be given proper consideration. Several position papers gave reasons for revising the citizenship laws, and also suggested that a chapter dealing with citizenship should be added to the Constitution.

The CRC also invited prominent legal experts, relevant institutions, concerned stakeholders, individuals and Parliamentarians to hold discussions and provide their expert opinions and guidance on the issue.

The CRC reviewed the current provisions relating to citizenship contained in the Sierra Leone Citizenship Act 1973, as amended by the Sierra Leone Citizenship (Amendment) Act 2006, constitutions of other African countries, reports from experts, submissions from institutions, and position papers from government ministries, organisations, CSOs and individuals. The CRC also took into account opinions expressed by Sierra Leoneans during the public consultations. The CRC paid particular attention to the recommendations of the TRC.

The CRC also benefited from discussions held during a two-week experience-sharing trip to Kenya and Ghana during October /November 2015.

In the light of all of the information gleaned, the CRC recommends that Citizenship should be specified within the reviewed constitution of Sierra Leone, bringing it in line with the majority of comprehensive national constitutions and the wishes of the majority of the people of Sierra Leone.

²¹⁰ HRC-SL Report of a two-day programme for expert engagement on Citizenship with CRC on the 4th-5th June, 2014 page 8

6.2 Historical Background

Pre-1961 to 1972: “As in other areas of law, differences in the legal systems of the colonisers have influenced the principles that have been applied since independence, though both African and European states have since amended and modified the principles on which their nationality law was originally based.”²¹¹

“The territories of the British empire in Africa belonged to one of three categories. First established were the “colonies” (largely the coastal trading enclaves, including Lagos and Freetown); of these, South Africa later became a self-governing “dominion.” The remaining territories, including all those added in the late nineteenth century “scramble for Africa” were designated “protectorates,” into which the early colonies were later mostly merged.²¹²

In her presentation, the Honourable Justice Salimatu Koroma gave an insight to experts and CRC members on the laws and developments relating to the issue of citizenship. She stated:

“In the Colonial era, Sierra Leone was divided into two for administrative reasons. Freetown was known as the colony and the rest of Sierra Leone was called the Protectorate. Up to 1948, it was standard practice for Britain to apply separate rules for those in the colony from those under British protection.

Freetown was a crown colony and was ruled directly from Britain supervised by the Governor General.

The Protectorate was divided into districts. Each district was administered by a District Officer appointed by the Governor General. The District Officer supervised the whole area including influencing the role of Paramount Chiefs.

The British Nationality Act of 1948 created “British subjects” and “British protected persons.”²¹³

“The Immigration Restriction Act (Cap.86) of the Laws of Sierra Leone 1960 enacted on 1st July, 1947 for the first time made reference to the term “native foreigner” meaning people from practically the whole of Africa south of the Sahara. A distinction was made between those born in the colony and protectorate and those born outside before Independence.

The Undesirable British Subject Control Act (Cap.89) of the Laws of Sierra Leone 1960 defined “British subject” as one that “includes a British protected person who is a native of Sierra Leone”. So, the status of British subject came to be applied to the protectorate”.²¹⁴

“The Sierra Leone (Constitution) Order in Council 1961 in the second schedule stipulated that citizenship could be attained by birth, registration and naturalization. The first chapter of the

²¹¹ Citizenship Law in Africa page 28 para 1

²¹² Citizenship Law in Africa page 28 para 2

²¹³ Report on a two-day expert engagement on citizenship with the CRC 4-5 June 2015 page 3

²¹⁴ Report on expert engagement on citizenship 4-5 June 2015 page 3

1961 constitution has the heading “*Citizenship*” and it gives details of status of colony persons including dual citizenship, thereby laying foundations of citizenship.”²¹⁵

“In the 1971 Constitution there was no specific chapter on citizenship. The 1971 Constitution introduced certain limitations on citizenship. This Constitution first introduced the phrase “either one whose parents in a person of Negro African descent” in the context of a requirement for presidency, members of parliament and other public offices.”²¹⁶

1973 to 1990: the law on citizenship from 1973 to 2006 was contained in Sierra Leone Citizenship Act 1973.

The criteria relating to acquisition of citizenship were based on race and gender.

Section 2 of the Sierra Leone Citizenship Act 1973 gave two criteria for acquiring citizenship by birth or descent, and these are based on race and gender: a person could only become a citizen by birth or descent if his father or grandfather was born in Sierra Leone and he was a person of Negro African descent.

Under section 7 of the Act, only the spouse of a male Sierra Leone citizen may apply for naturalisation on grounds of marriage. The same is not allowed for spouses of female Sierra Leone citizens.

Section 8 of the Act makes a discriminatory distinction on grounds of race for qualifying to apply for citizenship by naturalisation.

Under section 10 of the 1973 Act, dual citizenship was expressly not allowed.

1991 Constitution of Sierra Leone: the Constitution of Sierra Leone 1991 does not define the word citizen. There is no separate chapter on this very important issue although section 13 lists the duties of the citizen. All issues relating to the acquisition and revocation of citizenship have been left to Acts of Parliament.²¹⁷

2006 to 2016: the Sierra Leone Citizenship (Amendment) Act 2006 brought into effect two important changes to the Sierra Leone Citizenship Act of 1973. Firstly, the proviso to section 2 of the Sierra Leone Citizenship Act 1973 was amended to allow a person to acquire citizenship if his mother, father, grandfather or grandmother was a Sierra Leonean and of Negro African descent.

Secondly, the 2006 Act permits dual citizenship, thereby reversing the prohibition under the 1973 Act. In addition, it makes provision for those who lost their Sierra Leone citizenship as a result of the 1973 Act to resume their citizen status if they so wish.

²¹⁵ Report on expert engagement on citizenship 4th - 5th June 2015 page 4

²¹⁶ Report on expert engagement on citizenship 4th - 5th June 2015 page 5

²¹⁷ Report on expert engagement on citizenship 4th - 5th June 2015 page 6

6.3 Current Context

There is no definition of, or provision for, citizenship in the 1991 Constitution. The current provisions for citizenship are contained in the Sierra Leone Citizenship Act 1973, as amended by the Sierra Leone Citizenship (Amendment) Act 2006.

The criteria contained within these two Acts relating to the acquisition of citizenship and right to transfer citizenship have attracted criticism and generated a substantive debate on issues relating to gender and discrimination. The Acts do not refer to, nor make any mention of, the rights or responsibilities of a citizen. Conditions relating to acquiring citizenship by naturalisation are contained in Sections 8 and 9. They are complex and are discriminatory on grounds of race.

Both mother and father and any grandparent of the mother or father can now be a Negro of African descent for the qualification criteria for acquisition of citizenship in Sierra Leone.

Section 7 of the Sierra Leone Citizenship Act 1973 allows a non-Sierra Leonean woman who is married to a Sierra Leonean citizen to apply for citizenship by naturalisation. However, a non-Sierra Leonean man who is married to a Sierra Leonean citizen cannot apply for citizenship by naturalisation. This section has been criticized as being discriminatory against women.

Dual citizenship is now allowed for Sierra Leoneans who have or acquire another nationality. Sierra Leoneans who lost their Sierra Leonean nationality under the provisions of section 10 of Sierra Leone Citizenship Act 1973 may automatically resume their Sierra Leonean nationality if they so wish.

6.4 Dimensions of the Issue

The main dimensions of the citizenship issue are:

- a. The rights of citizens in the constitution
- b. The acquisition of citizenship without reference to race or gender
- c. Non-discriminatory conditions for naturalisation
- d. Non-discriminatory conditions for acquiring citizenship through marriage
- e. The right of an adopted child to citizenship
- f. The right to citizenship of a child found in Sierra Leone
- g. The right to hold dual citizenship
- h. Marriage or dissolution of the marriage should not affect citizenship
- i. Reasons for the revocation of citizenship

6.5 Observations

The PTC Report recommended that the “Constitution should give a clear and authoritative provision which would determine who the citizens of Sierra Leone are and how to acquire citizenship without reference to race or gender criteria.”²¹⁸

This endorsed the imperative recommendation made by the TRC that “Citizenship should be acquired by birth, descent or naturalisation. Race and gender must not be a consideration in the acquisition of citizenship. The Sierra Leone Citizenship Act should be amended accordingly.”²¹⁹

The CRC was pleased to receive an expert briefing and a paper on the issue from the United Nations High Commission for Refugees (UNHCR). In its paper, UNHCR stated that:

“Sierra Leone is party to several international treaties that enshrine the right to asylum, forbid refoulement, and set standards for the protection of refugees and stateless persons. These include the 1951 Convention and its 1967 Protocol, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (“the 1969 OAU Convention”), the 1981 African Charter on Human and People’s Rights, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the 1966 International Covenant on Civil and Political Rights. On this basis it can be argued that Sierra Leone should comply with its international obligations and ensure the respect of the right to asylum, the principle of non-refoulement and the protection of the rights of refugees and stateless persons. It is equally noted that during the period of the civil war over half a million Sierra Leoneans fled the country and benefited from refugee protection in neighbouring countries.”²²⁰

Similarly, Sierra Leone is a party to several international treaties that enshrine the right to nationality. These include: the International Covenant on Civil and Political Rights 1966; the Convention on the Rights of Persons with Disabilities 2006; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990; the Convention on the Rights of the Child 1989; the Convention on the Elimination of All Forms of Discrimination Against Women; and the International Convention on the Elimination of All Forms of Racial Discrimination. On this basis, it can be argued that Sierra Leone has an obligation to adopt key provisions in its Constitution that guarantee the right to nationality, thereby preventing statelessness.

“UNHCR remarks that the 1991 Constitution of the Republic of Sierra Leone does not contain any provision concerning the right to asylum, the protection of refugees or the protection of stateless persons and the right to a nationality. The current constitutional reform process thus represents a unique opportunity to incorporate, at the core of Sierra Leone’s normative system, international protection standards for refugees and stateless persons. It is also an opportunity to elaborate on the right to a nationality so as to guarantee the dignity of all individuals linked with Sierra Leone and protect them against statelessness. To that end UNHCR presents in this paper

²¹⁸ PTCR page 23 para 38

²¹⁹ TRC Report, Volume 2 Chapter 3 page 133 para 85

²²⁰ “UN advises ending of refugee status for Sierra Leoneans who fled country”, UN News Centre, 6 June 2008, available at http://www.un.org/apps/news/story.asp?NewsID=26933&Cr=Sierra&Cr1=Leone#.U39QLdJ_uPY.

a brief summary of applicable international law as well as a survey of comparative constitutional law, and recommends the inclusion of specific provisions”.²²¹

The UNHCR paper proposed the following recommendations to be included in the revised Constitution:

- a) The Protection of Refugees
- b) The Right to Asylum
- c) Non-refoulement
- d) Refugee Rights and Standards of Treatment
- e) The Protection of Stateless Persons
- f) The Prevention of Statelessness

At the meeting of Parliamentarians and CRC members held on 11 February 2014 to review the 1991 Constitution, taking account of the recommendations made in the PTC Report and in particular Chapter II (State Policy), the participants observed that “citizen” is referred to in sections 6, 7, 8, 9 and 13 of Chapter II of the 1991 Constitution and that section 13 stipulates the duties of citizens in relation to the State, but there was no definition of the term citizen within the 1991 Constitution.

The Parliamentarians and CRC members agreed that it was essential to include in the revised Constitution a definition of citizen to put into context the rights and responsibilities of citizens of Sierra Leone. It was also agreed unanimously that the revised Constitution should contain a new chapter on citizenship and that the term citizen needed specific definition within the Citizenship Chapter.²²²

A question on citizenship was put to the public during the consultation process: “Do we need to have a section in the Constitution that defines who is a citizen and how it could be transferred?”²²³

The majority of the respondents (approximately 95%) agreed that there should be a chapter in the Constitution that defines who is a citizen and how citizenship can be acquired. The breakdown of the responses revealed that this majority view was replicated in all regions of the country.²²⁴

²²¹Paper presented by the UNHCR pages 2 and 3

²²² Consolidated input from Parliamentarians and CRC Subcommittee 11 February 2014 page 4

²²³ State Policy and Human Rights Public submission Form, Question 11

²²⁴ Out of 1,333 respondents, 1,216 agreed that there should be a chapter in the Constitution that defines who is a citizen and how citizenship can be acquired. Only 117 respondents disagreed. The breakdown of the responses from the nationwide consultations was as follows: 405 of the 425 responses from Western Area agreed, and 24 disagreed. 405 responses of 460 responses from North agreed, and 55 disagreed. In the Southern region, 299 of the 326 total responses agreed and 27 disagreed. In the Eastern region, 107 of a total of 118 agreed.

HRCSL made a submission to the Peter Tucker Constitutional Review Commission on 29th July 2007, and also endorsed the PTC Report recommendation that there should be a chapter in the revised Constitution specifically on citizenship²²⁵. HRCSL proposed that this chapter should include the provisions relating to dual citizenship that had been enacted in the Sierra Leone Citizenship (Amendment) Act 2006.

HRCSL made strong representations that all discriminatory clauses on grounds of sex and circumstances of birth should be removed in the revised Constitution. HRCSL's position is that the new chapter on citizenship must ensure that spouses enjoy equal rights irrespective of gender. HRCSL specifically called for Sierra Leone not to contravene the principles of equality and non-discrimination in all the international treaties and obligations by which it is bound.²²⁶

In its submission to the CRC, HRCSL reiterated the positions and recommendations made in its 2007 submission to the Peter Tucker Constitutional Review Commission.²²⁷

The CRC received a wide range of submissions on the subject of citizenship, and the overwhelming view from Sierra Leoneans was that there is a need for a chapter on citizenship to be added into the revised Constitution.

OSIWA in its report on public opinion came to the conclusion that: "it has emerged that the public has made numerous calls for the Constitution of Sierra Leone being reviewed to address the issue of citizenship."²²⁸

In addition, women's groups demanded that the chapter in the Constitution should be non-discriminatory on grounds of gender and race. Women's groups have been unanimous in demanding the abolition of discriminatory provisions in the current citizenship laws.

The All Political Parties Women's Association (APPWA) during a meeting with CRC called for the repeal of citizenship laws that are discriminatory.²²⁹

Oxfam and 50/50 Group of Sierra Leone position paper (which includes the Sierra Leone Women's position paper) submitted that: "All women agreed that a new chapter on Citizenship (as recommended by the PTC Report) is necessary because the current citizenship law is discriminatory, unjust and exploitative."

"Reform of Citizenship will enhance equality and rights of women, boost economic development and reduce corruption and exclusion.

1. Any person born in SL has the right to be a citizen at birth; all racial qualifications to be abolished. The Right to Sierra Leonean Citizenship belongs to every individual person and does not depend on the status or condition of her or his parent.

²²⁵ HRCSL Submission to the PTCR 2007

²²⁶ HRCSL Submission to the PTCR 29th July 2007 page 1 and 2

²²⁷ HRCSL position paper for CRC 2015 page 10 para 28

²²⁸ OSIWA position paper page 5

²²⁹ APPWA position paper page 8 - Culture

2. Male and Female citizens should have equal rights to confer citizenship on spouses and on their children.
3. Anyone legally married to a citizen, lawfully resident in Sierra Leone and gainfully employed should have the right to apply for Sierra Leonean citizenship irrespective of the person they married to.
4. Children and grandchildren of Sierra Leoneans (by birth or naturalization) born outside of Sierra Leone shall have the right to apply for citizenship or become a permanent resident in the same way as a foreign spouse.
5. The criteria and process for naturalization should be revisited to make Sierra Leone welcoming to people who demonstrate genuine desire to make Sierra Leone a permanent home and contribute to nation building and development. Delay and imposing huge costs for naturalization to long term residents should end. Naturalized citizens should have full rights of citizenship as citizens by birth.
6. Patriotism and Rights and Duties of the Sierra Leone Citizen are to be taught to every person in Sierra Leone.²³⁰

During the CRC Engagement with Women, the women made recommendations on citizenship. They called for both male and female citizens to have the right to confer citizenship on spouses and on their children. They recommended that anyone legally married to a citizen, lawfully resident in Sierra Leone and gainfully employed, should have the right to apply for Sierra Leonean citizenship, irrespective of to whom they are married. They also proposed that children and grandchildren of Sierra Leoneans (by birth or naturalization) born outside of Sierra Leone shall have the right to apply for citizenship or become a permanent resident in the same way as a foreign spouse.²³¹

In its position paper, the Sierra Leone Institute of International Law commented that: “There is no provision in the current Constitution for Citizen of Sierra Leone and we decided that as in most Constitutions, our Constitution should give clear and authoritative provision which determine who the citizens of Sierra Leone are and how to acquire citizenship”²³²

During the CRC engagement in Ghana and Kenya with members of the Sierra Leonean community, the issue of citizenship and enfranchisement in a national, regional and international context was discussed.

They stated that citizenship and national identity were very important in creating a spirit of national unity and enhancing patriotism and a sense of belonging. At the same time, the enfranchisement of citizens was central to promoting representative government. They demanded that the Constitution must therefore clearly address the issue.

²³⁰ Oxfam and 50/50 Group position paper page 11, and Sierra Leone Women’s position paper page 12

²³¹ Report of CRC Engagement with Women 17th Feb 2016 page 2

²³² Sierra Leone Institute of International Law (SLIIL) page 12 para 3

They recommended that “the new Constitution should strengthen the Bill of Rights provision of the 1991 Constitution and specifically expand citizenship rights, including the right of all citizens, including Sierra Leoneans resident outside of the country, to participate in elections, irrespective of where they are domiciled. Further, independent candidates (not belonging to a political party) should also be entitled to vie for (and occupy) the offices of President and Vice-President.”²³³

A position paper received from the Sierra Leone Labour Congress (SLLC), which represents workers organisations made the following observations:

“The current 1991 Constitution makes no mention of citizenship. It is not clear on who is a citizen of the Republic of Sierra Leone. The Sierra Leone Labour Congress is [of the view] that a new section on citizenship, which specifies the different ways in which an individual can become a citizen of the Republic of Sierra Leone. This must include all who are eligible and qualified irrespective of the colour of their skin or their racial origin.”²³⁴

One of the key concerns identified in a position paper submitted by Society for Learning and Yearning for Equal Opportunities (SLYEO) was that “the definition of citizenship in the 1991 constitution is unclear”. Therefore, SLYEO urged that “the new constitution clearly defines citizenship.”²³⁵

The majority of the position papers advocated that citizenship should be acquired without reference to gender or race:

The Sierra Leone Peoples’ Party (SLPP) in its position paper emphasized that “we further believe that a new chapter on citizenship should now form part of a reviewed 1991 Constitution as international best practice dictates that modern Constitutions should give a clear and authoritative provision which would determine who the citizens of a country are and how to acquire citizenship without reference to racial or gender criteria.”²³⁶

In its submission to the CRC in May, 2015, CARL endorsed the PTC Report recommendations to include citizenship in the revised Constitution: “CARL recommends that the new Constitution should have a simplified section on citizenship. CARL proposes that the section should follow the approach set out in the TRC report, and should be drafted as follows:

No citizen may be deprived of citizenship;

- a. All citizens are equally entitled to the rights, privileges and benefits of citizenship;
- b. All citizens are equally subject to the duties and responsibilities of citizenship.

²³³ Members of the Sierra Leone Community in Kenya position paper

²³⁴ SLLC position paper page 2 para 5

²³⁵ SLYEO position paper pages 4 and 5

²³⁶ SLPP position paper page 2 and 3

- c. The new constitution should repeal any law that deprives persons born in Sierra Leone of citizenship on the basis of colour (Negro descent). It should clearly state that anyone born in Sierra Leone is equally entitled to rights, privileges and benefits of citizenship.”²³⁷

CARL submitted additional recommendations to the CRC in March 2016, during the validation process following the publication of the first CRC abridged report. It made the following comment: “CARL welcomes a number of recommendations made by the CRC in the recently published draft report”, and went on further to state: “The proposed chapter on citizenship is particularly important to the Centre for Accountability and Rule of Law as it seeks to promote equality as well as ending discrimination in acquiring and conferring citizenship.”²³⁸

During the public consultations, there was an overwhelming demand for a chapter on citizenship in the revised Constitution.²³⁹

6.6 Recommendations

The CRC took into consideration a broad range of modern constitutions on the issue of citizenship, and examined the substantial number of representations and recommendations made and submitted by experts, Parliamentarians, institutions, government ministries, CSO’s, women’s groups, political parties and youths. Moreover, the CRC evaluated the outcome of the extensive public consultations.

The CRC also took account of the fact that there had been a huge demand from the people of Sierra Leone that it was desirable to have a chapter dedicated to citizenship in the revised Constitution and the overwhelming consensus was that the provisions must be non-discriminatory on grounds of race and gender.

The CRC therefore recommends that there should be a new chapter in the revised Constitution dedicated to citizenship.

6.7 Theme - Rights of Citizens

Current Context

The 1991 Constitution is silent on the rights of Sierra Leone citizens, although section 13 lists the duties of the citizen. There is no definition of citizen within the 1991 Constitution.

The main provisions relating to citizenship are contained in the Sierra Leone Citizenship Act 1973, as amended by the Sierra Leone Citizenship (Amendment) Act 2006. These Acts detail the requirements for acquisition of and revocation of citizenship, but do not mention the rights or responsibilities of citizens.

²³⁷ CARL position paper page 4 para 2

²³⁸ CARL Additional Recommendations to the Constitutional Review Committee March 2016 page 1

²³⁹ Public Consultations of the CRC 2015 page 24 Citizenship and Discrimination

Observations

“Legal recognition of nationality or citizenship is the most critical link between an individual and the state whose nationality is claimed.”²⁴⁰

Currently, there is no provision in the Constitution relating to the rights conferred by citizenship. There have been overwhelming and consistent calls for a chapter on citizenship to be included in the revised Constitution.

At the meeting of Parliamentarians and CRC members to review Chapter II of the 1991 Constitution (Fundamental Principles of State Policy), including considering the recommendations made in the PTC Report, a debate arose about defining citizenship when the participants discussed whether to change the term “people” to the term “citizens” in section 5(2) a in the 1991 Constitution to read “sovereignty belongs to the citizens of Sierra Leone from whom the Government through this Constitution derives all its powers, authority and legitimacy.”²⁴¹

This prompted further deliberations when section 6(3)(b) was discussed; this reads “secure full rights of residency for every citizen in all parts of the State.”

The participants observed that although “citizen” is referred to in sections 6, 7, 8, 9 and 13 of Chapter II and that section 13 stipulates the duties of a citizen in relation to the State there is no definition of the term “citizen” contained within the 1991 Constitution.

In relation to this issue, the matter of section 18(3)(b) was also raised. Section 18(3) reads:

“Nothing contained or done under authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision”, and 18(3)(b) “for the imposition of restrictions on the movement or residence within Sierra Leone of any person who is not a citizen thereof or of the expulsion from Sierra Leone of any such person;”

Thus participants commented on the fact a distinction was made between citizens and non-citizens relating to the protection of freedom of movement.

Following discussions, it was agreed unanimously that in order to give effect to sections within the Constitution that refer to citizens, the revised Constitution should contain a new chapter on citizenship, and that the term “citizen” needed specific definition within this chapter.²⁴²

During a two-day expert engagement programme which took place on 4th-5th June 2015, several presentations were made by prominent contributors in relation to citizenship and the constitution:

²⁴⁰ Citizenship Law in Africa page 18 first paragraph

²⁴¹ CRC engagement with Parliamentary Committee on Human Rights

²⁴² Consolidated input from Parliamentarians and CRC 11 February 2014 page 2

In a statement delivered by a Commissioner of HRCSL, it was said that: “Citizenship in law is a legal bond between the State and the individual and is the basis for other rights including right to diplomatic protection by the State.”

The Commissioner stated further that “rights vary according to states but that the most common are permanent residence within the state, freedom of movement, right to vote and to be elected or appointed”, and concluded that “[the] commission believes this is an opportune time to have a people-centred constitution.”²⁴³

The Women’s Forum president in her submission said that the Women’s Forum wanted a constitution that is a living document and a State that guarantees protection from discrimination.

The Chairman of the Legislative Committee of Parliament lauded the idea of improving Sierra Leone citizenship laws and expressed the view that something substantial on citizenship should be done. He advocated for discriminatory laws in the Constitution to be removed.

At the same engagement, the National Youth Commission commented that “citizenship is a stable legal relationship between the individual and the state which is expressed in the totality of their rights, duties and responsibilities.”²⁴⁴

The representative of the Immigration Department also made a significant contribution, recognising that the current laws “regretfully demonstrate exclusionary patterns and that the way forward was for racial languages in the constitution to be repealed.”²⁴⁵

“All women agreed that a new chapter on Citizenship (as recommended by PTRC) is necessary because our current Citizenship Law is discriminatory, unjust and exploitative.”²⁴⁶

Detailed submissions were received from the Sierra Leone Institute of International Law (SLIIL) on the subject of citizenship: “there is no provision in the current Constitution for Citizens of Sierra Leone and we decided that our Constitution should give clear and authoritative provision which determines who the citizens of Sierra Leone are and how to acquire citizenship.”²⁴⁷

Sierra Leone Labour Congress (SLLC) submitted that “the current 1991 Constitution makes no mention of citizenship. It is not clear on who is a citizen of the Republic of Sierra Leone. The Sierra Leone Labour Congress is [of the view] that a new section on citizenship, which specifies the different ways in which an individual can become a citizen of the Republic of Sierra Leone. This must include all who are eligible and qualified irrespective of the colour of their skin or their racial origin.”²⁴⁸

²⁴³ Report of expert engagement on citizenship 4th -5th June 2015 page 8

²⁴⁴ Report of expert engagement on citizenship 4th -5th June 2015 page 9

²⁴⁵ Report of expert engagement on citizenship 4th -5th June 2015 page 10

²⁴⁶ Oxfam and the 50/50 Group position paper on Women’s Right page 11, and Sierra Leone Women’s position paper page 12

²⁴⁷ SLIIL position paper page 2 para 2

²⁴⁸ SLLC position paper page 2 para 5

The Sierra Leone Peoples' Party (SLPP) made its position clear: "we further believe that a new chapter on citizenship should now form part of a reviewed 1991 Constitution as international best practice dictates that modern Constitutions should give a clear and authoritative provision which would determine who the citizens of a country are and how to acquire citizenship without reference to racial or gender criteria."²⁴⁹

One of the key concerns raised by SLYEO was that "the definition of citizenship in the 1991 constitution is unclear". SLYEO urged that "the new constitution clearly defines citizenship."²⁵⁰

The CRC recognised that a key issue emanating from the representations and submissions made is that there should be a clear, definitive provision in the Constitution relating to the rights of citizens. This provision should be broad enough to encompass political freedom, freedom of movement, freedom from discrimination and any other rights thereafter mentioned in the Constitution.

6.8 Recommendations

The CRC took cognisance of the recommendations of the PTC Report, the imperative recommendation of the TRC, and the consistent call from Parliamentarians, expert opinion, input from government ministries, position papers and feedback from the public consultations that there should be a new chapter on citizenship and this should define who is or who can become a citizen and the rights of citizens.

The CRC recommends that an all-encompassing provision be adopted to formalise the rights that may be enjoyed by citizens of Sierra Leone and that the Constitution should define who is or who may become citizens.

The CRC recommends the following section:

Section 1 - Rights of Citizens

“(1) Subject to the provisions of this Constitution every citizen shall be entitled to:

- (a) the rights, privileges and benefits of citizenship;**
- (b) A Sierra Leonean passport or other document of registration or identification issued by the State to citizens.**

(2) Such passport or other document of registration or identification may be denied, suspended or confiscated only in accordance with an Act of Parliament.”

²⁴⁹ SLPP position paper pages 2 and 3

²⁵⁰ SLYEO position paper pages 4 and 5

6.9 Theme - Acquisition of Citizenship

Current Context

The law relating to the acquisition of citizenship is detailed in section 2 of the Sierra Leone Citizenship Act 1973, as amended by the Sierra Leone Citizenship (Amendment) Act 2006.

Section 2(a) of the 1973 Act limited acquisition of citizenship by birth by reference to paternal ancestry. This was later amended by the Sierra Leone Citizenship (Amendment) Act 2006 to add maternal ancestry. However, both the 1973 Act and the 2006 Act retain the requirement of being of African Negro Descent as the addition criterion for acquiring citizenship.

6.10 Observations

There have been widespread calls that there is a need to make provision for the acquisition of citizenship by birth without reference to race.

A recent report titled “Citizenship Law in Africa” provided a comparative analysis of laws relating to citizenship. The report stated: “at least half a dozen countries effectively ensure that those from certain ethnic groups can never obtain nationality from birth; nor can their children or their children’s children. At the most extreme end, Liberia and Sierra Leone, both founded by freed slaves, take the position that only those “of Negro descent” can be citizens from birth.”²⁵¹

The UNHCR paper on citizenship made particular reference to statelessness:

“In 1961, the United Nations adopted the Convention on the Reduction of Statelessness to provide practical steps that assist States to integrate the right to a nationality in their existing legal structures. The Convention elaborates an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. At the 2011 Ministerial Intergovernmental Event on Refugees and Stateless Persons that took place in Geneva, Sierra Leone pledged to ratify the 1961 Convention, thus acknowledging the importance of the standards laid down in this instrument.

At the continental level, the 1990 African Charter for the Rights and the Welfare of the Child recognizes the right to a nationality, as it provides for the acquisition of nationality of the country of birth if otherwise the child would be rendered stateless. The right to a nationality was further elaborated, in 2003, with the adoption of the Protocol on the Rights of Women in Africa, which acknowledges their right to acquire a nationality and, in the event of their marriage, to acquire their husband’s nationality.

The African Commission of Human and People’s Rights has addressed both general and country-specific issues related to nationality and statelessness in communications and resolutions. In its April 2013 Resolution 234, the Commission affirmed that the right to a nationality is implied with the provisions of Article 5 of the African Charter on Human and

²⁵¹ Citizenship Law in Africa page 3

People's rights and is essential to the enjoyment of other fundamental rights and freedoms under the Charter".

The UNHCR paper further elaborated the international and regional best practices on the matter of nationality and citizenship:

"The constitution is the fundamental law of the country that elaborates both the foundation and the organization of a nation. It is UNHCR's opinion that core principles governing citizenship, in particular the fundamental right to a nationality, should be enshrined in the constitution while the legislation, as enacted by the parliament, shall regulate the acquisition and withdrawal of nationality.

Most countries within the ECOWAS region do not regulate nationality in their constitutions; they do however mention that citizenship should be regulated in legislation enacted by the government.²⁵²

In Africa, there are two constitutions that clearly provide for the right to a nationality, namely the Ethiopian Constitution²⁵³ and the South African Constitution.²⁵⁴ Both legal documents only enumerate core principles surrounding nationality, while the rules on acquisition and withdrawal of nationality are articulated in specific, separate legislation adopted by the Parliament.

The Constitution of Ethiopia provides in Article 6 that:

- (1) Any person of either sex shall be an Ethiopian national where both or either parent is Ethiopian.
- (2) Foreign nationals may acquire Ethiopian nationality.
- (3) Particulars relating to nationality shall be determined by law.

The South African Constitution provides that:

Art. 3: (1) There is a common South African citizenship.

(2) All citizens are-

(a) equally entitled to the rights, privileges and benefits of citizenship; and

(b) equally subject to the duties and responsibilities of citizenship.

(3) National legislation must provide for the acquisition, loss and restoration

Art. 20: No citizen may be deprived of citizenship.

²⁵² See for example art. 98 of 1990 Constitution of Benin; art. 80 of the 1991 Constitution of Burkina Faso; art. 71 of the 2000 Constitution of Côte d'Ivoire; art. 72 of the 1984 Constitution of Guinea; art. 70 of the 1992 Constitution of Mali; art. 81 of the 1999 Constitution of Niger; and art. 67 of the 2001 Constitution of Senegal.

²⁵³ 1994 Constitution of the Federal Democratic Republic of Ethiopia, art. 6

²⁵⁴ 1996 Constitution of South Africa, art 28

Art. 28: Every child has the right- to a name and a nationality from birth;”

UNHCR therefore made the following recommendations to the CRC:

“Based on the above analysis and referring to Sierra Leone’s international obligations, UNHCR would like to recommend amending the current constitution by deleting section 27(4)(c) and (h). Both provisions imply that discriminatory provisions are allowed within the area of citizenship. This contravenes the universal standards of equality and non-discrimination contained in all international human rights instruments, including the African Charter for Human and People’s Rights, which provides that:

Article 2:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3:

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

In addition, UNHCR based on universal human rights standards and best practices would like to recommend inserting the following provisions:

- (1) Every child born in Sierra Leone and every child born abroad to a Sierra Leonean parent has the right to Sierra Leonean nationality from birth;
- (2) The acquisition, loss and restoration of citizenship is not subject to any discrimination based on race, ethnicity, gender, religion, political opinion or any other reason;
- (3) All citizens are equally entitled to the rights, privileges and benefits of citizenship; and equally subject to the duties and responsibilities of citizenship;
- (4) National legislation will provide for the modalities of acquisition, loss and restoration of citizenship.
- (5) No Sierra Leonean can be deprived of his or her citizenship if this would render him or her stateless.

Conclusion

The current reform process represents a unique opportunity to incorporate into the constitution the protection of refugees and stateless persons as well as measures to prevent statelessness and ensure that Sierra Leone meets its obligations under international law. Following the foregoing exposition of international instruments and best practices in comparative constitutional law,

UNHCR recommends that provisions be included concerning the recognition of the right to asylum, the safeguard of the principle of non-refoulement, the guarantee of refugees' rights, the protection of statelessness persons, and the prevention of statelessness. Taken together, the text recommended by UNHCR reads as follows:

With respect to the protection of refugees:

1. The Republic of Sierra Leone guarantees the right to seek and to enjoy asylum with due respect to the relevant refugee conventions and international human rights instruments.
2. The State shall respect and guarantee the principle of non-refoulement. No one may be removed, expelled or extradited to a State in which there is a serious risk that he could face the death penalty, torture or any other form of cruel, inhuman or degrading treatment or punishment.
3. Refugees shall benefit from special protection guaranteeing the full enjoyment and exercise of their rights as set forth in the Constitution and in relevant international and regional Conventions.

With respect to the protection of stateless persons:

4. The Republic of Sierra Leone guarantees stateless persons the protection of the law with due respect of the African Charter on Human and People's Rights and other international human rights instruments.

With respect to the prevention of stateless:

5. Every child born in Sierra Leone and every child born abroad to a Sierra Leonean parent has the right to Sierra Leonean nationality from birth;
6. The acquisition, loss and restoration of citizenship is not subject to any discrimination based on race, ethnicity, gender, religion, political opinion or any other reason;
7. All citizens are equally entitled to the rights, privileges and benefits of citizenship; and equally subject to the duties and responsibilities of citizenship.
8. National legislation will provide for the modalities of acquisition, loss and restoration of citizenship.
9. No Sierra Leonean can be deprived of his or her citizenship if this would render him or her stateless.”²⁵⁵.
10. The Chief Immigration Officer of Sierra Leone, Mr. Alpha Kholifa Koroma, made a presentation at a two-day expert engagement on citizenship where he explained the origins of the citizenship law: “Jus soli”, he said, is a concept relating to the soil (of one's country). It is the rule by which birth in a state is sufficient to confer nationality, irrespective of the

²⁵⁵ Paper presented by UNHCR pages 13, 14 15,16 and 17

nationality of one's parents. "Jus sanguinis" on the other hand, is a different concept relating to blood; the principle "being "that the nationality of children is the same as that of their parents, irrespective of their place of birth." He said that "either way, these were basically restrictive and are legalized forms of discrimination which regrettably demonstrate exclusionary patterns". He added further that there was need to chart a way forward.

The Chief Immigration Officer drew attention to the fact that the 1991 Constitution had no definition of "citizen" and that the Sierra Leone Citizenship Act of 1973, though the principal legislation on citizenship despite several amendments, still carries the discriminatory phrase 'negro African descent'. He recommended that racial language in the Constitution should be repealed²⁵⁶.

HRCSL proposed that "citizenship is to be granted on the basis of strong connection to Sierra Leone and that discriminatory law and practices that are contrary to international practice in the constitution should be expunged."

HRCSL stated that Sierra Leone had signed international and regional instruments on human rights and was part of the United Nations Human Rights Council. HRCSL said further that other human rights mechanisms such as the Universal Periodic Review have recommended removal of discriminatory laws.²⁵⁷

The Women's Forum of Sierra Leone stated "that the forum wants a state that guarantees protection from discrimination."

The meeting was also attended by Parliamentarians, and the Chairman of the Legislature Committee of Parliament, Honourable Manley Spaine Esq. also urged that discriminatory laws in the Constitution should be removed.²⁵⁸

Ms Aminata Sillah, Deputy Commissioner of the National Youth Commission was of the view "that discriminatory provisions in the constitution must be expunged."²⁵⁹

The Sierra Leone Women's position paper expressed the group's wishes: "any person born in Sierra Leone has the right to be a citizen at birth; all racial qualifications to be abolished. The Right to Sierra Leonean Citizenship belongs to every individual person and does not depend on the status or condition of her or his parent."²⁶⁰

The SLPP's position paper reiterated that acquisition of citizenship should be without reference to race or gender:

²⁵⁶ Report of expert engagement on citizenship 4th - 5th June 2015 page 10

²⁵⁷ Report of expert engagement on citizenship 4th - 5th June 2015 pages 8 - 9

²⁵⁸ Report of expert engagement on citizenship 4th - 5th June 2015 page 9

²⁵⁹ Report of expert engagement on citizenship 4th - 5th June 2015 page 9

²⁶⁰ Sierra Leone Women's position paper "Many Messages, One Voice" page 13 para 1

“We therefore accept and support the recommendation in the working document for the extant review that this new chapter should ‘provide that no citizenship law shall contain any provision, requirement or condition which is discriminatory on grounds of race, colour or gender.’”²⁶¹

SLLC also made the representation that the right to citizenship “must include all who are eligible and qualified irrespective of the colour of their skin or their racial origin.”²⁶²

The Movement for Social Progress suggested that “citizenship should be by birth and anyone from another African country who resides in Sierra Leone for more than 5 years should have voting rights and options for full citizenship after 10 years. Others who are not of African descent should be allocated full citizenship if any one of their parents is born in Sierra Leone.”²⁶³

The CRC also received views opposing the abolition of discriminatory provisions in the Sierra Leone Citizenship Act 1973:

In its position paper, OSIWA expressed that” the gender qualification to be removed and the race qualification retained.”²⁶⁴

A position paper submitted by five prominent Sierra Leoneans proposed further narrowing the qualification for acquisition of citizenship:

“It is necessary to have Negro descent of the established ethnic groups in Sierra Leone in the new constitution.”²⁶⁵

Honourable Justice Salimatu Koroma, Chairperson of the Sierra Leone Law Reform Commission, in her keynote presentation to the participants of the engagement on citizenship gave her comparative analysis on the laws of citizenship in Sierra Leone and other jurisdictions. She stated:

“There are several issues on citizenship which cut across boundary lines- one of the most obvious is that of discrimination at various levels.

Amongst the most undesirable element of citizen in quite a number of African countries, is an implicit racial basis for citizenship. Liberia and Sierra Leone take the position that only those of Negro African Descent can be citizens by birth. Sierra Leone also provides restrictive rules of naturalization of those who are not of Negroes of African descent.

Gender Discrimination- Until recently most African countries discriminated on the basis of gender in all areas of governance and Citizenship was not exempted. Women were unable to pass on their citizenship to their foreign Spouses or to their children if the father was not a citizen.

²⁶¹ SLPP position paper page 3

²⁶² SLLC position paper page 2 para 5

²⁶³ Movement for Social Progress position paper page 3

²⁶⁴ OSIWA position paper page 5

²⁶⁵ Part I of the position paper submitted by Mr Sylvanus Koroma, Mrs Ndeye Koroma, Mr Kaba Simeon Khalu, Mr Alphious Cole, Mr Alpha Dumbuya

In recent years changes have slowly been introduced, mainly due to the influence of International Human Right Laws on Women's rights. There has been more gender-friendly legislation enacted in several African countries. The Gambia and Kenya are a case in point.

Dual Citizenship

At independence most Constitutions were restrictive in the case of dual citizenship. It was argued that the allegiance to one's country should not be diluted with the same level of allegiance to another country.

In recent times many African countries have changed their laws to allow dual citizenship. Amongst those that have changed their laws within the last decade are Ghana, Gambia, Kenya, Rwanda and Sierra Leone. Others like South Africa allow dual citizenship, but only with permission from the Government. However the limitations on dual citizenship vary from state to state.

In Sierra Leone there are limitations on holding public offices and elected offices. In most as in Senegal and Cote d'Ivoire they may not hold high public offices especially the presidency. And even across the ocean there are still ongoing debates on the status of dual citizenship in Jamaica especially within the issue of political representation.

Recommendations

- (1) The Sierra Leone Citizenship Act 1973 as amended should be repealed and replaced by a citizenship Act which is non-discriminatory on the grounds of race, colour or Gender.
- (2) That the Constitution should have one chapter devoted to issues of Citizenship.
- (3) Citizenship by birth should be enlarged to include every person born in or outside Sierra Leone before April 27th 1991, one of whose parents was born in Sierra Leone.
- (4) Acquisition of Citizen by Registration or Resolution should be made simple.
- (5) Citizenship by Naturalization should not be based on race. The contribution of the applicant to the economic and social advancement of the country must be a deciding factor.
- (6) The law should provide the right to acquire Citizenship by naturalization to everyone who had been habitually resident in Sierra Leone for five years or is married to Sierra Leonean for a shorter period.
- (7) Section 75 & 76 of the constitution should be replaced, to enable citizens by naturalization to hold Public Office and Elected offices, except that of the presidency.²⁶⁶

²⁶⁶ Report of engagement on citizenship 4th - 5th June 2015

The CRC was mindful of the recommendations made in the PTC Report and the TRC, and of the national responses on the issue of citizenship. The CRC also examined all the position papers, recommendations, representations and opinions received during the process.

The CRC thoroughly reviewed all the expert evidence, in particular that given during the two-day expert engagement on citizenship, and took into consideration the analysis of the nationwide consultations. The CRC also placed emphasis on the experience of other African constitutions and on information obtained during the two-week experience-sharing mission to Ghana and Kenya in October and November 2015.

The CRC was also mindful of the fact that Sierra Leone has signed and ratified many human rights conventions and treaties which endorse an end to discriminatory laws and practices.

The CRC put all matters on this issue into the balance to reach a recommendation that reflected the views of the majority of Sierra Leoneans.

6.11 Recommendations

Building on all of these factors, the CRC recommends removing any reference to race in relation to the criteria for acquisition of citizenship, and proposes that the following provision be included in the chapter on citizenship of the revised Constitution:-

“Acquisition of Citizenship:

Citizenship may be acquired by birth, naturalisation, marriage or adoption.”

6.12 Theme - Citizenship by Birth

Observation

There is a specific requirement to be a “person of Negro African descent” in order to acquire citizenship by birth. This precludes many people born in Sierra Leone from being a citizen by birth.

The current law relating to the acquisition of citizenship is detailed in section 2 of the Sierra Leone Citizenship Act 1973, as amended in 2006.

Section 2(a) of the 1973 Act was limited to paternal ancestry, was amended to add maternal ancestry in the 2006 Act.

Section 2 of the 1973 Act reads:

“Citizenship By Birth

Every person who, having been born in Sierra Leone before the nineteenth day of April, 1971, or who was resident in Sierra Leone on the eighteenth day of April, 1971, and not the subject of

any other State shall, on the nineteenth day of April, 1971, be deemed to be a citizen of Sierra Leone by birth:

Provided that-

(a) his father or his grandfather was born in Sierra Leone; and

(b) he is a person of negro African descent”.

Sections 3, 4, 5, and 6 of the 1973 Act state:

“3. Citizenship by birth in Sierra Leone

Every person born in Sierra Leone on or after the nineteenth day of April, 1971, in the circumstances set out in section 2, shall be deemed to be a citizen of Sierra Leone by birth.”

“4. Citizenship by birth outside Sierra Leone

Every person born or resident outside Sierra Leone on or before the eighteenth day of April, 1971, and who, but for such birth or residence outside Sierra Leone would be a citizen of Sierra Leone by virtue of section 2, shall, on the nineteenth day of April 1971, be deemed to be a citizen of Sierra Leone by birth.”

“5. Citizenship by descent

Every person born outside Sierra Leone on or after the nineteenth day of April 1971, of a father who was or would but for his death have been a citizen of Sierra Leone by virtue of sections 2, 3 and 4, is a citizen of Sierra Leone by birth.”

“6. Other category of citizenship

Every person whose mother is or was a citizen of Sierra Leone by virtue of sections 2,3, 4 and 5 and who does not or did not acquire the citizenship of another State shall be deemed to be a citizen of Sierra Leone by birth.”

The Sierra Leone Citizenship (Amendment) Act 2006 made the following amendment:

“Amendment of section 1 of Act No. 4 of 1973

“2. Subsection (1) of section 1 of the Sierra Leone Citizenship Act, 1973 is amended as follows:

—

“mother” means a natural but not an adoptive mother”.

“person of negro African descent” means a person whose mother or father and any of the grand parents of the mother or father is or was a Negro of African descent”.

The 2006 Act also repealed and replaced the proviso to section 2 of the 1973 Act:

“3. The proviso to section 2 of the principal Act is repealed and replaced by the following proviso:–

“Provided that his father, mother or any of his grandparents was born in Sierra Leone and is or was a person of Negro African descent”.

There are many people born in Sierra Leone who will be unable to fulfill the criterion relating to race:

“Among the most problematic elements of citizenship law in some African countries is an explicit racial or ethnic basis for acquisition of nationality. At least half a dozen countries effectively ensure that those from certain ethnic groups can never obtain nationality from birth; nor can neither their children nor their children’s children. At the most extreme end, Liberia and Sierra Leone, both founded by freed slaves, take the position that only those “of Negro descent” can be citizens from birth.”²⁶⁷

The CRC was conscious that the vast majority of submissions received urged that race should not be a criterion for citizenship and so should not be included in the new chapter on citizenship in the revised Constitution.

The position papers received by the CRC showed an overwhelming, consistent and clear call for Sierra Leone’s citizenship laws to be reformed to repeal all racial language and that the Sierra Leone Citizenship Act 1973 as amended should be repealed and replaced by a Citizenship Act which is non-discriminatory on grounds of race, colour or gender in its entirety.

The CRC gave due consideration to dissenting views expressed but was mindful that the majority view from all sections of society was that references to race should be removed as a criterion for acquiring citizenship birth.

The CRC was mindful that discriminatory laws are contrary to international best practice, and that to render people stateless is contrary to international conventions that Sierra Leone has signed and ratified.

A research paper published by the Open Society Institute encourages all states that the “national constitutions and nationality laws should provide for an explicit and unqualified right to nationality from birth”.

“The law should provide for a child to have nationality from birth (of origin) if he or she is born in the state concerned or if he or she is born in the state concerned and:

- a. either of his or her parents are citizens; or
- b. either of his or her parents was also born in the country; or

²⁶⁷ Citizenship Law in Africa page 3

- c. either of his or her parents has his or her habitual residence in the country; or
- d. He or she would otherwise be stateless.”²⁶⁸

“With particular reference to the issue of nationality and given our discriminatory citizenship laws, Children Born in Sierra Leone whose parents are not citizens of Sierra Leone are practically stateless de facto and de jure. There is no right of children to nationality in the 1991 Constitution.”²⁶⁹

At the two-day programme for Political Parties Youth Engagement in Bo on 20th and 21st August 2015, the group which examined and made its recommendations on the Chapter on State Policy and Human Rights stated “any provision that discriminates against other people should be removed.”²⁷⁰

A position paper presented by UNCHR stated that:

“In 1961 the United Nations adopted the Convention on the Reduction of Statelessness to provide practical steps that assist States to integrate the right to a nationality in their existing legal structures. The Convention elaborates an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. At the 2011 Ministerial Intergovernmental Event on Refugees and Stateless Persons that took place in Geneva, Sierra Leone pledged to ratify the 1961 Convention, thus acknowledging the importance of the standards laid down in this instrument.

At the continental level, the 1990 African Charter for the Rights and the Welfare of the Child recognizes the right to a nationality, as it provides for the acquisition of nationality of the country of birth if otherwise the child would be rendered stateless. The right to a nationality was further elaborated, in 2003, with the adoption of the Protocol on the Rights of Women in Africa, which acknowledges their right to acquire a nationality and, in the event of their marriage, to acquire their husband’s nationality.

The African Commission of Human and People’s Rights has addressed both general and country-specific issues related to nationality and statelessness in communications and resolutions. In its April 2013 Resolution 234, the Commission affirmed that the right to a nationality is implied with the provisions of Article 5 of the African Charter on Human and People’s rights and is essential to the enjoyment of other fundamental rights and freedoms under the Charter.”²⁷¹

6.13 Recommendations

The CRC took into account the recommendations made in the TRC, the PTC Report, UNHCR, and also expert opinions, submissions and position papers. After thorough review of African and

²⁶⁸ Citizenship Law in Africa page 11 para 9

²⁶⁹ Position paper presented by Basita Michael LLM, BL, page 1

²⁷⁰ Youth Engagement in Bo Final Report page 5 point 3

²⁷¹ Paper presented by UNHCR page 17

other Constitutions, the CRC concluded that a person is a citizen of Sierra Leone by birth if on the day of the person's birth, whether in Sierra Leone or not, either the mother or father of the person is a citizen of Sierra Leone.

The CRC also took into account Sierra Leone's commitment to upholding international best practice, and therefore strongly recommends that all references to race and gender be removed in relation to the acquisition of citizenship.

The CRC also took note of the fact that Sierra Leone had signed and ratified international conventions and treaties committing it to eliminating discrimination on grounds of race.

The CRC also observed and took into consideration that most modern African countries have taken steps already to eliminate race as a criterion for acquiring citizenship.

In relation to the provision on citizenship by birth, the CRC therefore recommends that the 1973 Act should be repealed and that any subsequent legislation should be drafted in line with the new citizenship chapter of the revised Constitution.

The CRC therefore recommends that the following provision should be included in the new chapter on citizenship of the revised Constitution:

“Citizenship by Birth

A person is a citizen by birth if:

(a) on the day of the person's birth, whether in Sierra Leone or not, either the mother or father of the person is a citizen of Sierra Leone.

(b) if the person is born in Sierra Leone before the coming into force of this Constitution who is not a citizen of Sierra Leone under sub-section (a) of this section and whose father or mother were born in and ordinarily resident in Sierra Leone at the time of the birth of such person shall be a citizen of Sierra Leone by birth.

(c) either one or both parents were born in Sierra Leone and deprived of citizenship by birth due to previous legislation on citizenship.”

(d)“A child who is not a citizen, but is adopted by a citizen.”

6.14 Theme - Citizenship by Naturalisation

Current Context

The current provision for citizenship by naturalisation is contained in the Sierra Leone Citizenship Act 1973, as amended in 2006. They read as follows:-

“7. Citizenship by naturalization of married women

Every woman who is not a Sierra Leonean and who is or has been married to a Sierra Leone citizen, may, on application being made by her in the manner prescribed, be granted a certificate of naturalization.

8. Citizenship by naturalization of other persons

(1) Every person of Negro African descent born in Sierra Leone after the eighteenth day of April, 1971, may on application being made by him in the manner prescribed be granted a certificate of naturalization:

Provided that a person shall not be granted a certificate by virtue of this section if at the time of his birth -

(a) neither of his parents was a citizen of Sierra Leone and his father possessed such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Sierra Leone; or

(b) his father was an enemy alien and the birth occurred in a place then under occupation of the enemy.

(2) Every person of full age and capacity, either of whose parents is a person of negro African descent who is resident in Sierra Leone and has been continuously so resident for a period of not less than eight years may, on application in the prescribed manner being made by him that he is qualified for naturalization under the Second Schedule, be granted a certificate of naturalization.

(3) Every person of full age and capacity, neither of whose parents is a person of negro African descent, who is resident in Sierra Leone and has been continuously so resident for a period of not less than fifteen years may, on application being made by him in the manner prescribed, be granted a certificate of naturalization if he satisfies the Minister that he is qualified for naturalization under the provisions set forth in the Third Schedule.

(4) Any person under the age of twenty-one years -

(a) Whose father or mother was a citizen of Sierra Leone by naturalisation,

(b) Born outside Sierra Leone on or after the date on which the father or mother became a citizen as aforesaid,

may, if he desires to acquire citizenship of Sierra Leone, make an application therefor for naturalization under the foregoing provisions of this section.

(5) Any person who has acquired citizenship of Sierra Leone in accordance with the provisions of subsections (2), (3) and (4) or such person's wife and children who have acquired such citizenship by reason of that person himself having so acquired Sierra Leone Citizenship shall not hold the following public offices:

(a) President of the State of Sierra Leone,

(b) Member of any Commission established under the Sierra Leone Constitution,

- (c) Ambassador or Diplomatic Representative of Sierra Leone in any foreign country,
- (d) Member of the Army or Navy or Air Force or Police Force of Sierra Leone,
- (e) Permanent Secretary, Provincial Secretary, Secretary to the President, Secretary to the Vice-President, Secretary to the Prime Minister, Secretary to the Foreign Minister, the Financial Secretary, the Secretary to the Cabinet or the Establishment Secretary,
- (f) Member of Parliament or of a Local Authority:

Provided that the restrictions specified under this subsection may be removed by Resolution passed by not less than two-thirds of the Members of Parliament on application being made by that person in the manner prescribed, after a period of twenty-five years of his acquiring Sierra Leone Citizenship.

9. Conditions precedent to grant of certificate

Notwithstanding anything in this Act contained, no person applying for citizenship under sections 7 and 8 shall be granted a certificate of naturalization unless-

- (a) he is of full age and capacity; and
- (b) he has renounced, in a manner satisfactory to the Minister, any other citizenship which he possesses; and
- (c) he has taken an oath of allegiance to the Republic in accordance with the First Schedule;
- (d) he has made and registered a declaration, satisfactory to the Minister, concerning residence and employment; and
- (e) he has paid such fees as may be prescribed:

Provided that where a person cannot renounce the citizenship of the other country under the law of that country he may instead make a declaration concerning that other citizenship as will satisfy the Minister that the declarant intended to and has in fact properly renounced that citizenship”.

The Sierra Leone Citizenship (Amendment) Act 2006 amends the 1973 Act as follows:-

“4. Section 9 of the principal Act is repealed and replaced by the following section:-

9. Notwithstanding anything contained in this Act, no person applying for citizenship under sections 7 and 8 shall be granted a certificate of naturalization unless-

- (a) he is of full age and capacity;
- (b) he has taken an oath of allegiance to the Republic of Sierra Leone in accordance with the First Schedule;

- (c) he has made and registered a declaration satisfactory to the Minister concerning residence and employment; and
- (d) He has paid such fees as may be prescribed.”

Observations

“Sierra Leone provides for more restrictive rules for naturalisation of “non-Negroes.”²⁷²

The Sierra Leonean experts during the engagement with the CRC also emphasised that the laws related to acquisition of citizenship by naturalisation should be harmonised with international human rights and citizenship laws and best practices. The participants also stated that: “the acquisition of citizenship by Naturalisation should be made simple. Citizenship by Naturalization should not be based on race. The contribution of the applicant to the economic and social advancement of the country must be a deciding factor.”²⁷³

“Acquiring citizenship by naturalisation may be very difficult even where the rules are not onerous on paper. In Sierra Leone, for example, citizenship by naturalisation is in theory possible after an (already-long) 15-year legal residence period; in practice it is nearly impossible to obtain.”²⁷⁴

“The criteria and process for naturalization should be revisited to make Sierra Leone welcoming to people who demonstrate genuine desire to make Sierra Leone a permanent home and contribute to nation building and development. Delay and imposing huge costs for naturalization to long term residents should end. Naturalized citizens should have full rights of citizenship as citizens by birth.”²⁷⁵

There was a persistent call from national stakeholders and international institutions and during the national consultation process for the process of naturalisation to be simplified and become more transparent. In the public submission form analysis report on state Policy and Human Rights, the following question of naturalisation was presented to the public: “should the Constitution continue to permit discrimination against Sierra Leoneans who have acquired citizenship through registration, naturalization or by resolution in Parliament?”

1243 citizens responded to this question. 48% disagreed with the idea that the Constitution should continue to discriminate against Sierra Leoneans who have acquired citizenship through registration, naturalization or by resolution in Parliament.

²⁷² Citizenship Law in Africa page 65

²⁷³ Report of engagement on citizenship 4th - 5th June 2015 pages 7- 8

²⁷⁴ Citizenship Law in Africa page 6

²⁷⁵ Sierra Leone Women’s position paper page 13

6.15 Recommendations

The CRC recommends there should be a ten-year residency requirement to acquire citizenship by naturalisation. In addition, the CRC recommends that a person wishing to naturalise should be able to make a meaningful contribution to the advancement, development and wellbeing of Sierra Leone.

The CRC took special note of all the representations made that the criteria should not make reference to race or gender and must be non-discriminatory.

The CRC therefore recommends, firstly that the following provision be included in the citizenship chapter of the revised Constitution, and secondly that the process of acquiring citizenship by naturalisation should be governed by an Act of Parliament:

“Citizenship by Naturalisation:

A person may apply to be a citizen by naturalisation if that person -

- a. Has been resident in Sierra Leone for a period of ten years ;**
- b. Has made or is capable of making useful and substantial contribution to the advancement, progress and well-being of Sierra Leone; and**
- c. Satisfies the conditions prescribed by an Act of Parliament.”**

6.16 Theme - Citizenship by Marriage

Current Context

Section 7 of the Sierra Leone Citizenship Act 1973 allows a non-Sierra Leonean woman who is married to a Sierra Leonean citizen to apply for citizenship by naturalisation. It reads as follows:

“7. Citizenship by naturalization of married women

Every woman who is not a Sierra Leonean and who is or has been married to a Sierra Leone citizen, may, on application being made by her in the manner prescribed, be granted a certificate of naturalization”.

The same provision is not made for a man who is not a Sierra Leonean citizen and who is, or has been, married to a Sierra Leone citizen. This section has been held to be discriminatory against women.

Observations

The current legislation relating to acquiring citizenship through marriage is considered discriminatory against women. This has been echoed by women groups, human rights experts, civil society organisations and concerned citizens.

Including Sierra Leone, there are “more than two dozen countries today still do not allow women to pass their citizenship to their non-citizen spouses, or apply discriminatory residence qualifications to foreign men married to citizen women who wish to obtain citizenship.”²⁷⁶

There were many representations, position papers and submissions, and also feedback received during the consultation process, some of which have been cited above. There was a fervent call that the new citizenship chapter of the revised Constitution should address all forms of gender discrimination.

The CRC considered the recommendation made in the PTC Report to ensure that “our Constitution should give a clear and authoritative provision which would determine who the citizens of Sierra Leone are and how to acquire citizenship, without reference to racial or gender criteria.”²⁷⁷

The CRC also considered HRCSL’s position paper, reiterating the call for gender parity in the citizenship laws first made in its submission to the Peter Tucker Constitutional Review Commission on 29th July 2007.²⁷⁸

In its position paper submitted in 2015, HRCSL raised concerns about the discriminatory aspect of section 5(3) and (5): “section 5(3) which allows a woman who is a registered citizen to continue to enjoy citizenship even after annulment without making similar provisions for the man who is a registered citizen is discriminatory and contravenes the principle of equality and non-discrimination in all the international treaties and obligation signed by the government of Sierra Leone. We suggest an amendment of this clause to allow similar provisions to apply equally to both men and women who are registered”.

“Similarly section 5(4) discriminates against children on the basis of circumstances of birth in that a child of a marriage of a woman registered as citizen can continue to enjoy citizenship after an annulment of the said marriage whilst the child of a marriage of a man registered as citizen is denied this right. This contravenes the principle of equality and non-discrimination in all the international treaties and obligation Sierra Leone is bound by. We suggest an amendment of this clause to allow for equal provisions to apply to the children on an equal basis to the children of men and women who are registered citizen of a annulled marriages”.

“Section 5(5) imposes very onerous provisions for the man married to a Sierra Leonean woman seeking registration as citizen without applying similar provision to a woman married to a Sierra Leone man seeking registration. Again this contravenes the principles of equality and non-discrimination in all the international treaties and obligation Sierra Leone bound by. In addition it particularly discriminates against women as unequal provisions will apply to their marriage with non-Sierra Leoneans leaving the registration of their spouse to the discretion of the authority which does not apply to the marriage of Sierra Leonean men whose foreign wives registration. We suggest an amendment of this clause to ensure that spouse enjoy equal right in marriage in respective of gender”.

²⁷⁶ Citizenship Laws in Africa page 47

²⁷⁷ PTCR page 20 para 38

²⁷⁸ HRCSL submission to the PTCR 29th July 2007, pages 1 and 2

“Section 6(6) is discriminating against women for the reason stated above and we suggest it be amended to ensure that both sex enjoys equality in marriage.”

The CRC actively engaged with women and women’s groups throughout the consultation process. All the women’s organisations called for gender parity in relation to citizenship:

“They called for both male and female citizens to have the right to confer citizenship on spouse and on their children. They recommended that anyone legally married to a citizen, lawfully resident in Sierra Leone and gainfully employed, should have the right to apply for Sierra Leonean citizenship, irrespective of who they married to. They also proposed that children and grandchildren of Sierra Leoneans (by birth or naturalization) born outside of Sierra Leone shall have the right to apply for citizenship or become a permanent resident in the same way as a foreign spouse.”²⁷⁹

The Sierra Leone Women’s Forum, the 50/50 group of Sierra Leone, the All Political Parties’ Women Association, Sierra Leone Market Women’s Association, the Ministry of Social Welfare Gender and Children’s Affairs, and Civil Society Organisations in their presentations and position papers unanimously called for gender discriminatory provisions in the 1991 Constitution to be addressed, as well as gender discriminatory provisions in the Sierra Leone Citizenship Act 1973.

Oxfam in collaboration with the 50/50 group of Sierra Leone, together with the Sierra Leone Women in their position paper “Many Messages, One Voice”, stated that “all women agreed that a new chapter on citizenship (as recommended by the PTC Report) is necessary because the current citizenship law is discriminatory, unjust and exploitative.”²⁸⁰

The CRC held consultations with women’s groups, during which they made recommendations on citizenship. The women’s groups called for both male and female citizens to have the right to confer citizenship on their spouse and children.”²⁸¹

6.17 Recommendations

Based on the recommendations and presentations made by stakeholders and organisations, the CRC recommends that equal rights should be given to both spouses in relation to the acquisition of citizenship by naturalisation.

The CRC considered the numerous representations and widespread calls made to ensure that there should be gender parity in all issues in the new citizenship provisions.

CRC took into consideration the large number submissions by institutions, expert evidence and the numerous position papers which expressed heartfelt representations on this issue.

²⁷⁹ Report on CRC Engagement with Women Groups 2014 to 2016 page 2

²⁸⁰ Oxfam and the 50/50 Group position paper page 11, and Sierra Leone Women’s position paper page 12

²⁸¹ CRC Engagement with Women – Feb 2016 page 2

CRC endorses this and recommends that equal provisions be given to both spouses in marriage. The CRC therefore proposes that the following be included in the new citizenship Chapter of the revised Constitution:

“Citizenship by Marriage

A person may apply to be a citizen by marriage if that person has been married to a citizen for at least five years.”

6.18 Theme - Citizenship by Adoption

Current Context

The Sierra Leone Citizenship Act 1973, as amended by the Sierra Leone Citizenship (Amendment) Act 2006, silent on the issue of acquiring citizenship by adoption. The interpretation section of the 1973 Act it makes it clear that “father” includes a natural but not an adoptive father, and section 2(1) of the 2006 Act states that “mother” means a natural but not an adoptive mother.

Section 12(1) and (2) of the Adoption Act 1989 set out the law in relation to the legal relationship between the adoptive parents and the adopted child:

“Rights and duties of parents and other persons

12. (1) Upon an adoption order being made-

- (a) All rights, duties, obligations and liabilities, including any arising out of customary law and practice of parents of the juvenile, or any other person in relation to the future custody, maintenance and education of the juvenile (including all rights to appoint a guardian and to consent or give notice of dissent to marriage) shall be extinguished; and
- (b) There shall vest in, and be exercisable by and enforceable against, the adopter all such rights, duties, obligations and liabilities in relation to the future custody, maintenance and education of the juvenile as would vest in him if the juvenile were a child born to the adopter in a lawful marriage.

(2) In respect of custody, maintenance and education, the juvenile shall stand to the adopter exclusively in the position of a child born to the adopter in a lawful marriage.”

Observations

Adoption is a formal process and has to be sanctioned by an order of the High Court of Sierra Leone as prescribed in the Adoption Act 1989. A legally adopted child should be entitled to citizenship if one of the adoptive parents is a Sierra Leonean citizen.

6.19 Recommendations

The CRC recommends a new provision on citizenship by adoption. It also recommends that the current legislation on adoption should be harmonised in line with the new provisions of the revised Constitution.

The provision in the citizenship chapter must therefore ensure that, in line with the Adoption Act 1989, a child who is not a citizen but adopted by a Sierra Leonean citizen should be entitled to be naturalised.

The CRC realised that there were no extant provisions for the position of a legally adopted child in Sierra Leone in relation to the acquisition of citizenship.

The CRC is mindful that under the Adoption Act 1989, the adopted child's rights are limited to custody, maintenance and education. There are no provisions in the Adoption Act 1989 relating to the acquisition of citizenship by an adopted child who is not a Sierra Leonean citizen. The CRC therefore recommends resolving this ambiguity in the law and proposes that the following provision, citizenship by adoption, should be included in the new citizenship chapter of the revised Constitution:

“Citizenship by Adoption

“A child who is not a citizen, but is adopted by a citizen”

6.20 Theme - Child found in Sierra Leone

Current Context

Both the 1991 Constitution and the current citizenship laws are silent on the issue of what happens to a child found in Sierra Leone without parents or guardians.

Observations

The current laws in Sierra Leone do not address the issue of abandoned children. This means that they may become stateless.

The CRC was faced with overcoming a very practical issue of children found in Sierra Leone.

The United Nations Convention on the Reduction of Statelessness seeks to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life.

The objective is to provide for child protection in line with the commitment given by Sierra Leone at the Ministerial Intergovernmental Event on Refugees and Stateless Persons held in Geneva in 2011 to ratify the 1961 United Nations Convention on the Reduction of Statelessness. Accordingly Sierra Leone is committed to taking steps to integrate the right to a nationality in its national legislation.

The Open Society Institute research on citizenship in Africa notes that “seven countries fail to make any default provision for children with no other option to have a right to a nationality under their citizenship law, even if other laws indicate a right to citizenship (Botswana, Gambia, Kenya, Nigeria, Seychelles, Sierra Leone, and Zimbabwe).”²⁸²

The Sierra Leone Institute of International Law (SLIIL) in its position paper suggested that: “A new-born infant, who after the commencement of this Constitution, is found abandoned in Sierra Leone, shall unless the contrary is shown, be deemed to be a citizen of Sierra Leone.”²⁸³

6.21 Recommendations

The CRC recommends that provision be made to allow a child who is found abandoned and whose nationality and parents are not known to be presumed to be a citizen by birth. The CRC also recommends that there should be an upper age limit of five years for this provision to apply to avoid possible misuse or abuse of this provision.

The CRC recommends that full protection should also be guaranteed in national laws to protect abandoned children’s rights to acquire citizenship.

The CRC therefore proposes that the following provision should be included in the new citizenship chapter:

“Child Found in Sierra Leone

“A child found in Sierra Leone who is, or appears to be, less than five years of age, and whose nationality and parents are not known, shall be presumed to be a citizen by birth”.

6.22 Theme - Dual Citizenship

Current Context

Dual citizenship has been allowed in Sierra Leone since the Sierra Leone Citizenship (Amendment) Act 2006. However, the Sierra Leone Citizenship Act 1973 had previously prohibited dual citizenship.

Sections 10 and 11 of the 1973 Act state:

“10. Dual citizenship

No person shall have Sierra Leone citizenship and any other citizenship at one and the same time.

11. Loss of Sierra Leone Citizenship by Person of Dual Citizenship

²⁸² Citizenship Law in Africa page 37 para 2

²⁸³ SLIIL position paper page 4

Any person who, upon attaining the age of twenty-one years, is a citizen of Sierra Leone and also a citizen of another country shall cease to be a citizen of Sierra Leone upon his attaining the age of twenty-two years, (or in the case of a person of unsound mind, at such later date as may be prescribed) unless he has complied with paragraphs (a), (b) and (c) of section 9.”

The Sierra Leone Citizenship (Amendment) Act 2006 states:

“Section 10 of the principal Act is repealed and replaced by the following section:–

11. A citizen of Sierra Leone may hold a citizenship of another country in addition to his citizenship of Sierra Leone”.

Furthermore, section 7 of the Citizenship (Amendment) Act 2006 allows Sierra Leoneans to have dual nationality and resume their nationality lost due to section 11 of the 1973 Act.

A new amended section was added which states:

“19A. Where any citizen of Sierra Leone, being of full age and capacity, has at any time-

(a) acquired the citizenship of any foreign country-

(i) by birth; or

(ii) by any voluntary or formal act; or

(b) done any act or thing the sole or primary purpose of which or the effect of which was or is to acquire the citizenship of a foreign country,

and that person ceased to be a Sierra Leonean citizen by reason thereof, he may, if he so wishes resume his Sierra Leonean citizenship.”

Observations

The right to hold dual citizenship was established under the Sierra Leone Citizenship (Amendment) Act 2006.

During the consultation process, there were divergent opinions on the issue of dual citizenship. The consultation report indicated that whilst a minority opposed dual citizenship, the majority supported it. However, the latter was of the opinion that dual citizenship should bar a person from being eligible to stand for the office of President.

The CRC also took account that the trend in other African countries is to permit dual nationality:

“In recent years, many African states have changed their laws to allow dual citizenship or are in the process of considering such changes. Among those that have changed the rules in the last

decade or so are Angola, Burundi, Djibouti, Gabon, Gambia, Ghana, Mozambique, Rwanda, São Tomé and Príncipe, Sierra Leone, Sudan, and Uganda.”²⁸⁴

6.23 Recommendations

The CRC recommends that the right to dual citizenship should be included in the new citizenship chapter.

The CRC believes that dual citizenship should be allowed to continue, and this was supported by the vast majority of the people of Sierra Leone during the public consultation process.

The CRC weighed up all the arguments that had been put forward for and against the principle of dual nationality, and concluded that the overall evidence and weight of public opinion was in favour of dual nationality.

The CRC therefore proposes that the following provision should be included in the new citizenship chapter:

“Dual Citizenship

“A citizen by birth shall not lose citizenship by acquiring the citizenship of another country”.

6.24 Theme – Citizenship not lost through Marriage

Current Context

The Sierra Leone Citizenship Act 1973 and the Sierra Leone Citizenship (Amendment) 2006 are silent on the matter of dissolution of marriage and how marriage to a foreign citizen affects the status of a Sierra Leonean citizen.

Observations

The CRC received position papers from women groups and human rights organisations stating that marriage should not result in loss of a citizenship, irrespective of gender. It was also said that no law should force a citizen to change their nationality as a result of marriage.

Citizenship acquired through marriage should be retained in the event of the dissolution of that marriage, and there should be gender parity on marriage and dissolution of marriage.

Sierra Leone Women’s position paper “Many Messages, One Voice” signed by all women’s organisations in Sierra Leone recommended that “anyone legally married to a citizen lawfully

²⁸⁴ Citizenship Law in Africa page 7

resident in Sierra Leone and gainfully employed should have the right to apply for Sierra Leonean citizenship irrespective of the person they are married to.”²⁸⁵

International best practice indicates that “the law should not include any provisions providing that marriage to a foreigner or change of nationality by the husband during marriage automatically changes the nationality of the wife or forces upon her the nationality of the husband, or that place her at risk of statelessness.”²⁸⁶

International best practice also demands that “the law should provide that those who have acquired nationality on the basis of marriage to a citizen do not lose that nationality in the event of dissolution of the marriage.”²⁸⁷

6.25 Recommendations

The CRC recommends that dissolution of a marriage or marriage to a person of another nationality should not affect the citizenship of a Sierra Leonean national. In addition, there is need to bring clarity in the law as to what would happen if citizenship is acquired through marriage and on dissolution of the said marriage.

The CRC also considered the issue of gender parity in all matters relating to citizenship.

The CRC understands that there are international best practices and that Sierra Leone’s laws are currently in line with these standards. CRC believes that in the interest of transparency, security and stability, loss of citizenship on marriage should be included in the revised Constitution.

The CRC therefore proposes that the following provision should be included in the new citizenship chapter:

“Citizenship not lost through Marriage

“Citizenship shall²⁸⁸ not be lost through marriage or the dissolution of marriage”.

6.26 Theme - Revocation of Citizenship

Current Context

Section 5 of the Sierra Leone Citizenship (Amendment) Act 2006 allows for dual citizenship. This fundamentally affects sections 16 (“Deprivation of citizenship of persons acquiring foreign citizenship”) and 18 (“Deprivation of citizenship of persons acquiring residence in foreign countries”) of the 1973 Act.

²⁸⁵ ²⁸⁵ Sierra Leone Women’s position paper “Many Messages, One Voice” page 12

²⁸⁶ Citizenship Law in Africa page 14 para 41

²⁸⁷ Citizenship Law in Africa page 14 para 43

²⁸⁸ A sub-committee of the CRC proposed that “shall” should be replaced with “may”.

The 2006 Act repealed section 16 of the 1973 Act and replaced it with the following section:

“16. The Minister may by Order, deprive any person, who is a citizen by naturalization, of his citizenship if he is satisfied that it would not be conducive to the public good that such person, being of full age and capacity, should continue to be a citizen of Sierra Leone”.

Observations

The section should be amended to state the circumstances in which a person’s citizenship can be revoked.

The CRC is of the view that it is a right of all citizens to know the objective reasons that citizenship may be revoked. The CRC paid particular attention to international standards relating to revocation of citizenship, and was mindful of the implications of rendering someone stateless, which would be contrary to international conventions that Sierra Leone has signed and ratified.

To avoid potential misuse of section 16 of the Citizenship Act 1973, as amended by the 2006 Act, the CRC discussed regional best practices dealing with the revocation of citizenship.

The Open Society Institute (OSI) research paper stated that:

“Even in those countries where citizenship may be taken only from those who have become citizens by naturalisation, the grounds are often very broad, and extend far beyond cases in which citizenship might have been acquired by fraud. The decision to deprive someone of citizenship is not always subject to appeal or court review: many countries have provisions allowing for revocation of naturalisation at the discretion of a minister and without appeal to any independent tribunal. At the other end of the process, the laws of many countries provide explicitly that there is no right to challenge a decision to reject an application for naturalisation.

These broadly drafted provisions have been used by many different African governments (for political purposes) to revoke the nationality of a troublesome critic or of someone who is running for high office and shows signs of winning. Although there are other means of silencing journalists and blocking political candidates, the usefulness of denationalisation is that the person affected then has a tenuous legal status that is highly vulnerable to abusive use of discretionary executive power.”²⁸⁹

The OSI research paper also indicated that decisions on revocation should be made by the courts:

“The laws of several countries, including Gambia, Ghana, and South Africa, establish explicit due-process protections in case of deprivation of citizenship acquired by naturalisation, limiting grounds for removal, requiring reasons to be given, and granting a right to challenge the

²⁸⁹ Citizenship Law in Africa page 9

decision in court—and, in the best cases, providing for the decision to be made in the first place by the courts and not the executive.”²⁹⁰

“Article 15 of the Universal Declaration of Human Rights provides that “No one shall be arbitrarily deprived of his nationality.” Thus, any decision to revoke citizenship, which has such an important effect on an individual’s rights, must be judicial and not administrative, and must respect due process of law.”

“According to international jurisprudence, the notion of arbitrariness also includes necessity, proportionality, and reasonableness.”²⁹¹

The CRC is committed to introducing international best practice and adherence to international jurisprudence in these matters, and consequently reasons for revoking citizenship should be stated in unambiguous and objective language to ensure that “reasonableness” is met.

6.27 Recommendations

After careful consideration and comparison with other African constitutions, reviewing the international context, and taking account of pledges made by the government of Sierra Leone in the international arena, the CRC recommends that revocation of citizenship must follow due process.

The CRC reiterates that nationality should be revoked only by court order following an individual hearing on the merits of the case, and not by administrative decision. The State should bear the burden of proving that the person concerned is not entitled to citizenship, and there should be a right of appeal.

The CRC recommends that section 16 of the Sierra Leone Citizenship Act 1973, as amended by the Sierra Leone Citizenship (Amendment) Act 2006, should be further updated.

The CRC therefore proposes that the following section should be included in the new citizenship chapter:

“Revocation of Citizenship

“(1) If a person acquires citizenship by naturalisation, the citizenship may be revoked if the person—

- (a) acquired the citizenship by fraud, false representation or concealment of any material fact;**
- (b) has, during any war in which Sierra Leone was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was knowingly carried on in such a manner as to assist an enemy in that war;**

²⁹⁰ Citizenship Law in Africa page 9

²⁹¹ Citizenship Law in Africa page 23

- (c) **has, within five years after naturalisation, been convicted of an offence and sentenced to a fine and imprisonment for a term of five years or longer; or**
- (d) **has, at any time after naturalisation, been convicted of treason, or of an offence for which a penalty of at least seven or more years imprisonment may be imposed.**

(2) The citizenship of a person who was presumed to be a citizen by birth, as contemplated in section 7, may be revoked if—

- (a) **the citizenship was acquired by fraud, false concealment of any material fact by any person;**
- (b) **the nationality or parentage of the person becomes known, and revealed that the person was a citizen of another country; or**
- (c) **the age of the person becomes known, and it is revealed that the person was older than five years when found in Sierra Leone.”**

6.28 Theme - Enacting provisions

6.29 Recommendation

In addition to the citizenship chapter, the CRC recommends that the Sierra Leone Citizenship Act 1973 and the Sierra Leone Citizenship (Amendment) Act 2006 should be consistent with the proposed new citizenship chapter.

Parliament must enact legislation describing the necessary procedures relating to acquisition of citizenship, entry, residence and permanent residency status in Sierra Leone. In addition, updated citizenship Act must also describe procedures in line with international best practices relating to voluntary renunciation of citizenship, revocation of citizenship and generally prescribing the duties and rights of citizens.

Enacting provisions:

“Parliament shall enact legislation—

- (a) prescribing procedures by which a person may become a citizen;
- (b) governing entry into and residence in Sierra Leone;
- (c) providing for the status of permanent residents;
- (d) providing for voluntary renunciation of citizenship;
- (e) prescribing procedures for revocation of citizenship;
- (f) prescribing the duties and rights of citizens; and
- (g) generally giving effect to the provisions of this Chapter.

7 CHAPTER SEVEN

THE EXECUTIVE

7.1 Introduction

A constitution is a set of fundamental principles and laws, according to which a state or a nation is governed. It defines the inter-relationship between the three branches of government, the Executive, the Legislature, the Judiciary and the citizens of a country. A constitution sets down their roles, rights and responsibilities. These rules together constitute the entity and procedures of government in the country. A constitution lays down procedures for the appointment and removal of key personnel. It identifies and describes the functions of all institutions of the state and lays down specified parameters for all.

In many jurisdictions, the powers and functions of the President are expressly enumerated in the constitution. The Constitutional Review Committee (CRC) reviewed the Constitution of Sierra Leone 1991. In doing so, the CRC concluded that provisions relating to key areas of the executive branch of government need to be amended so that they reflect constitutional best practices.

The provisions relating to the Office of the President; the election of the President; incidents of office; vacancy in the office of the President; mental or physical incapacity; and misconduct by the President have been identified by various stakeholders, experts and the majority of the population as provisions that do not meet modern standards.

The CRC took into consideration the Report of the Peter Tucker Constitution Review Commission, expert opinion, position papers submitted by institutions and individuals, and responses from public submission forms. It also considered the Constitutions of Kenya, Ghana, and Uganda.

For good governance to obtain, the three branches of government – the Executive, the Legislature and the Judiciary - must be separate and independent of one another, and each must have the requisite power to fulfil its functions. The constitutional provisions that ensure the separation of powers must not merely exist on paper, but rather must be developed and reaffirmed continuously in their application. A failure to respect this separation inevitably allows one branch of government – most often the Executive – to act in an unaccountable fashion and to influence or undermine the work of the other two.

The Truth and Reconciliation Commission (TRC) made imperative recommendations, one of which was that: “The executive needs to prove that it is different from its predecessors in the

post-independence period. It needs to demonstrate ownership, leadership, imagination and determination in developing and implementing programmes for change.”²⁹²

7.2 Historical Background

The 1961 Constitution laid the foundation for a Parliamentary system. This Constitution was written as part of the transition to independence and provided for a Westminster-style parliamentary democracy: the Head of State was the British Monarch, represented by the Governor-General, and a prime minister was chosen from among Members of Parliament to head the government. The government was answerable to the Parliament, which could sanction it through censure votes. In practice, however, weak coalition arrangements within Parliament limited Parliament’s ability to effectively control the executive, as a result of which the latter gained more and more discretionary power.

The 1971 Constitution abolished the parliamentary system in favor of a presidential system. This Constitution vested tremendous powers in the President, it was under this Constitution that the President. In particular, the President was given sole power to appoint and dismiss his Vice-President without consulting anyone.

The 1978 Constitution replaced the multi-party system with a single-party system, thereby increasing the powers of the Executive arm of Government. In particular, this Constitution extended presidential term limits from four years to seven years.

Additionally, section 34 gave the President the power to appoint the Electoral Commissioners and the Chief Justice (head of the Judiciary). The Electoral Commission, the organ that accepted or rejected candidates for Parliament, was also controlled by the President. In that way, the Parliamentarians elected were mainly accountable to the President. This reality made it difficult to control the executive so that in practice the system functioned almost like a one party regime.

Influenced by events elsewhere such as the fall of the Berlin Wall, pressure from the West to democratize, and reform movements in neighboring countries, especially francophone West Africa where one party regimes were disappearing, opposition to one-party rule became stronger in Sierra Leone in the early 1990s. A coalition demanded a liberalized political system as socio-economic conditions worsened. President Momoh appointed a 35- member National Constitution Review Commission to recommend constitutional changes that would provide alternatives to the one-party state and reform the political system. This resulted in a new constitution in 1991 that reinstated multi-party politics.

The 1991 Constitution recognized the separation of powers, with provisions for oversight and institutional accountability. It vested the power of judicial review in the Supreme Court.

The operation of the 1991 Constitution was forestalled due to a military coup led by Valentine

²⁹² TRC Report, 2008, page 8, para 22

Strasser in April 1992. The Constitution was suspended, all political parties banned, and powers concentrated in the military government of the National Provisional Ruling Council (NPRC).

In 1991, civil war broke out in Sierra Leone. The Revolutionary United Front organized a terror campaign, killing thousands during the 11 years of the war. The conflict came to an end following the signing of the Lomé Peace Accord in 2002. The Lomé Peace Accord called for a review of the 1991 Constitution.

Current Context

Under the 1991 Constitution, the President is head of State, with supreme executive powers, as well as commander-in-chief of the Armed Forces. The presidential term is five years, limited to two terms. The Vice-President is the principal assistant to the President. Ministers and Deputy Ministers offices may be appointed by the President, who determines the general policy of the Government. In the exercise of his functions, the President may act with the advice of the Cabinet. The 1991 Constitution increased executive presidential powers in major areas, such as the appointment of the Electoral Commissioner, the Chief Justice, the Auditor General, the Head of the Police, and several key state institutional heads prior to the approval by Parliament.

Several stakeholders, experts and a majority of the people called for a balance of the powers of the President, and for an executive branch that is completely independent.

7.3 Theme - Office of the President

Current Context

Section 40 of the 1991 Constitution states:

“40. (1) There shall be a President of the Republic of Sierra Leone who shall be Head of State, the supreme executive authority of the Republic and the Commander-in-Chief of the Armed Forces.

(2) The President shall be the Fountain of Honour and Justice and the symbol of national unity and sovereignty.

(3) The President shall be the guardian of the Constitution and the guarantor of national independence and territorial integrity, and shall ensure respect for treaties and international agreements.

(4) Notwithstanding any provisions of this Constitution or any other law to the contrary, the President shall, without prejudice to any such law as may for the time being be adopted by Parliament, be responsible, in addition to the functions conferred upon him in the Constitution, for—

- (a) all constitutional matters concerning legislation;

- (b) relations with Foreign States;
- (c) the reception of envoys accredited to Sierra Leone and the appointment of principal representatives of Sierra Leone abroad;
- (d) the execution of treaties, agreements or conventions in the name of Sierra Leone;
- (e) the exercise of the Prerogative of Mercy;
- (f) the grant of Honours and Awards;
- (g) the declaration of war; and
- (h) such other matters as may be referred to the President by Parliament:

Provided that any Treaty, Agreement or Convention executed by or under the authority of the President which relates to any matter within the legislative competence of Parliament, or which in any way alters the law of Sierra Leone or imposes any charge on, or authorises any expenditure out of, the Consolidated Fund or any other fund of Sierra Leone, and any declaration of war made by the President shall be subject to ratification by Parliament—

- (i) by an enactment of Parliament; or
- (ii) by a resolution supported by the votes of not less than one-half of the Members of Parliament.”

7.4 Observation

The predominant issue relating to section 40 is the assumption that presidential styles and titles constitute power rather than honours.

The CRC reviewed section 40 and recommends that section 40(3) should remain the same.

As regards section 40(4), the CRC recommends that it should be amended in order to settle the contentious issue that the President has too many powers. In this respect, the CRC endorses the PTC Report recommendation, as follows:

The PTC Report recommended the following amendments: “by the deletion of the words “within the legislative competence of Parliament” in the proviso to section 40(4), and the addition of a new paragraph (iii) in subsection (4), as follows: “(iii) or by referendum where the Agreement alters or seeks to alter an entrenched provision of the Constitution”²⁹³.

The titles referred to in section 40(1) as “supreme executive authority” and “Head of State”, enacted by Parliament in 1973 and continued in the 1978 and the 1991 Constitutions, should be placed under a separate section to distinguish them from the executive powers of the President combined under the same heading.

The CRC debated section 40(1), with particular reference to the President’s title “supreme executive authority”. Different opinions were canvassed, and it was suggested that there should be a new, separate section called “Presidential Styles and Titles”. Another opinion was that

²⁹³ PTC Report report Chapter V, page 38

rather than the title “supreme executive authority”, the title should instead be “chief executive authority”.

Section 57 of the Constitution of Ghana 1992 states “There shall be a President of the Republic of Ghana who shall be the Head of State and Head of Government and Commander-in Chief of the Armed Forces of Ghana. (2) The President shall take precedence over all other persons in Ghana; and in descending order, the Vice- President, the Speaker of Parliament and the Chief Justice, shall take precedence over all other persons in Ghana”.

Section 58(1) refers to an “executive authority”, stating that “the executive authority of Ghana shall vest in the President and shall be exercised in accordance with the provisions of this Constitution”.

The Civil Society Forum of Sierra Leone (CSFSL) in their position paper commented on section 40(1): “is the said section merely descriptive or does it confers real powers to be exercised by the president? A number of cases have been taken to the Supreme Court in recent years pertaining to the exercise of executive authority. The opportunity now exists for us to protect the future by clearing ambiguities or loopholes”. The CSFSL recommended that the phrase “supreme executive authority” should be totally removed from the reviewed Constitution.²⁹⁴

In their position paper, the Governance Stakeholders’ Coordination Forum (GSCF) commented that although the 1991 Constitution makes it clear that all of the powers and functions of the President are to be exercised subject to judicial oversight, and that many of the most important powers require parliamentary approval, the deep rooted socio-political culture and tradition of authoritarianism and deference in which the Constitution and national life operate, allied with presidential powers of appointment and control of state resources, meant the constitutional checks and balances on the head of State were not effective.

The GSCF recommended that the granting of honours and awards, which is in the hands of the President alone, could be used effectively ‘to win friends’ and ‘influence’ those who should speak out: “how to address and safeguard Sierra Leone’s hard won and still fledgling democracy against recurrent anti progressive totalitarian tendencies that are currently manifesting in phenomena such as the ‘Campaign for a Presidential Third Term’ is a long standing dilemma that has confronted our nation since independence. The GSCF being nonpartisan would be the appropriate mechanism to take the lead in facilitating an informed and dispassionate public debate on how the Constitutional review process can be used to transform Sierra Leone society’s aspirations for democracy and equality from theory to reality in all aspects of national life.”²⁹⁵

In their position papers, the 50/50 Group in collaboration with Oxfam, and also the Sierra Leone Women, recommended that the President’s accountability under the Constitution and to the people should be restated in the Constitution: “the provisions in the Constitution relating to the

²⁹⁴ CSFSL position paper page 3

²⁹⁵ GSCF position paper pages 25-26

exercise of Executive Authority in Sierra Leone should be reviewed and clarified so that the President does not act above the Constitution.”²⁹⁶

In their position paper, the Open Society Initiative for West Africa (OSIWA) commented that a number of cases had been taken to the Supreme Court in recent years pertaining to the exercise of executive authority: “the opportunity now exists for us to protect the future by clearing ambiguities or loopholes. We must use this opportunity for instance to have clarification and review of the term “supreme executive authority” in section 40(1) of the Constitution”. They stated that in the four regions it was a unanimous decision by civil society that “we ask that the term “supreme executive authority”, whatever it means be totally be removed from the reviewed constitution.”²⁹⁷

The Native Consortium Think-Tank in their position paper commented that a semi-presidential system in which the President’s role was largely ceremonial and does not carry much executive authority was better than executive presidency:

“When the enormous powers vested in the Executive Presidency is taken together with the immunity attached to it, are examined, it is self-evident that the very concept is the antithesis of democracy. Clearly, the executive presidency has also disempowered Parliament creating a category of servile, sycophantic, opportunistic politicians without any vision who are unable to make any meaningful contribution to the formulation of national and legislative policy.”

They recommended that the revised Constitution should make provision for a ceremonial president who continues to be commander-in-chief of the armed forces. Executive power should be vested in a Prime Minister, being the leader of the largest party in Parliament²⁹⁸.

The Native Consortium Think Tank also commented on section 40(2), and recommended that the words “fountain of honor and justice” were vague terms and needed to be defined: “a president who does not maintain high moral standards and is clearly making expenditures above his income, or fails to regularly (every three years) declare his assets or pay taxes cannot be exuding honor and justice. In a similar vein, a president belonging to a political party after his election cannot be a symbol of national unity. Finally a president that takes bribes or secret gifts from foreign nationals/ businessmen or other countries and does declare them to Parliament is not a fountain of honour. The above issues need to be addressed by the new constitution by carefully establishing absolute moral standards by which, amongst other things, all presidential aspirants must be assessed as a fitness test for the presidency.”²⁹⁹

Section 40 comprises both the titles of the President and also the inherent powers of the President under the misleading heading “Office of the President”. This title has led to confusion and has given the impression that the President has excessive executive powers.

The titles of honour under review have been used in many constitutions to venerate a Head of

²⁹⁶ 50/50 Group in collaboration with Oxfam position paper page 12

²⁹⁷ OSIWA position paper page 3

²⁹⁸ Native Consortium position Think Tank position paper pages 3-4

²⁹⁹ Native Consortium Think Tank position paper page 5

State, rather than entrust him with power. Lord Blackstone wrote in his “Commentaries of the Laws of England” that “the distinction of rank and honours is necessary in every well-governed state; in order to reward such as are eminent for their services to the public, in a manner the most desirable to individuals, and yet without burthen to the community; exciting thereby an ambitious yet laudable ardor, and generous emulation in others.”³⁰⁰

Thus, we see in section 40(2), another example of a titles: “The President shall be the Fountain of Honour and Justice and the symbol of national unity and sovereignty.”

The styles and titles should be granted under a separate section in the revised Constitution to distinguish them from presidential powers. The comingling of the styles, titles and the inherent powers of the President invariably lead to the assumption that they are the same and may be exercised as executive powers.

The Sierra Leone Bar Association also raised the issue of whether or not the President has too many powers.

Mr. Owen Kai Combey commented that “section 5(2)(a) has rightfully provided that ‘sovereignty belongs to the people of Sierra Leone from whom Government ...derives its powers, authority and legitimacy’. Therefore, giving ‘supreme executive authority,’ whatever that ambiguous expression actually means, to the President would be inconsistent with the fundamental principles of State Policy as contained in Section 5.”

Mr Combey also commented that the phrase ‘supreme executive authority’ was too vague and susceptible to abuse, as had been the case in the country’s recent history. He therefore recommended that section 40(1) be amended to read “There shall be a President of the Republic of Sierra Leone who shall be Head of State, Head of the Executive and Commander-in-Chief of the Armed Forces.”³⁰¹

The CRC also deliberated on the arrangement of Presidential powers in the 1991 Constitution. There was a strong view that all presidential powers should be contained in one part of the Constitution. This means that section 40 (currently in Part I of Chapter V) and section 53 (currently in Part II of Chapter V) need to be reviewed, amended, and placed sequentially.

The CRC therefore recommends that the relevant sections be placed nearer to each other, as is the practice in the arrangement of sections in modern constitutions.

7.5 Recommendations

In the revised constitution, the CRC recommends that in section 40(1), the President should be titled “The Chief Executive” rather than the “supreme executive authority”, as follows:

³⁰⁰ Chapters II and III of Blackstone’s Commentaries of the Laws of England; see also John Selden’s “titles of honour”

³⁰¹ Owen Kai Combey position paper page 6

“40. (1) There shall be a President of the Republic of Sierra Leone who shall be Head of State, the Chief Executive of the Republic and the Commander-in-Chief of the Armed Forces.

In addition, the CRC recommends that section 40(4) should be amended to read as follows:

“(4) Notwithstanding any provisions of this Constitution or any other law to the contrary, the President shall, without prejudice to any such law as may for the time being be adopted by Parliament, be responsible, in addition to the functions conferred upon him in the Constitution, for—

- (a) **To ensure that laws are executed;**
- (b) **To guard** all constitutional matters concerning legislation;
- (c) **Power to appoint Ambassadors, envoys, Judges of the Superior Court of Judicature, Ministers of Government, Public Officials subject to the provisions of this constitution and Parliamentary approval;**
- (d) **To constitute any public office, appoint and dismiss to and therefrom;**
- (e) To declare war;
- (f) To make and execute treaties, agreements, diplomatic compacts, agreements and conventions in the name of Sierra Leone;
- (g) **To conduct foreign policy, receive envoys accredited to Sierra Leone and the appointment of principal representatives of Sierra Leone abroad;**
- (h) To exercise the Prerogative of Mercy **including the granting pardons, reprieves;**
- (i) To grant Honours and Awards;
- (j) **To veto disagreeable legislation in accordance with the provisions of this Constitution;**
- (k) **To present the State of Nation in an address to Parliament;**
- (l) **To declare states of emergency, manage, regulate disasters and other states of emergency in accordance with the provisions of this Constitution; and**
- (m) such other matters as may be referred to the President by Parliament.”

7.6 Theme - Qualification for office of the President

Current Context

Section 41 of the 1991 Constitution states:

“41. No person shall be qualified for election as President unless he—

- (a) is a citizen of Sierra Leone;
- (b) is a member of a political party;
- (c) has attained the age of forty years; and
- (d) is otherwise qualified to be elected as a Member of Parliament.”

Observation

The International Legal Resource Centre/American Bar Association expert review paper on the 1991 Constitution recommended deleting the requirement in section 41(b) that a person running for president must be affiliated to a party. The paper commented that elimination of this requirement would open up the office to those who were not necessarily affiliated to an official party.³⁰²

The Sierra Leone Labour Congress (SLLC) agreed with the provision in the Constitution that the President must be a citizen of Sierra Leone: “however, it is not very clear who a citizen of Sierra Leone is and the SLLC is requesting that there be a clear definition of a citizen in the new Constitution.”³⁰³

The SLLC further recommended that people with dual citizenship should not be eligible to contest for the Presidency, and also proposed a three-year residency requirement for people contesting for the Presidency: “the Sierra Leone Labour Congress agrees that only candidates that are members of political parties, nominated by their parties should partake in presidential elections and such candidates should be at least forty years old.”³⁰⁴

The Open Society Initiative for West Africa (OSIWA) in their position paper commented that there was a need also for clarification of section 41.³⁰⁵

The Native Consortium Think Tank in their position paper stated that the requirement for the President to be a symbol of national unity was better attainable if he/she was neutral. If this was accepted, then any individual should be able to contest the presidency. The corollary was that if a member of a political party won the presidential race, he must resign from his party. A presidential candidate need not be nominated by a political party.

³⁰² The international Legal Resource Centre/ American Bar Association expert review paper page 50

³⁰³ SLLC position paper pages 4-5

³⁰⁴ SLLC position paper page 5

³⁰⁵ OSIWA position paper page 3

The Native Consortium Think Tank recommended that: “four more sub-clauses are necessary. The presidential aspirant must:

- a) Affirm with documentary evidence that he/she has no outstanding personal or business taxes due for payment within the last five years.
- b) He/She has no outstanding matter presently receiving the attention of the judiciary.
- c) He/She has declared all his assets and liabilities and sources of income which information must be published in at least three National Newspapers.
- d) He/She must have proven political career history by having held other political office (Ward Councilor, Council Chairman, Mayor, Member of Parliament, Ex-Prime Minister) in his political career for at least five years.”³⁰⁶

During the various public consultations, participants recommended that section 41(d) should be expunged because it had some aspects of the parliamentary system of government carried over from the 1978 Constitution which appeared to be a fusion of the executive and the legislative functions.

The position paper of the National Democratic Alliance (NDA) recommended that separation of powers should be respected in the revised Constitution: “there should be a clear separation between the role of the President as chief executive and his functions in parliament. The Constitution must make a clear cut decision that shall bar the president from becoming a member of parliament at the same time. Hence section 41 clause (d) should be repealed.”³⁰⁷

The NDA position paper also recommended that “the candidate for President must be a citizen of Sierra Leone. This citizenship must meet that which stated that his ancestors must be of Negro descent. No dual citizen should be given an opportunity to contest for the office of President.”

The NDA also commented on the age requirement for the Presidency, and recommended that “as a result of their numerical strength and capacity to lead, the age requirement for Presidential candidate must be reduced from 40 years to 35 years. This will give young people a say in the governance of the state.”³⁰⁸

The Peoples Democratic Party (PDP) recommended that “the age for contesting Presidential elections as a candidate shall be 40 years as already stated in the 1991 Constitution; this will make way for the empowerment and democratic participation of young adults including women.”³⁰⁹

³⁰⁶ Native Consortium Think Tank position paper page 5

³⁰⁷ NDA position paper page 2

³⁰⁸ NDA position paper page 14

³⁰⁹ PDP position paper page 14

Mr Thomas Dickson Kallon recommended that a Presidential candidate must hold a Masters degree in any field, and must have resided in the country for three years.

Another citizen, Mr Alhaji A.C.Kamara, recommended that all intended presidential candidates must identify projects or development programmes they have initiated in their areas. He further recommended that no bachelor or spinster should be elected to the position of the Presidency.

Mr Owen Kai Combey commented that “given the position of the President of the Republic is the highest office in the land, a positive discrimination in favour of “citizens by birth” (as a qualification for candidacy) can be considered reasonable here. Otherwise, all persons declared ‘citizens’ of the Republic must be allowed to enjoy equal rights and privileges reserved for citizens. Similarly, it is important that we establish a minimum educational standard for those who wish to occupy the highest office in the land.)” He therefore recommended that section 41 should be amended to read as follows:

“No person shall be qualified for election as President of the Republic of Sierra Leone unless he

- a. is a citizen of Sierra Leone otherwise than by naturalization;
- b. is a member of a registered political party;
- c. is a registered voter;
- d. is a tax payer in the Republic of Sierra Leone;
- e. is a graduate from a recognized university;
- f. has attained the age of forty years;
- g. is otherwise qualified to be elected as a Member of Parliament³¹⁰

7.7 Recommendation

The CRC recommends that section 41 should remain the same. The only proposed change is that the revised Constitution should state that sections 50 and 51 are the only prescribed procedures relating to the impeachment of the President. This was suggested to be inserted in section 54(8).

7.8 Theme – Election of the President

Current Context

³¹⁰ Owen Kai Combey position paper page 6

Section 42 of the 1991 Constitution states:

“42. (1) A Presidential candidate shall be nominated by a political party.

(2) The following provisions shall apply to an election to the office of President—

- (a) all persons registered in Sierra Leone as voters for the purposes of election to Parliament shall be entitled to vote in the election;
- (b) the poll shall be taken by a secret ballot on such day or days, at such time, and in such manner as may be prescribed by or under an Act of Parliament;
- (c) a candidate for an election to the office of President shall be deemed to have been duly elected to such office where he is the only candidate nominated for the election after the close of nomination;
- (d) where in an election to the office of President a candidate nominated for the election dies, is incapacitated or disqualified, the party which nominated him shall within seven days of such death, incapacitation or disqualification, nominate another candidate;
- (e) no person shall be elected as President of Sierra Leone unless at the Presidential election he has polled not less than fifty-five per cent of the valid votes in his favour; and
- (f) in default of a candidate being duly elected under paragraph (e), the two candidates with the highest number or numbers of votes shall go forward to a second election which shall be held within fourteen days of the announcement of the result of the previous election, and the candidate polling the higher number of votes cast in his favour shall be declared President.

(3) A person elected to the office of President under this section shall assume that office on the day upon which he is declared elected by the Returning Officer, or upon the date that his predecessor's term of office expires, whichever is the latter.”

Observation

The various public consultations, expert opinions, position papers were of the view that many republics now make three key provisions regarding the election of the President, namely:

- a. There shall be a fixed date for holding national elections.
- b. That both Presidential and Parliamentary elections be held concurrently and on a fixed date.

The National Electoral Commission of Sierra Leone in its position paper recommended that sections 43 and 49 of the 1991 Constitution be amended to provide that Parliamentary and Presidential elections must be held concurrently on a permanent date, and that section 45(2) of the Constitution

and section 55 of the Public Elections Act 2012 should provide an expedited timeline for the adjudication of election petitions in Presidential elections.³¹¹

The 50/50 Group in collaboration with Oxfam in their position paper recommended that there should be specific dates for all elections set by the Constitution: “stringent limits are to be set based on the ability of the National Electoral Commission (NEC), the President or the Parliament to alter these dates except in emergency situations.”³¹²

The All People’s Congress (APC) in their position paper recommended that “to enhance respect for the emerging principle of some form of limits to Presidential terms, but without violating the right of any citizen to run for political office of his or her choice, we propose that nobody shall be eligible to serve as President for more than two consecutive terms. However such persons may be eligible to contest for Presidential elections after an intervening term. No person should be permanently barred from running for the political office of his or her choice. Some of the world’s greatest democracies from Britain to Australia, Germany and Japan do not permanently bar citizens.”³¹³

The APC went on to recommend that “in line with international best practice, we believe the 55% percent threshold for outright election of the President is too high. The constitution should be amended to allow a Presidential candidate who gets 50% plus 1 of the votes cast in the first round to be President.”³¹⁴

The National Democratic Alliance (NDA) in its position paper was also of the view that there must be a stipulated date enshrined in the Constitution for Presidential elections: “a date should also be stipulated for swearing in of the President elect and a date for the inauguration of the President and all election petitions must be addressed before the swearing in and inauguration of the declared President Elect.”³¹⁵

The NDA further recommended that “any candidate that did not obtain 55% of the total votes cast in the first round of elections should not be declared as President and the first and second candidates with the highest votes cast must go for a run-off election.”³¹⁶

The Sierra Leone Labour Congress (SLLC) suggested that there should be a run-off if a person fails to obtain 50.1% of the votes and not 55%, as prescribed by section 42(2)(e) of the 1991 Constitution.³¹⁷

The SLLC further commented that “the Sierra Leone 1991 Constitution was not very clear on a fix date for the presidential elections to be held, although it gives an indication of every 5 years, however, it is a bit flexible and can increase on the duration of the presidency. The new constitution must be clear on the date”.

³¹¹ National Electoral Commission position paper page 1

³¹² 50/50 Group in collaboration with Oxfam joint position paper page 13

³¹³ APC position paper page 1

³¹⁴ APC position paper page 2

³¹⁵ NDA position paper page 3

³¹⁶ NDA position paper page 14

³¹⁷ SLLC position paper page 6

The Native Consortium Think Tank recommended the following:

“Section 42(2)(b)

Voting can be done in secrecy but ballot papers must be serially numbered and security printed (each embedded with unique security features that may be invisible). Considering the trappings of power, the control over all the resources of the country and value of human life and property, it will make more sense even to use complete biometric voting systems rather than just biometric registration.

Section 42(2)(c)

This clause is only valid if all parties/citizens are allowed unfettered access to nomination centers and freedom of movement immediately prior to the nomination period.

Section 42(3)

After the results have been declared and assuming that the losing contestants can petition there must be a cooling off period of at least 30 days while the results are further validated and the Supreme Court deliberates on any petition.”³¹⁸

The position paper of the People’s Movement for Democratic Change recommended that the dates for Presidential and Parliamentary elections should be included in the Constitution as entrenched clause so that the nation would be appraised of the fixed date for such elections.³¹⁹

The People’s Democratic Party recommended that “the criteria for Presidential candidate to be elected as President of the Republic of Sierra Leone shall be 50% plus of the total valid votes cast for Presidential candidates.”³²⁰

The Sierra Leone Women’s position paper “Many Messages, One Voice” recommended that “specific dates for all elections should be set by the Constitution. Stringent limits to be set on ability of the National Electoral Commission (NEC), President or Parliament to alter these dates except in emergency situations.”³²¹

Having evaluated the various issues raised by the political parties and a majority of the population in the nationwide public consultations, it was clear that there was support for there to be a fixed date for Presidential and Parliamentary elections, as well as a fixed date for swearing in the President Elect: 95% of respondents were in favour, and only 5% were not.³²²

³¹⁸ Native Consortium Think Tank position paper page 6

³¹⁹ People’s Movement for Democratic Change position paper page 1

³²⁰ PDP position paper page 14

³²¹ Sierra Leone Women’s position paper “Many Messages, One Voice” page 14

³²² CRC Consultation response form report page 22

One key reason for this recommendation was that it would allow citizens, the National Electoral Commission, and political parties to plan well in advance because the date for the election of the President and Members of Parliament would no longer be determined by the incumbent President for his own political gain.

Additionally it would save costs, because a proper budget would be planned to undertake the electioneering process rather than having different budgets for different elections.

Owen Kai Combey in his position paper commented on section 42(3) that “unlike the old version, this amended version a ‘coup-like atmosphere’ and allows for a peaceful transition of power to which other dignitaries can be invited. It also avoids the duplication of ceremonies - different ceremonies for swearing-in and inauguration – as has been the case in the past. This amounts to waste of state resources.” He therefore recommended that section 42(3) should be amended to read that: “a person elected to the office of President under this section shall be called President-elect until when he formally assumes office, and which shall take place not later than 30 days after being declared duly elected by the Returning Officer.”³²³

7.9 Recommendation

The CRC recommends amending section 42 so as to allow a practicable way of conducting elections that is conducive to the stability of a country. In the event of unforeseen circumstances, if this was not feasible, the provisions of the 1991 Constitution relating to a state of emergency would allow for the suspension of elections.

The CRC therefore recommends that elections should be held on the same day to save costs and ensure proper planning by political parties and the National Electoral Commission.

The CRC further recommends that the election of the President, Parliament, and local government should be held on the same day, and an amendment should therefore be made to the relevant sections of Chapter IV of the 1991 Constitution (Representation of the People).

7.10 A fixed date for the inauguration of the elected President

The CRC recommends amending section 43 that there shall be a fixed date for the inauguration of the elected President to ensure that there is no vacuum of power during and after the election. Therefore CRC recommends that section 43 proviso be amended by adding subsection (c) which reads as follows:

Section 43(c)

“There shall be a Fixed Date for the Inauguration of the Elected President.”

³²³ Owen Kai Combey position paper page 7

7.11 Theme - Incidents in office

Current Context

Section 48 of the 1991 Constitution states:

“48. (1) The President shall receive such salary and allowances as may be prescribed by Parliament and such salary and allowances payable to the President are hereby charged on the Consolidated Fund.

(2) The salary and allowances of the President shall not be altered to his disadvantage during his tenure of office.

(3) The President shall be exempted from personal taxation.

(4) While any person holds or performs the functions of the office of President, no civil or criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his official or private capacity.

(5) The President shall be entitled to such pension and retiring benefits as shall be prescribed by Parliament.”

Observation

The 1991 Constitution exempts the President from “personal taxation”. In the course of the CRC public consultations, the allusion to “personal taxation” appeared vague to the public because it is not evident from section 40(3), what constitutes taxation of the President. Accordingly, this issue requires clarification to ensure that the revised Constitution states clearly what aspects of the President’s income and emoluments are taxable.

The Sierra Leone Labour Congress in its position paper recommended that the President should not be exempted from paying personal taxes since section 48(3) of the current Constitution states that the President shall be exempted from paying taxes³²⁴.

In its position paper, the National Democratic Alliance (NDA) stated that “as the first gentleman in the state, the President must pay taxes based on his earnings.”³²⁵

The Native Consortium Think Tank in their position paper recommended the following amendments:

“Section 48(3)

³²⁴ SLLC position paper page 5

³²⁵ NDA position paper page 2

The president must be subjected to personal and business taxation. It is bad example for the president to be exempted from tax when everybody else is not. Transparency and accountability would otherwise be severely impaired. As a matter of fact, failure of the president to declare his taxes correctly should automatically lead to huge fines, loss of all pension rights and possibly impeachment.

To make this clause effective, the President's foreign bank accounts should partially frozen (except for interest payments) and no external transfers can be made by a president while in office either directly or through third parties. Any third parties used to flout this law may forfeit such funds without recourse in any court of law.

Section 48(4)

It should be possible to bring both criminal and civil action against a sitting president and it is most unfair for the president to have immunity for any criminal or civil action that may not even be related to official duties. The president ought to behave in an exemplary manner. What we can do to avoid distraction from the state duties is to differ the hearing of the matter till the end of his term of office.

Section 48(5)

At the expiry of the tenure of each president, a referendum must be held on his performance. He will only be entitled to a pension if 50% or more of those voting in the referendum endorse him/her as a good president who has conducted the affairs of state fruitfully, transparently, honestly and impartially.

Our review must include a need for two more incidents of office.

1. The constitution must expressly forbid the president from accepting gifts either in cash or in kind without declaring such gifts to the state through parliament. On declaration the gifts must be gazetted and should be treated as belonging to the state. He/She may acquire the gifts from the state at the recorded market value. Where He/She is not interested in acquiring, then any other citizen may do so by national competitive bidding.

2. Once a president has been declared as winner, and before he can ascend to high office, he must make a thorough declaration of all his assets which must be published again. At the end of every three years or at the expiry of his term of office whichever is earlier, he must again declare his assets. The assets and liabilities so declared must be debated by parliament. Any

failure to correctly declare assets would lead to him/her losing the office of President, and the omitted assets seized and a prison sentence of not less than three years imposed.”³²⁶

The Child Rights Coalition Sierra Leone in their position paper commented that “according to the current Constitution, the rule of law appears to not apply to the President. For example, according to section 48(3) of the Constitution, the President is exempt from paying taxation despite being a citizen of Sierra Leone. Also, section 48(4) shields the President or anyone performing the functions of the office of the President from civil or criminal liability for anything done or omitted to be done by him either in his official or private capacity. This strengthens the perception that the President and his staff are above the law, when in fact they are not immune.”³²⁷

During the CRC’s visit to Ghana and Kenya, the CRC was informed that the President pays taxes on both his personal earnings and his salaries and other emoluments from the consolidated fund.

Section 46(3) of the Constitution of Ghana 1992 states that the President should not engage in income-generating employment while he is serving as president: “The President shall not, while he continues in office as President, hold any other office of profit or emolument in the service of Sierra Leone or occupy any other position carrying the right to remuneration for rendering services.”

Section 115 of Ghana’s Constitution makes further provisions in respect of salaries and allowances:

“115. (1) There shall be paid to the holders of the offices to which this section applies such salaries and allowances as may be prescribed by or under any law.

(2) The salaries and allowances payable to the holders of the offices to which this section applies shall be a charge on the Consolidated Fund.

(3) The salary, pensions, gratuity and allowances payable to the holder of any office to which this section applies and his other terms of services shall not be altered to his disadvantage after his appointment, and for the purposes of this subsection in so far as the terms of service of any person depends on the option of that person, the terms for which he opts shall be taken to be more advantageous to him than any other terms for which he might have opted.

(4) This section applies to the officers of the President, Vice-President, Attorney-General and Minister of Justice, Ministers, Deputy Ministers, the Chief Justice, a Justice of the Supreme Court, a Justice of Appeal, a Judge of the High Court, the Director of Public Prosecutions, the Chairman and Members of the Electoral Commission, the Chairman and Members of the Public Service Commission, and the Auditor-General.”

³²⁶ Native Consortium Think Tank position paper page 7

³²⁷ The Child Rights Coalition Sierra Leone position paper page 19

In the United States, the President is subject to the same tax laws as all citizens. The President's salary is taxable in accordance with Title 26 of the United States Code, and the President also receives additional allowance of USD 50,000 which is not taxable and is used for official purposes only.

Having taken various comments into consideration, the CRC recommended that the President's salary and emoluments should be exempt from taxation while all other income from other sources should be taxable like those of his compatriots.

7.12 Recommendation

The CRC recommends that the President's salary, emoluments and allowances drawn from the Consolidated Fund as privileges of the office of President should not be subject to taxation. The President, nonetheless is not to be exempt from personal taxation on income derived from other sources, including any enterprise, business venture in mining, agriculture, among others taxable and applicable to all other citizens. The CRC therefore recommends that section 48(3) should be amended to read as follows:

“(3) The President shall not be exempted from personal taxation”.

7.13 Theme - Vacancy in the office Of President

Current Context

Section 49 of the 1991 Constitution states:-.

“49. (1) The office of President shall become vacant—

- (a) on the expiration of any of the terms prescribed in subsection (1) of section 46 of this Constitution; or
- (b) where the incumbent dies or resigns or retires from that office; or
- (c) where the incumbent ceases to hold that office in pursuance of section 50 or 51 of this Constitution:
- (d) Provided that the President shall not resign or retire from his office even at the due expiration of his term of office while a general election of Members of Parliament is pending within the ensuing three months, or where a state of public emergency has been declared.

(2) If Sierra Leone is at war in which the national territory is physically involved, and the President considers that it is not practicable to hold elections, Parliament may by resolution extend the period of five years mentioned in sub-section (1) of section 46, but no such extension shall exceed a period of six months at any one time.

(3) Any resignation or retirement by a person from the office of President shall be in writing addressed to the Chief Justice and a copy thereof shall be sent to the Speaker and the Chief Electoral Commissioner.

(4) Whenever the President dies, resigns, retires or is removed from office as a result of paragraphs (b) and (c) of subsection (1), the Vice-President shall assume office as President for the unexpired term of the President with effect from the date of the death, resignation, retirement or removal of the President, as the case may be.

(5) The Vice-President shall, before assuming office as President in accordance with subsection (4), take and subscribe the oath for the due execution of his office as set out in the Second Schedule to this Constitution.”

Observation

In their position paper, the All People’s Congress submitted to the CRC recommended that “in order to strengthen political parties as fundamental units for ensuring vertical accountability and for aggregating preferences of citizens, the President and Vice President should be members of a political party and as clarified by the Supreme Court, this is a continuous requirement. A President or Vice-President also loses his/her office when they are no longer members of the party under whose ticket they become President or Vice-President.”³²⁸

The Native Consortium Think Tank in their position paper commented that “where there is a vacancy in the office of President by operation of this constitution, the Prime Minister will act in that office until elections are held and a new President elected within 90 days.”³²⁹

The Civil Society Forum of Sierra Leone (CSFSL) in their position paper recommended that “loss of party membership to be any reason for losing office as any elected member of either the executive or the legislature.”³³⁰

Political parties, civil society organizations, youth groups, and women organizations in their various position papers raised the issue of loss of party membership by a sitting President and Vice-President.

The majority of the responses from the nationwide consultations raised the issue of loss of party membership, and urged that it should be treated with utmost urgency.

The CRC took into consideration the views expressed in public consultations and position papers, and also the practice in other countries. As a result, the CRC decided that loss of party membership should form a basis for removal of the President, with the approval of Parliament. This would avoid unscrupulous party members having total control over the Presidency.

³²⁸ APC position paper page 2

³²⁹ Native Consortium Think Tank position paper page 7

³³⁰ CSFSL position paper page 3

7.14 Recommendation

The CRC recognises that the President has a unique constitutional status in the country.

The loss of party membership should not nullify or remove a sitting President from office. Provided in case of loss party membership section 51 procedure will follow.

The CRC therefore recommends that a new subsection should be added to section 54 concerning loss of party membership.

7.15 Theme - Mental or physical incapacity

Current Context

Section 50 of the 1991 Constitution states:

“50. (1) Where the Cabinet has resolved that the question of the mental or physical capacity of the President to discharge the functions conferred on him by this Constitution ought to be investigated and has informed the Speaker accordingly, the Speaker shall, in consultation with the Head of the Medical Service of Sierra Leone, appoint a Board consisting of not less than five persons selected by him from among persons registered as medical practitioners under the laws of Sierra Leone.

(2) The Board appointed under subsection (1) shall enquire into the matter and make a report to the Speaker stating the opinion of the Board whether or not the President is, by reason of any infirmity of mind or body, incapable of discharging the functions conferred on the President by this Constitution.

(3) Where the Cabinet has resolved that the question of the mental or physical capacity of the President to discharge the functions conferred on him by this Constitution ought to be investigated in accordance with the provisions of subsection (1), the President shall, as soon as another person assumes the office of President, cease to perform those functions and until the Board submits its report, those functions shall be exercised in accordance with subsection (1) of section 52 of this Constitution.

(4) Where the Board reports that the President is incapable of discharging the functions conferred on him by this Constitution by reason of infirmity of mind or body, the Speaker shall certify in writing accordingly, and thereupon, the President shall cease to hold office and a vacancy shall be deemed to have occurred in the office of President and subsection (4) of section 49 of this Constitution shall apply.

(5) Upon receipt of the report of the Board referred to in subsection (4), the Speaker shall—

- (a) if Parliament is then sitting or has been summoned to meet, within five days communicate the report to Parliament;

(b) if Parliament is not then sitting (and notwithstanding that it may be prorogued), summon Parliament to meet within twenty-one days after the receipt by the Speaker of the report of the Board and communicate the report of the Board to Parliament.

(2) For the purposes of this section—

(a) the Cabinet may act notwithstanding any vacancy in its membership or the absence of any member;

(b) a Certificate by the Speaker that the President is by reason of mental or physical infirmity unable to discharge the functions of the office of President conferred on him by this Constitution shall, in respect of any period for which it is in force, be conclusive and shall not be entertained or enquired into in any court.”

Observation

The 25th Amendment to the United States Constitution addresses the steps that must be taken in the event of Presidential disability but scholars have furthered other steps in the event the President recovers from his disability. The CRC should align itself with these steps in order to ensure international best practices.

The 1991 Constitution did not distinguish between inability to perform the duties of the office of the President – a President may be mentally or physically disabled but may at some time be in a position to recover to resume his duties and functions as prescribed in the Constitution.

The CRC discussed whether or not there should be a fixed time for the Board to prepare its report under section 50(2).

If the Vice-President and a majority of Cabinet members submit to the Speaker of the House a written declaration that the President is unable to discharge the powers and duties of this Office, the reference to a Board under section 50(2) to examine the President will come into effect.

In the event he is unable to perform his functions, the President should, if possible, inform the Vice-President, and the Vice-President should serve as Acting President, exercising the powers and duties of the office until the inability ends.

In the event of an inability which would prevent the President from so communicating with the Vice-President, the Vice-President, after such consultation as seems to him appropriate under the circumstances, would decide upon the devolution of the powers and duties of the office and would serve as Acting President until the inability ends.

In either event, the President would determine when the inability had ended and at that time would resume all powers and duties of office.

If the President and the Vice-President become disabled concurrently, the Speaker should report the matter to Parliament for consideration of appointing an official who would serve as

President until an election is held.³³¹

Where the President suffers from mental and physical incapacity with no prospect of recovering, the Speaker may invoke the steps set out in section 50.

7.16 Recommendation

The CRC recommends that section 50(2) should be amended as follows:

“(2) The Board appointed under subsection (1) shall enquire into the matter and make a report **within 90 days** to the Speaker stating the opinion of the Board whether or not the President is, by reason of any infirmity of mind or body, incapable of discharging the functions conferred on the President by this Constitution.”

7.17 Theme - Misconduct by the President

Current Context

Section 51 of the 1991 Constitution states:

“**51.** (1) If notice in writing is given to the Speaker signed by not less than one-half of all the Members of Parliament of a motion alleging that the President has committed any violation of the Constitution or any gross misconduct in the performance of the functions of his office and specifying the particulars of the allegations and proposing that a tribunal be appointed under this section to investigate those allegations, the Speaker shall—

- (a) if Parliament is then sitting or has been summoned to meet within five days, cause the motion to be considered by Parliament within seven days of the receipt of the notice; or
- (b) if Parliament is not then sitting (and notwithstanding that it may be prorogued), summon Parliament to meet within twenty-one days of the receipt of the notice, and cause the motion to be considered by Parliament.

(2) Where a motion under this section is proposed for consideration by Parliament, it shall meet in secret session and shall not debate the motion, but the Speaker or the person presiding in Parliament shall forthwith cause a vote to be taken on the motion and, if the motion is supported by the votes of not less than two thirds of all Members of Parliament, shall declare the motion to be passed.

(3) If a motion is declared to be passed under subsection (2)—

³³¹ Presidential succession and delegation in case of disability (a memorandum to the Attorney General Theodore Olson), dated April 3, 1981

- (a) the Speaker shall immediately notify the Chief Justice who shall appoint a tribunal which shall consist of a Chairman who shall be a Justice of the Supreme Court and not less than four others selected by the Chief Justice, at least two of whom shall hold or shall have held high judicial office;
- (b) the Tribunal shall investigate the matter and shall within the period of three months from the date on which the motion was passed report to Parliament through the Speaker whether or not it finds the particulars of the allegation specified in the motion to have been sustained;
- (c) the President shall have the right to appear and be represented before the Tribunal during its investigation of the allegations against him.

(4) If the Tribunal reports to Parliament that it finds that the particulars of any allegation against the President specified in the motion have not been substantiated, no further proceedings shall be taken under this Section in respect of that allegation.

(5) Where the Tribunal reports to Parliament that it finds that the particulars of any allegation specified in the motion have been substantiated, Parliament may, in secret session, on a motion supported by the votes of not less than two-thirds of all the Members of Parliament, resolve that the President has been guilty of such violation of the Constitution or, as the case may be, such gross misconduct as is incompatible with his continuance in office as President; and where Parliament so resolves, the President shall thereupon cease to hold office and a vacancy shall then be deemed to have occurred in the office of President and subsection (4) of Section 49 of this Constitution shall apply accordingly.”

Observation

The CRC deliberated on the issue of impeachment of the President.

The International Legal Resource Centre/American Bar Association expert review paper on the 1991 Constitution suggested that the following phrase should be added to section 51(1) to assure the President due process of law: “The President shall be notified of the motion alleging misconduct and shall be provided an opportunity to be heard in person or by counsel.”

The paper also recommended deleting the phrase in section 51(2) “it shall meet in secret session and shall not debate the motion, but”, noting that the Constitution should not mandate secrecy. The paper further pointed out that section 51(5) allowed the use of secrecy in certain circumstances³³².

In its position paper, the Open Society Initiative for West Africa (OSIWA) stated that “it is imperative that the process of removing the president or vice be clarified. Sections 50 and 51

³³² The International Legal Resource Centre/American Bar Association expert review paper page 51

specify how either could be removed for health reasons or misconduct/violations of the constitution. We garner that the people are asking that.”³³³

In its position paper, the National Democratic Alliance (NDA) recommended that impeachment proceedings must be made public.³³⁴

The Native Consortium Think Tank in their position paper commented: “Since the allegations need to be factual and must be supported by substantiating evidence there is little or no need for 50% of the members of parliament to trigger the action. We believe 10 % or more of the members of parliament is adequate.

If the constitution says that the president must not wear a blue shirt on Sundays, it is up to him to comply and continue in office. However if he does violate the rule and there is sufficient evidence to prove so he must be impeached. To allow a situation where his supporters in parliament can prevent his impeachment by simply saying that it was not a blue shirt is contrary to the spirit of good governance and is mainly responsible for the culture of abuse of public office with impunity in this country.

Subsection (4) is clear that if the motion has not been substantiated no further action will be taken. What we think is most important here is where the petitioning MP’s fail to substantiate the motion they should lose their seats in the house.”³³⁵

7.18 Recommendation

The current provisions on impeachment, which include misconduct or mental or physical incapacity, are sufficient. However, the CRC recommends that section 51 should be amended to set out an impeachment procedure, and to widen the scope of the process so that citizens are informed and involved in it. The CRC therefore recommends the following amendments to the section:

“51. (1) A member of parliament and/ or a citizen (who is not a member of parliament) can give notice in writing clearly outlining offences committed or violation of the constitution by the president and proposing that a tribunal be established to investigate the allegation signed by half of all members of parliament may provoke a motion in parliament to impeach a sitting president.

- (a) if Parliament is then sitting or has been summoned to meet within five days, cause the motion to be considered by Parliament within seven days of the receipt of the notice; or

³³³ OSIWA position paper page 3

³³⁴ NDA position paper page 14

³³⁵ The Native Consortium Think Tank position paper pages 7-8

- (b) if Parliament is not then sitting (and notwithstanding that it may be prorogued), summon Parliament to meet within twenty-one days of the receipt of the notice, and cause the motion to be considered by Parliament.
- (2) When the motion proposed in under this section is been considered by parliament, it shall meet in secret session and shall not debate the motion. The speaker or presiding officer shall cause a vote to be immediately taken. The motion will be considered passed if supported by two-thirds votes of all members of parliament.
- (3) The speaker of parliament shall immediately inform the Chief Justice to appoint a tribunal of four judges (two of whom shall have high judicial office) and a chairperson who shall be justice of the Supreme Court to investigate the alleged offence(s) the president is deemed to have committed within 90 days.
- (2) The tribunal shall investigate the allegations specified in the motion and report its findings to parliament through the speaker within ninety days from the date on which the motion was passed.
- (3) The President shall have the right to appear before the tribunal and be represented by counsel of his/her choice during investigation of the allegation against him.
- (4) The investigation (trial) shall be held in full public view.
- (5) If the Report of the tribunal indicates that the president has committed the allegations specified in the motion, the chief justice shall communicate the findings to the speaker of parliament.
- (6) If parliament is in sitting, the speaker shall summon parliament within five days of receipt of the Report and shall lay the Report before parliament within seven days.
- (7) If parliament is in recess, the speaker shall summon parliament within twenty one days after receipt of the Report of the tribunal and lays the Report of the tribunal before parliament.
- (8) If the president is found guilty of an offence by the tribunal, parliament shall vote to remove the president by two-thirds votes of all members of parliament present and voting shall convict and remove the president from office.
- (9) However, if the report of the tribunal indicates that the allegations specified in the motion against the president are not substantiated, no further proceedings under this section shall be taken against the president.”

7.19 Theme - Temporary filling of vacancy

Current Context

Section 52 of the 1991 Constitution states:

“**52.** (1) Whenever the President is absent from Sierra Leone or is by reason of illness or any other cause unable to perform the functions conferred upon him by this Constitution, those functions shall be performed by the Vice-President.

(2) Upon assumption of office under subsection (1), the Vice-President shall not take and subscribe the oath of office of President.”

7.20 Observation

The CRC recommends that in case of the death, illness, or absence of the Vice-President from office, the President must appoint a new Vice-President from the same political party.

7.21 Theme – Vice-President

Current Context

Section 54 of the 1991 Constitution states:

“**54.** (1) There shall be a Vice-President of the Republic of Sierra Leone who shall be the Principal Assistant to the President in the discharge of his executive functions.

(2) A person—

(a) shall be designated a candidate for the office of Vice-President by a Presidential candidate before a Presidential election;

(b) shall not be qualified to be a candidate for the office of Vice-President unless he has the qualifications specified in section 41.

(3) A candidate shall be deemed to be duly elected as Vice-President if the candidate who designated him as candidate for election to the office of Vice-President has been duly elected as President in accordance with the provisions of section 42.

(4) The Vice-President shall, before entering upon the duties of his office, take and subscribe the oath of Vice-President as set out in the Third Schedule of this Constitution.

(5) Whenever the office of the Vice-President is vacant, or the Vice-President dies, resigns, retires or is removed from office, the President shall appoint a person qualified to be elected as a Member of Parliament to the office of Vice-President with effect from the date of such vacancy,

death, resignation, retirement or removal.

(6) Whenever the President and Vice-President are both for any reason unable to perform the functions of the President, the Speaker of Parliament shall perform those functions until the President or Vice-President is able to perform those functions, and shall take and subscribe the oath of office as set out in the Second Schedule before commencing to perform those functions.

(7) Where the Speaker of Parliament assumes the office of President as a result of the death, resignation or removal from office of the President and Vice-President, there shall be a Presidential election within ninety days of that assumption of office.

(8) The provisions of sections 50 and 51 of this Constitution, relating to the removal from office of the President, shall apply to the removal from office of the Vice-President.”

Observation

The CRC discussed whether or not loss of party membership should nullify a sitting President or Vice-President from office. The rationale for this is that, upon taking office, the said individuals become public servants of the entire nation and not solely for the political parties on whose ticket they were elected. Intra-party politics should therefore not be encouraged to determine the fate of public elected officials.

The All People’s Congress party recommended that “in order to ensure accountability of a Vice President to the President, the APC proposes that the President may indicate whom he wants to serve as Vice President and could remove him/her whenever he comes to the conclusion that the Vice President lacks the requisite loyalty, capacity etc. to continue to serve as his/her principal assistant.”³³⁶

The Civil Society Forum of Sierra Leone (CSFSL) in their position paper recommended that “the reviewed constitution clearly states the qualifications for staying in office, once elected as Vice President, without having anything to do with qualifications for elections. In particular, we do not want the loss of party membership to be any reason for losing office as any elected member of either the executive or the legislature.”³³⁷

7.22 Recommendation

The CRC recommends adding a new subsection (8) to section 54, which reads as follows:

“(8) Loss of party membership shall not nullify from office a sitting President or Vice-President”. Provided in case of loss party membership section 51 procedure will follow.

³³⁶ APC position paper page 1

³³⁷ CSFSL position paper page 3

7.23 Theme - Vacancy in the office of vice-President

Current Context

Section 55 of the 1991 Constitution states:

“55. The office of the Vice-President shall become vacant—

- (a) on the expiration of the term of office of the President; or
- (b) if the Vice-President resigns or retires from office or dies; or
- (c) if the Vice-President is removed from office in accordance with the provisions of section 50 or 51 of this Constitution; or
- (d) upon the assumption by the Vice-President to the office of President under subsection (4) of section 49.”

7.24 Recommendation

The CRC endorses the recommendation in the PTC Report³³⁸ that a new section 55(e) should be added, as follows:-

“(e) if she/he voluntarily ceases to be a member of the political party of which she/he was a member at the time of election to office.”

7.25 Theme - Office of Attorney-General and Minister of Justice

Current Context

Section 64 of the 1991 Constitution states:

“64. (1) There shall be an Attorney-General and Minister of Justice who shall be the principal legal adviser to the Government and a Minister.

(2) The Attorney-General and Minister of Justice shall be appointed by the President from among persons qualified to hold office as a Justice of the Supreme Court and shall have a seat in the Cabinet.

(3) All offences prosecuted in the name of the Republic of Sierra Leone shall be at the suit of the Attorney-General and Minister of Justice or some other person authorised by him in accordance with any law governing the same.

(4) The Attorney-General and Minister of Justice shall have audience in all Courts in Sierra Leone except local courts.”

³³⁸ PTCR page 38

Observation

The CRC deliberated on the issue of the separation of the office of the Attorney-General and Minister of Justice, and was informed by various expert papers and position papers in this respect.

The International Legal Resource Centre/American Bar Association expert review paper on the 1991 Constitution, and recommended adopting the proposal in the PTC Report, as it promotes transparency, and the independence of the Judiciary from the Executive. The PTC Report recommended the following:

“(1) delete the words “Attorney-General & Minister of Justice” and replace with the word “Attorney-General,”

(2) the Office of Attorney-General shall be a public office which shall be filled in the same way as that of the Solicitor-General, i.e. he shall be appointed by the President on the advice of the Judicial and Legal Service Commission, with approval of Parliament, and he shall, before assuming the functions of his Office, take and subscribe the oath as set out in the Third Schedule of the Constitution,

(3) the holder of the Office of the Attorney-General must be a Sierra Leonean, and

(4) if a President so desires, he can appoint a Minister of Justice, whose portfolio shall

include the courts, the Prisons and the Probation service for administrative and political purposes.”

The rationale for this proposal is that there should be transparency in the administration of justice and non-interference by the Executive in the domain of the Judiciary.

The paper also recommended deleting section 64(3) because, as a member of the Cabinet appointed by the President and the principal legal adviser to the Government, the Attorney-General is associated with the Executive. Separating the Attorney-General from prosecutorial decision-making would be in the interest of promoting transparency and ensuring that prosecutorial authority is independent of the Executive.

The paper noted that although the Attorney-General is not subject to the direction or control of anyone else, nevertheless, the Attorney-General is a member of the Cabinet and carries out ministerial responsibilities. The paper suggested that if there are some prosecutorial matters over which the Attorney-General needs to have some oversight, such situations could be specifically provided for in the Constitution.³³⁹

In its position paper, the Centre for Accountability and Rule of Law (CARL) commented that “section 64 of the 1991 Constitution creates the office of the Attorney-General and Minister of Justice, which essentially merges two offices and otherwise separate functions into one. The

³³⁹ The International Legal Resource Centre/American Bar Association expert review paper page 52

Peter Tucker Report does recommend a separation of the two offices, stating that “there should be transparency in the administration of justice and non-interference by the Executive in the domain of the Judiciary”. CARL fully supports this recommendation, and further proposes safeguards for the independence and security of tenure for the Attorney-General. The Attorney-General should perform a purely professional function, and should therefore be insulated from any form of external (Executive) interference into his/her work.”³⁴⁰

In their position paper, the Governance Stakeholders’ Coordination Forum (GSCF) recommended that “the office of the Attorney-General (AG) should be separated from that of the Minister of Justice, thus removing scope for interference by the Executive in the judiciary. This is also a TRC recommendation. The PTRC proposal is for the Attorney-General to become a public officer appointed (subject to parliamentary approval), on the advice of the Judicial and Legal Service Commission while the Minister of Justice is a political appointment.

However in my view this proposal would still leave the judiciary subject to the political control of the Minister of Justice and continue to undermine judicial independence and separation of from the executive. An alternative would be to eliminate the office of Minister of Justice and leave the Attorney General as ‘principal legal adviser to the Government and a Minister¹³’. If this happened there would be no minister with power and responsibility to supervise the judges and thus political influence from the executive branch would be reduced.”³⁴¹

A report by the Campaign for Good Governance on behalf of Civil Society Organisations recommended that “the institution of Attorney-General and Minister of Justice is in contravention of the Rule of Law. The formation of this institution was criticized by the civil society, the Peter Tucker Report (PTR), and the Consultant’s Report (CR) as a threat to the principle of separation of powers, i.e. to the Rule of Law. The recommendations for amendments in the PTR in this respect are to be accepted. However, the fact that the Attorney-General and Minister of Justice has “audience in all courts of Sierra Leone except local courts” (Article 64 (4) of the Constitution) is still problematic because of the risk of violation of the principle of fair trial: the participation of the *avocat général* in deliberations of judges had been found by the ECtHR [European Court of Human Rights] to be in contravention of the principle of ‘equality of arms’, which is an inherent feature of a fair trial.”³⁴²

In their position paper, the 50/50 Group in collaboration with Oxfam recommended “to abolish the office of the Minister of Justice who appears to direct or supervise the Chief Justice and the Judiciary, as this gives the impression that the Judiciary is not an independent arm of the State and raises concerns about lack of separation of the three arms of government.”³⁴³

The Sierra Leone Women’s position paper “Many Messages, One Voice” recommended “abolishing the office of Minister of Justice who appears to direct or supervise the Chief Justice

³⁴⁰ CARL position paper page 15

³⁴¹ GSCF position paper pages 24-25

³⁴² Report of the Campaign for Good Governance on behalf of Civil Society Organisations page 13

³⁴³ 50/50 Group in collaboration with Oxfam position paper page 14

and the Judiciary as this gives the impression that the Judiciary is not an Independent arm of the State and raises concerns about lack of separation of the three arms of government.”³⁴⁴

The Native Consortium Think Tank in their position paper recommended “that in order to establish the independence of the judiciary, the Attorney General position must be separated from Minister of Justice.”³⁴⁵

Mr Owen Kai Combey in his position paper recommended “that the office of the ‘Attorney General’ from that of the ‘Minister of Justice should be separated.”³⁴⁶

7.26 Recommendation

The CRC considered the various position papers, suggestions, and recommendations that were in line with the PTC Report. The CRC therefore recommends that the position of the Minister of Justice and the Attorney-General should be separated.

Section 64 should therefore be amended to read as follows:

“64. (1) There shall be an Attorney-General who shall be the principal legal adviser to the Government.

(2) the Office of Attorney-General shall be a public office which shall be filled in the same way as that of the Solicitor-General, i.e. he shall be appointed by the President on the advice of the Judicial and Legal Service Commission, with approval of Parliament, and he shall, before assuming the functions of his Office, take and subscribe the oath as set out in the Third Schedule of the Constitution,

(3) the holder of the Office of the Attorney-General must be a Sierra Leonean”.

7.27 Theme – Solicitor-General

Current Context

There are 12 subsections in section 65 of the 1991 Constitution. The CRC deliberated on subsections (2) and (7), as follows:

“(2) The Solicitor-General shall be appointed by the President on the advice of the Judicial and Legal Service Commission and he shall, before assuming the functions of his office, take and subscribe to the oath as set out in the Third Schedule to this Constitution.”

³⁴⁴ Sierra Leone Women’s position paper “Many Messages, One Voice” page 14

³⁴⁵ The Native Consortium Think Tank position paper page 8

³⁴⁶ Owen Kai Combey position paper page 9

“(7) Subject to the provisions of this section, a person holding the office of Solicitor-General shall vacate his office when he attains the age of sixty-five years.”

Observation

The CRC considered the issue of the retirement age of the Solicitor-General, and the appointment of the Solicitor-General subject to Parliamentary approval.

In the International Legal Resource Centre/American Bar Association expert review paper suggested that in section 65(2), the phrase “and subject to the approval of Parliament” be inserted between “Commission” and “and.” It was also suggested that this would promote the transparency and independence of the Judiciary from the Executive, which was recommended in the PTC Report³⁴⁷.

The PTC Report proposed the following amendment to section 65:

“By the inclusion of the words “and subject to the approval of Parliament” between the words “Commission” and “and”³⁴⁸.

Owen Kai Combey in his position paper recommended that “by removing the office of the Solicitor-General and in its place, establish the office and functions of the Minister of Justice. The functions of the Solicitor-General will be effectively performed by the Deputy Attorney General and the Director of Public Prosecutions – as is currently the case.”³⁴⁹

7.28 Recommendation

The CRC recommends amending section 65(2) to add the reference to the need for Parliamentary approval, and amending section 65(7) to raise the retirement age from 65 to 70, as follows:

“(2) The Solicitor-General shall be appointed by the President on the advice of the Judicial and Legal Service Commission, **subject to the approval of Parliament**, and shall, before assuming the functions of office, take and subscribe to the oath as set out in the Third Schedule to this Constitution.”

“(7) Subject to the provisions of this section, a person holding the office of Solicitor-General shall vacate office upon attaining the age of **seventy** years.”

³⁴⁷ The International Legal Resource Centre/American Bar Association expert review paper pageS 53-54

³⁴⁸ PTCR page 40

³⁴⁹ Owen Kai Combey’s position paper page 10

7.29 Theme - Director of Public Prosecutions

Current Context

There are 15 subsections in section 66 of the 1991 Constitution. The CRC deliberated on subsections (7), (8), and (10), as follows:

“(7) The powers conferred upon the Attorney-General and Minister of Justice by this section shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this section shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.”

“(8) In the exercise of the powers conferred upon him by this section, the Attorney-General and Minister of Justice shall not be subject to the direction or control of any other person or authority.”

“(10) Subject to the provisions of this section, a person holding the office of Director of Public Prosecutions shall vacate his office when he attains the age of sixty-five years.”

Observation

The International Legal Resource Centre/American Bar Association expert review paper proposed deleting sections 66(6) to (8) and adding new sections (6) and (7), as follows:

“(6) The powers conferred upon the Director of Public Prosecutions by paragraphs (b) and (c) of subsection (4) shall be vested in him to the exclusion of any other person or authority: provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by, or at the instance of, that person or authority and with the leave of the court.

(7) In the exercise of the powers conferred upon him by this section the Director of Public Prosecutions shall not be subject to the direction or control of any person or authority”. The remaining sub-sections of that section shall then be renumbered accordingly.”

The paper further proposed that in section 66(4), the words “Subject to subsection (3) of section 64” be deleted, leaving this subsection to commence with the existing words: “(4) The Director of Public Prosecutions shall have power in every case,”

The paper also recommended replacing throughout section 66 the use of term “Attorney-General and Minister of Justice” with “Attorney-General,” to make this section consistent with

the recommendation of the PTC Report regarding the transparency and independence of the Judiciary.³⁵⁰

7.30 Recommendation

The CRC recommends amending section 66(7) and (8) to replace the phrase “Attorney-General and Minister of Justice” with the word “Attorney-General”, and to amend section 66(10) to raise the retirement age from 65 to 70, as follows:

“(7) The powers conferred upon the **Attorney-General** by this section shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this section shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.”

“(8) In the exercise of the powers conferred upon him/her by this section, **the Attorney-General** shall not be subject to the direction or control of any other person or authority.”

“(10) Subject to the provisions of this section, a person holding the office of Director of Public Prosecutions shall vacate his/her office when he attains the age of **seventy** years.”

7.31 Theme - Secretary to the President

Current Context

Section 67(2) of the 1991 Constitution states:

“(2) The functions of the Secretary to the President shall include –

(a) acting as the principal adviser to the President on Public Service matters;

(b) the administration and management of the Office of the President, of which he shall also be Vote Controller;

(c) the performance of all other functions assigned to him from time to time by the President.”

Observation

³⁵⁰ The international Legal Resource Centre/American Bar Association expert review paper page 54

The CRC deliberated on the issue of removing the function of public service from the role of the Secretary to the President.

The PTC Report recommended that section 67(2)(a) should be deleted.

Owen Kai Combey in his position paper recommended to “amend section 67 to reconcile the office of the ‘Secretary to the President’ with that of the ‘Chief of Staff in the Office of the President’. It is not prudent to have the two positions in the same office. This only amounts to conflict of functions and waste of state resources. So, I would rather recommend that the ‘Secretary to the President’ be simply renamed as ‘Chief of Staff in the Office of the President’ – which title sounds more contemporary and respectful to the holder.”³⁵¹

7.32 Recommendation

The CRC recommends that section 67(2)(a) should be deleted so as to remove the function of principal adviser to the President on public service matters from the Secretary to the President. The amended section 67(2) therefore reads as follows:-

“(2) The functions of the Secretary to the President shall include –

(a) the administration and management of the Office of the President, of which she/he shall also be Vote Controller;

(b) the performance of all other functions assigned to him/her from time to time by the President.”

7.33 Theme - Secretary to the Cabinet

Current Context

Section 68 of the 1991 Constitution states:

“**68.** (1) There shall be a Secretary to the Cabinet who shall be the Head of the Civil Service and whose office shall be a public office.

(2) The Secretary to the Cabinet shall be appointed by the President in consultation with the Public Service Commission.

(3) The functions of the Secretary to the Cabinet shall include—

(a) having charge of the Cabinet Secretariat;

³⁵¹ Owen Kai Combey’s position paper page 10

- (b) responsibility for arranging the business for, and keeping the minutes of, the Cabinet, and for conveying the decisions of the Cabinet to the appropriate person or authority, in accordance with such instructions as may be given to him by the President;
 - (c) co-ordinating and supervising the work of all administrative heads of ministries and departments in the Public Service;
 - (d) such other functions as the President may from time to time determine.
- (4) The Secretary to the Cabinet shall not assume the duties of his office unless he has taken and subscribed to the oath as set out in the Third Schedule to this Constitution.”

Observation

In its position paper, the Public Service Commission stated that the arrangement of the public service under the 1991 Constitution is unclear in meaning and function, owing to the definition of “public service” in section 171(3) and (4) of the 1991 Constitution. Moreover, public service matters are spread out amongst the duties of the Secretary to the President and the Secretary to the Cabinet, and also the Public Service Commission and the Human Resources Management Office, thereby creating a division of the same organization with no synergy for its objectives:

“In this dispersed form of the public service with too many hands managing its affairs, there is a compelling reason to consolidate the public service and the civil service in a single institution of Government as it is the predominant best practice in the Commonwealth, peer African countries and modern constitutionalism.”³⁵²

The International Legal Resource Centre/American Bar Association expert review paper recommended adopting the proposal made in the PTC Report, which recommended that the functions listed under section 68(3) should be amended to read:

- “(a) acting as the Principal Adviser to the President on Public Service matters;
- (b) having charge of the Cabinet Secretariat;
- (c) responsibility for arranging the business for, and keeping the minutes of, the Cabinet, and for conveying the decisions of the Cabinet to the appropriate person or authority, in accordance with such instructions as may be given to him by the President;
- (d) co-ordinating and supervising the work of all administrative head of ministries and departments in the Public Service;

³⁵² Public Service Commission position paper

(e) such other functions as the President may from time to time determine.”³⁵³

7.34 Recommendation

The CRC recommends that the Secretary to the Cabinet’s functions under section 68(3) relating to civil and public service should be transferred to a new encompassing body set up to deal with these operations.

The CRC endorses the PTC Report recommendations that section 68(1) should be amended to delete the phrase “who shall be the Head of the Civil Service and”. Further, the CRC recommends that the phrase “and Public Service” should be deleted from section 68(3)(a) and (d).

Section 68 should therefore be amended to read as follows:-

“68. (1) There shall be a Secretary to the Cabinet whose office shall be a public office.

(2) The Secretary to the Cabinet shall be appointed by the President.

(3) The functions of the Secretary to the Cabinet shall include—

(a) acting as the Principal Adviser to the President and having charge of the Cabinet Secretariat;

(b) responsibility for arranging the business for, and keeping the minutes of, the Cabinet, and for conveying the decisions of the Cabinet to the appropriate person or authority, in accordance with such instructions as may be given to him/her by the President;

(c) co-ordinating and supervising the work of all administrative head of ministries and departments;

(d) such other functions as the President may from time to time determine.”

7.35 Theme - Secretary to the Vice-President

Current Context

Section 69 of the 1991 Constitution states:

“69. (1) There shall be a Secretary to the Vice-President whose office shall be a public office.

³⁵³ PTCR page 41

(2) The Secretary to the Vice-President shall be appointed by the President in consultation with the Public Service Commission and shall, before assuming the functions of his office, take and subscribe to the oath as set out in the Third Schedule to this Constitution.”

7.36 Recommendation

The CRC recommends that the phrase “in consultation with the Public Service Commission” should be deleted from section 69(2) to make it consistent with sections 67 and 68 of the revised Constitution.

Section 69 should therefore read as follows:

“69. (1) There shall be a Secretary to the Vice-President whose office shall be a public office.

(2) The Secretary to the Vice-President shall be appointed by the President and shall, before assuming the functions of his/her office, take and subscribe to the oath as set out in the Third Schedule to this Constitution.”

7.37 Theme - Office of Paramount Chief

Current Context

Section 72 of the 1991 Constitution states:

“72. (1) The institution of Chieftaincy as established by customary law and usage and its non-abolition by legislation is hereby guaranteed and preserved.

(2) Without derogating from the generality of the provisions of subsection (1), no provision of law in so far as it provides for the abolition of the office of Paramount Chief as existing by customary law and usage immediately before the entry into force of this Constitution, shall have effect unless it is included in an Act of Parliament and the provisions of Section 108 shall apply in relation to the Bill for such an Act as they apply in relation to the Bill for an Act of Parliament that alters any of the provisions of this Constitution that are referred to in subsection (3) of that section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, the provisions of subsection (1) to the extent that the law in question makes provision for the determination, in accordance with appropriate customary law and usage, of the validity of the nomination, election, unseating or replacement of any Paramount Chief, or the question of restraining in any way the exercise of any rights, duties, privileges or functions conferred upon, or enjoyed by him, by virtue of his office or the installation or deposition of a person as a Paramount Chief.

(4) A Paramount Chief may be removed from office by the President for any gross misconduct in the performance of the functions of his office if after a public inquiry conducted under the

Chairmanship of a Judge of the High Court or a Justice of Appeal or a Justice of the Supreme Court, the Commission of Inquiry makes an adverse finding against the Paramount Chief, and the President is of the opinion that it is in the public interest that the Paramount Chief should be removed.

(5) Subject to the provisions of this Constitution and in furtherance of the provisions of this section, Parliament shall make laws for the qualifications, election, powers, functions, removal and other matters connected with the Chieftaincy.”

Observation

The position paper of the National Council of Chiefs takes exception to the procedure for impeaching and removing Paramount Chiefs from office. The paper recommends that the President should share the executive power of investigating, charging and removing Chiefs, contrary to the procedure described in section 72(4) of the 1991 Constitution.

The International Legal Resource Centre/American Bar Association expert review paper recommended deleting sections 72(4) and (5), as suggested in the PTC Report, and adding the provisions proposed in the Report, as follows:

“(a) Election of Paramount Chiefs

The Chiefdom Councillors [sic] shall, whenever the office becomes vacant by death or otherwise elect a Paramount Chief, having regard to native law and customs to be in charge of the chiefdom. The Ministry of Local Government or the supervising Ministry shall be responsible for the conduct and supervision of the elections of all Paramount Chiefs.

Qualifications

All Aspirants who are direct descendants of recognized and established Paramount Chieftaincy Ruling Houses in existence at the time of Independence in 1961.

Disqualifications

No person shall be qualified for election as a Paramount Chief if:

- (a) He is or was a ward of a Paramount Chief
- (b) If he is a Regent Chief
- (c) He has been convicted and sentenced for an offence which involves fraud, dishonesty, or rape unless has been granted the presidential pardon or five years after he serves the sentence.

Duties

- a) Every Paramount Chief shall supervise the collection of local and other taxes within the area over which he or she has jurisdiction.
- b) Every Paramount Chief shall maintain order and good government in the area over which he or she exercises jurisdiction.
- c) Every Paramount Chief shall use his best ability to prevent the Commission of offences within the area over which he or she exercises jurisdiction.
- d) Every Paramount Chiefs is the guardian of the tradition and culture of his chiefdom.

Powers of Paramount Chiefs

Every Paramount Chief in Council may make bye-laws as may be deemed expedient for promoting the peace, good order and welfare of the people within his chiefdom.

Removal/Deposition of Paramount Chiefs

A Paramount Chief may be removed from office by the President for any gross misconduct in the performance of the functions of his office if after a public inquiry conducted under the Chairmanship of a Judge of the High Court or a justice of the

Appeal Court or a Justice of the Supreme Court, the Commission of inquiry makes an adverse finding against the Paramount Chief, and the President is of the opinion that it is in the public interest that the Paramount Chief should be removed.

The report of the Commission of Enquiry shall, for the purposes of this Constitution, be deemed to be a judgement of the High Court of Justice and accordingly an appeal shall lie as of right from the Commission to the Court of Appeal, and if thereafter the President is of the opinion that it is in the public interest that the Paramount Chief should be removed, it should be done accordingly.”

The paper also recommended adopting a new section 72(4), and renumbering section 72(4) and (5) sequentially thereafter. The new subsection would clarify and streamline the grounds for removing a Paramount Chief from office, and thereby minimise any potential abuse of power. The new section 72(4) would read:

(4) The Paramount Chief, at the time of her or his inauguration, shall take the following oath: “I do solemnly swear before the people that I will faithfully execute the duties of the Paramount Chief as established under the laws of Sierra Leone, follow and defend the Constitution, pursue the peaceful unification of the homeland, promote the freedom and welfare of the people and endeavor to develop and preserve the culture of our people”.

In addition, the paper stated that “Parliament should hold the power of impeachment, not the presidency. In this case, any person against whom a motion for impeachment has been passed shall be suspended from exercising her or his power until the impeachment has been adjudicated.”³⁵⁴

The PTC Report recommended that section 72(5) of the 1991 Constitution should read as follows: “Subject to the provisions of this Constitution and in furtherance of the provisions of this section, Parliament shall make laws for the qualifications, elections, powers, functions, removals and other matters connected with Chieftaincy.”³⁵⁵

In their position paper, the 50/50 Group in collaboration with Oxfam, and also the Sierra Leone Women in their position paper “Many Messages, One Voice” both recommended that section 72 should be amended to make it clear that Paramount Chieftaincy was a gender neutral office: “gender discrimination in Chieftaincy should be specifically outlawed by the Constitution. Women’s right to contest for all chieftaincy across the country to be confirmed and stated in the Constitution.”³⁵⁶

7.38 Recommendation

The CRC has already recommended the establishment of a National House of Chiefs. The CRC further recommends that the issue of the office of the Paramount Chiefs, their election, removal, entitlements, and other matters should be dealt with by the proposed National House of Chiefs, keeping all the recommendations made by stakeholders referred to in the “Observation” section above.

³⁵⁴ The International Legal Resource Centre/American Bar Association expert review paper page 56

³⁵⁵ PTCR page 42

³⁵⁶ Sierra Leone Women’s position “Many Messages, One Voice” paper page 14

8 CHAPTER EIGHT

REPRESENTATION OF THE PEOPLE

8.1 Introduction

Chapter IV of the 1991 Constitution - The Representation of the People - details who is eligible to register to vote. It is the guarantee of universal suffrage, and a commitment by the State to hold free, fair and transparent elections within a multi-party democracy. It presents the rules and regulations relating to the electorate and the conduct of elections.

Chapter IV defines the composition and role of the Electoral Commission, and makes provision regarding the registration and conduct of political parties. It specifies the principle that a secret ballot is the only voting method in an election, details how referenda are to be conducted, and defines all matters relating to constituencies and elections, as well as the filling of vacancies in the event that a Parliamentary seat becomes vacant.

This Chapter also highlights the role of the Political Parties Registration Commission (PPRC) in monitoring the activities of registered political parties to ensure transparency and accountability among them.

The CRC took into account opinions expressed in the TRC reports, expert opinions, position papers and at the nationwide public consultations.

It also gave serious consideration to the information and input obtained from a two-week experience-sharing visit to Ghana and Kenya during October and November 2015.

The CRC studied and compared 75 constitutions from around the world, including modern African constitutions.

The TRC report stated “free, fair and regular elections are central to democracy in Sierra Leone”³⁵⁷. The electoral authority, the National Electoral Commission (NEC) and other Electoral Management Bodies (EMBs) bear the main responsibility in building public confidence in the democratic process. “NEC must be independent and impartial”³⁵⁸.

It was with this in mind that the CRC gave careful consideration to the review of Chapter IV of the 1991 Constitution, with particular regard to upholding and strengthening democracy in Sierra Leone.

³⁵⁷ TRC Volume 2 Chapter 3 page 154 para 232

³⁵⁸ TRC Volume 2 Chapter 3 page 154 para 233

8.2 Dimension of the issues

No change was proposed to the registration of voters. The voting age should continue to be eighteen years.

Four of the Electoral Commissioners should be based in the four regions to enhance accountability and accessibility.

The age limit for Electoral Commissioners should be removed.

A requirement for Electoral Commissioners to declare their assets to mitigate against corruption should be included.

The CRC recommends extending the mandate of the PPRC so that it becomes a regulatory body. This will make it more robust, impartial, independent and effective. The new title will be Political Parties Registration and Regulatory Commission (PPRRC).

8.3 Historical background

“The colonial history of Sierra Leone was not placid. The indigenous people mounted several unsuccessful revolts against British rule and Krio domination. Most of the 20th century history of the colony was peaceful, however, and independence was achieved without violence. The 1951 Constitution (the Beresford Stooke Constitution, Beresford Stooke being the Governor General at the time) provided a framework for decolonization. Local ministerial responsibility was introduced in 1953, when Sir Milton Margai was appointed Chief Minister. He became Prime Minister after successful completion of constitutional talks in Lancaster in 1960.”³⁵⁹

When Sierra Leone became independent on 27th April 1961, it opted for a parliamentary system within the British Commonwealth, with its own constitution, usually referred to as the 1961 Constitution. The first general election under universal adult franchise was held in May 1962 under Sir Milton Margai’s Sierra Leone Peoples Party (SLPP).

There was no specific chapter in the 1961 Constitution dealing with representation of the people. The only references to matters relating to elections were in sections 37 and 38 of Chapter IV of the 1961 Constitution.

Section 37 covered the establishment of an Electoral Commission the members of which were appointed by the Governor General, who in turn was appointed by Her Majesty the Queen to be Her Majesty’s Representative in Sierra Leone. In appointing Electoral Commissioners, the Governor General was required to act on the advice of the Prime Minister.³⁶⁰ Section 37 also dealt with tenure of office, disqualification and removal from office, subject to the advice of the Prime Minister.

³⁵⁹ US State Department background

³⁶⁰ The 1961 Constitution, Chapter IV (section 37(3))

The role of the Electoral Commissioners in relation to the registration of voters and the conduct of elections was prescribed in section 38(8), which states:

“The registration of voters and the conduct of elections in every constituency shall be subject to the direction and supervision of the Electoral Commissioners.”

This is the only reference to registration of voters in the 1961 Constitution and there is no clarity about suffrage stipulations.

Section 38 also detailed how Sierra Leone was to be divided into constituencies and stated that each constituency was to return one member to the House of Representatives.

Sierra Leone became a Republic on 19th April 1971, and the Constitution of Sierra Leone 1971 (1971 Constitution) was the first constitution of the new republic. The 1971 Constitution detailed the change of jurisdiction of sovereignty from the Queen of England to the people of Sierra Leone. It shifted the power completely into the Sierra Leone arena. Siaka Probyn Stevens, the elected head of the civilian government became the first Executive President.

Sections 27 and 28 of the 1971 Constitution detailed the establishment of the Electoral Commission, constituencies and elections in exactly the same terms as sections 37 and 38 of the 1961 Constitution, with the one exception of replacing the Governor-General with the President at section 27(3), which reads:

“The members of the Electoral Commission shall be appointed by the President acting in accordance with the advice of the prime Minister.”

In 1977 following the student uprising, multi-party elections were held which were won by the All People’s Congress Party. Almost immediately after the election a referendum was held to bring in the 1978 one-party Constitution, which ushered in a one- party State.

Section 1 of Chapter 1 of the 1978 Constitution stated:-

“Sierra Leone is a Sovereign Republic, the boundaries of which are delimited in the First Schedule hereto, and recognises a One Party form of Government”

There were no Presidential elections because the President was chosen by the party, and so Siaka P. Stevens, as founder and leader of the APC, became the President.

Local councils had been banned since 1972 so there were no council elections. However, during the one-party constitutional period, parliamentary elections were held. Furthermore the majority of the constituencies had more than one candidate. The APC held primaries for each constituency to choose which candidates would be put forward for election within that constituency.

The 1978 Constitution was the first post-independence constitution to dedicate part of a chapter to formalising issues relating to representation of the people. Chapter IV (Parliament, Part I- The Representation of the People, sections 33-44) included detail relating to suffrage, secret ballots, referenda, primary elections, and nominations for elections to Parliament, as well as the establishment of the Electoral Commission and its functions, and constituencies and elections.

Section 33 stated that: “All citizens of Sierra Leone being twenty-one years of age and of sound mind shall have the right to vote; and accordingly shall be entitled to be registered as a voter for the purposes of public elections.”

It was also the first post-independence constitution that specified that voting was to be by secret ballot, as stated in section 36: “any public elections or referenda voting shall be by secret ballot.”

Around 1990, owing to the dissatisfaction in the country with the one-party system and the demand for a return to multi-party democracy, President J.S Momoh and his government introduced the Constitution of Sierra Leone 1991. Although the 1991 Constitution was approved by Parliament, President J. S. Momoh and his government were not able to implement the new Constitution because of the military coup that displaced them on 29th April 1992.

The National Provisional Ruling Council (NPRC) suspended the 1991 Constitution and ruled the country by provisional decrees from 1992 to 1996. In 1996, multi-party elections were held under the 1991 Constitution, although it had not yet been formally adopted. President Ahmad Tejan Kabbah and his party, the Sierra Leone People’s Party (SLPP) won the election, and the 1991 Constitution was formally adopted.

8.4 Theme - Registration of Voters

Current context

The registration of voters including the voting age is dealt with in section 31 of the 1991 Constitution, which states:

“**31.** Every citizen of Sierra Leone being eighteen years of age and above and of sound mind shall have the right to vote, and accordingly shall be entitled to be registered as a voter for the purposes of public elections and referenda.”

The general principle adopted by the State of Sierra Leone in relation to all elections is universal suffrage for all adult citizens.

Sierra Leone also enacted The Child Rights Act in 2007 with the specified intention of bringing domestic legislation in line with the Convention on the Rights of the Child and its two Optional Protocols, which Sierra Leone had signed and ratified, together with the African Charter on the Rights and Welfare of the Child.³⁶¹

Section 2 of the Child Right Act 2007 defines “child” as follows:

““Child” means a person below the age of eighteen;”

³⁶¹ Long title and sections 1, 2, and 3 of the Child Rights Act 2007

8.5 Observation - Voting Age

During the nationwide consultations, there was a consensus that there should be a uniform voting age for all elections.

There was a minority view that the age should be raised to 21, but the vast majority of respondents supported the retention of the current age of 18 years.

The CRC gave consideration to some significant recommendations and developments within the country.

The TRC had made an imperative recommendation that legislation should be enacted making 18 the age of majority, bringing it in line with the voting age of 18 already provided for in the Constitution.

The TRC made this recommendation in the light of the observation that “Article 1 of the Convention on the Rights of the Child defines a child as “every human being below the age of eighteen unless, under the law applicable to the child, majority is attained earlier.”³⁶²

The Sierra Leone government had acted upon this recommendation and enacted the Child Rights Act 2007. The Act brought into effect the Convention on the Rights of the Child, its two Optional Protocols and the African Charter.

During the engagement with APPWA, they said that: “the women recommended under this subject that there should be a uniform age of voting and agreed on eighteen (18) years to be the age of voting.”³⁶³

The CRC took account of various position papers on the matter from the Sierra Leone Correctional Services, the National Democratic Alliance (NDA), and Sierra Leone People’s Party (SLPP) that the voting age should be 18 years.

Thorough consideration was also given to the position papers, feedback, and views expressed during nationwide public consultations and by stakeholders, calling for a uniform age for registration of voters, and for the voting age to remain as 18 years.³⁶⁴

The CRC took account of the fact that the Government had enacted legislation to domesticate its international obligations under the Convention of the Rights of the Child, its two Optional Protocols, and the African Charter in line with the TRC recommendation.

8.6 Recommendation

The CRC recommends that the voting age should be uniform, and remain as eighteen years of age:

³⁶² TRC Volume 2 Chapter 3 page 176 para 378

³⁶³ Political Parties Engagement with CRC report page 8

³⁶⁴ Summary Report of Public Consultations by the CRC 2015 page 5

“31. Every citizen of Sierra Leone being eighteen years of age and above and of sound mind shall have the right to vote, and accordingly shall be entitled to be registered as a voter for the purposes of public elections and referenda.”

8.7 Theme - The Electoral Commissioners to reside in the regions

Current context

Sections 32(1)-(3) of the 1991 Constitution state:

“32. (1) There shall be an Electoral Commission for Sierra Leone.

(2) The members of the Electoral Commission shall be a Chief Electoral Commissioner, who shall be the Chairman, and four other members who shall be known as Electoral Commissioners.

(3) The members of the Electoral Commission shall be appointed by the President after consultation with the leaders of all registered political parties and subject to the approval of Parliament.”

Observation

There has been provision for an Electoral Commission since the first independence Constitution of 1961.

There was a clear and consistent call throughout the country for the four Electoral Commissioners to be resident in the four regional headquarters “in order for them to be effective, efficient and committed to the job.”³⁶⁵

The CRC observed that the TRC stated that “free, fair and regular elections are central to democracy”. It went on to say “free, fair and regular elections are central to democracy in Sierra Leone. The electoral authority, the National Electoral Commission (NEC), bears the main responsibility in building public confidence in the democratic process. This Commission must be independent and impartial.”³⁶⁶

The CRC thoroughly reviewed the submissions made in the position papers and considered the trends in regional constitutions and other democracies relating to decentralization of electoral bodies. The CRC agreed that by stipulating that the four Electoral Commissioners reside in the regions, it will enhance their performance, efficiency and effectiveness.

³⁶⁵ Summary Report of Public Consultation by the CRC 2015 page 6

³⁶⁶ TRC Volume 2 Chapter 3 page 154 para 23

8.8 Recommendation

The CRC recommends that the regional Commissioners of the National Electoral Commission should reside in the four regions in order to make them more accessible and to decentralise the Commission's work. Section 32(2) should therefore read:

“(2) The members of the Electoral Commission shall be a Chief Electoral Commissioner, who shall be the Chairperson, and four other members who shall reside in the regions and shall be referred to as Regional Electoral Commissioners.”

8.9 Appointment of the Electoral Commission

Section 32(3) of the 1991 Constitution states:

“(3) The members of the Electoral Commission shall be appointed by the President after consultation with the leaders of all registered political parties and subject to the approval of Parliament.”

Observation

A. Appointment of Commissioners by a multi-party committee.

B. Ensure that regional and ethnic diversity, and gender representation.

Under section 32(3) of the 1991 Constitution, Electoral Commissioners are appointed by the President after consultation with the leaders of all the political parties.

Different submissions were taken into account relating to the appointment of the Electoral Commissioners:

An expert opinion given by Oxford Pro Bono Project made the following recommendation: “The Constitutional Review Committee should consider adopting a provision which requires appointments to commissions and independent offices to reflect the regional and ethnic diversity, race and gender composition of Sierra Leone.”³⁶⁷

The position paper of the SLPP suggested that it would be preferable for a multi-party committee to be set up for the specific purpose of appointing Electoral Commissioners and that the President should not be part of the appointment process.

The Campaign for National Unity in its position paper called for emphasis to be placed on the independence of the National Electoral Commission:

“The sections and provisions contained in the 1991 Constitution are silent on the “Independence” of the National Electoral Commission (NEC). Second, in terms of size and

³⁶⁷ Oxford Pro Bono Project position paper, page 21

composition of the NEC's decision-making process, there is absolutely no political space for the voice and participation of political parties and civil society organizations (CSOs) in the commission as defined in the constitution. Above all, appointments of electoral commissioners are entirely vested in the powers of the President, with the sole prerogative to hire and fire Electoral Commissioners at will and at his discretion without reference to parliament, for example. See Section 32(8):

“A member of the Electoral Commission may be removed from office by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.”³⁶⁸

They also recommended that political parties and relevant CSOs should play a part in deciding whether or not the Electoral Commissioners should be removed from office:

“The hiring and firing of Electoral Commissioners must not be solely the prerogative of the President. Political parties and civil society organizations must be able to play a critical role in such decision to remove a commissioner from office. Removal must be subject to parliamentary approval and endorsement.”

The CRC received an individual submission from a citizen of Sierra Leone, Mr Kai Combey who urged that section 32(3) relating to the appointment of Electoral Commissioners:

“The members of the Electoral Commission shall be appointed by the Public Service Commission in concurrence with the leaders of all registered political parties, and subject to the approval of Parliament.”³⁶⁸

8.10 Recommendation

The issue of the appointment of Electoral Commissioners was thoroughly debated and due consideration was given to all submissions and position papers. The CRC therefore recommends that there should be no change to section 32(3) of the 1991 Constitution:

“(3) The members of the Electoral Commission shall be appointed by the President after consultation with the leaders of all registered political parties and subject to the approval of Parliament.”

In addition, the CRC strongly recommends that in appointing Electoral Commissioners, the relevant authorities must ensure that there is regional, ethnic, and gender diversity.

8.11 Vacation of Office

Section 32(7) of the 1991 Constitution states:

³⁶⁸ Individual submission to CRC by Mr Owen M.M. Kai Combey page 4

“(7) Subject to the provisions of this section, a member of the Electoral Commission shall vacate his office—

- (a) at the expiration of five years from the date of his appointment; or
- (b) on attaining the age of sixty-five years; or
- (c) if any circumstances arise which, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.”

Observation

The CRC gave consideration to the recommendation made in the PTC Report that the phrase “or if he has attained the age of sixty-five (65)” in section 32(7)(b) should be deleted.³⁶⁹

The CRC took due note of the views and recommendations of the ILRC/ABA. The recommendation was to delete “or if he reached the age of sixty five” at section 32(4)(b) and to delete section 32 (7)(b), which reads “on attaining the age of sixty-five”.³⁷⁰

The CRC also received position papers from stakeholders who commented that a strict application of the retirement age could lead to administrative problems if the retirement age was reached by a Commissioner following the announcement of an election.

8.12 Recommendation

The CRC endorses the recommendation made in the PTC Report to delete the age limit in section 32(7)(b).

The CRC also recommends that the age limit should be deleted from section 32(4)(b), so that it reads as follows:

“(b) to hold office as a member of the Electoral Commission if she/he is a Minister, a Deputy Minister, a Member of Parliament, or a public officer.

Provided that a person shall not serve as a member of the Electoral Commission more than two terms of five years.”

8.13 Declaration of Assets

In the 1991 Constitution, there is no provision made for Electoral Commissioners to declare their assets. The current position is not in the best interests of transparency.

³⁶⁹ PTCR page 43 para 63

³⁷⁰ ILRC/ABA report 26 09 2014 page 47

Observation

The CRC considered a recommendation made by one of the experts from the ILRC/ABA that the following text be added as a new section 32(7)(d):

“Has lost his civic rights by conviction in a criminal trial, or serious ethical breaches after due process. Commissioners must take the oath of office and declare their assets before or after their mandates.”³⁷¹

The CRC considered the trend of governments, government departments, international organisations and other institutions in introducing stringent measures to ensure transparency and accountability.

8.14 Recommendation

The CRC recommends that a new paragraph should be added to section 32(7) to require Electoral Commissioners to declare their assets to ensure greater transparency and credibility in relation to their office. The new section 32(7)(d) should therefore read as follows:

“(d) Members of the Electoral Commission shall declare their assets in accordance with the relevant law.”

8.15 Functions of the Electoral Commission - Election of Paramount Chiefs

Current context

Section 33 of the 1991 Constitution states:

“33. Subject to the provisions of the Constitution, the Electoral Commission shall be responsible for the conduct and supervision of the registration of voters for, and of, all public elections and referenda; and for that purpose shall have power to make regulations by statutory instrument for the registration of voters, the conduct of Presidential, Parliamentary or Local Government elections and referenda, and other matters connected therewith, including regulations for voting by proxy.”

Observation

All public elections, including those of Paramount Chiefs, should be within the jurisdiction of the NEC.

³⁷¹ ILRC/ABA report 26 09 2014 page 47

There is no provision in the 1991 Constitution for the NEC to supervise matters relating to the election of Paramount Chiefs.

The CRC paid particular attention to the position paper submitted by the NEC, who recommended that “its role in conducting Paramount Chieftaincy elections should be recognised.”³⁷² The CRC recognises that this would include the registration of tribal authorities, which at the moment was not covered.

There was extensive deliberation on this matter during which it was felt initially that the term “all public elections” included Chieftaincy elections. However, this still did not resolve the issue relating to registration of votes for Chieftaincy elections as this was currently being carried out by District Officers.

In its position paper, CARL submitted that “there have been arguments about which institution (the Ministry of Local Government and Rural Development or the National Electoral Commission) has the mandate to conduct Paramount Chieftaincy elections. This has sometimes caused considerable and unnecessary confusion. Such complication should be addressed once and for all by an amendment to the Constitution” and made a recommendation for Paramount chieftaincy elections to be conducted by the NEC.”

CARL recommended that section 33 be amended by inserting the words ‘Paramount Chieftaincy elections’ so that the new section 33 will read as “conduct of Presidential, Parliamentary or Local Government elections, referenda and Paramount Chieftaincy elections”.

According to CARL, “the National Electoral Commission (NEC) has the necessary logistical resources for the conduct of elections nationwide, and is in the best position to conduct elections fairly, impartially and in a competent manner.”³⁷³

The Campaign for National Unity-Sierra Leone recommended that intra-party elections must also fall under NEC’s jurisdiction: “over the years, intra-party electoral processes have been one of the source rivalry, tensions and political armed violence. This is because the manners in which intra-party elections are conducted are not consistent with democratic principles. For example, some political parties tend to adopt a selection or consensus criteria in the allocation of party symbols to candidates and political aspirants.

The constitution provides

Under section 33:

“the conduct and supervision of the registration of voters for, and of, all public elections and referenda.”

In short, the constitution provides for the National Electoral Commission for the conduct of all public elections and referenda but it is not clear whether NEC has the responsibility for the administration and conduct of intra-party elections”.

³⁷² NEC position paper page 1

³⁷³ CARL position paper page 11

We recommend All Political Parties Association (APPA) and CSOs representation be enshrined in the PPRC structure and decision making process. We need to delete the Labour Union to avoid politicization of the Union membership itself. The criteria for appointment of commissioners, especially the Chief Commissioner must not be limited to legal professionals alone. We must consider in the new constitution the need for setting criteria for selection and appointment of Sierra Leonean experts not only in the field of law, but other social sciences such as public policy, political science, and peace and conflict resolution.”³⁷⁴

8.16 Recommendation

The CRC recommends that NEC should be involved in all elections, including Paramount Chieftaincy elections. Section 33 should therefore be amended to read as follows:

“33. Subject to the provisions of the Constitution, the Electoral Commission shall be responsible for the conduct and supervision of the registration of voters for, and of, all public elections and referenda; and for that purpose shall have power to make regulations by statutory instrument for the registration of voters, the conduct of Presidential, Parliamentary, Local Government and Chieftaincy elections and referenda, and other matters connected therewith, including regulations for voting by proxy.”

8.17 Voting Rights for Sierra Leoneans Living Abroad

Observation

The Diaspora Initiative Project (DIP) submitted a position paper advocating for voting rights of Sierra Leoneans living abroad. DIP represents Sierra Leoneans in the diaspora, and collaborates with the Sierra Leone government, and the private and public sectors in the Sierra Leone on matters of socio-economic and political development.

In its position paper, DIP put forward an argument for Sierra Leoneans in the diaspora to participate in the constitutional review process:

“It is a fact that Sierra Leoneans in the diaspora have contributed and are still contributing into the development of the country. As President Koroma rightly said when he came to power in 2007, the Sierra Leone diaspora is now the 5th region of the country. This was not just a vague statement taking out of politics. It was due to the fact that we have over a million Sierra Leoneans living abroad and half of that number is eligible to participate in our national politics.

However, due to financial and other factors, Sierra Leoneans abroad have not been able to exercise their franchise.

³⁷⁴ Campaign for National Unity – Sierra Leone position paper page 5

We will like to emphasize that there is nothing in our constitution that bar us from participating. It is a financial decision by the government not to extend voting right to Sierra Leoneans living abroad.

Our aim is to make sure voting right is extended to all eligible Sierra Leoneans irrespective of the geographical distance they live. We want the commission to adopt the suggestion of a diaspora voting right in their recommendation during the constitutional modification.

HOW A DIASPORA VOTING RIGHT WILL BE SPONSORED?

As we mentioned earlier in our statement above, the only reason why eligible Sierra Leoneans in the diaspora are not able to voting during national election is due to the financial burden that process may have in our weak economy.

However, DIP and other subsidiaries have come up with a solution to this financial problem, a solution that will even help boost the economy of Sierra Leone or the National Electoral Commission's (NEC) budget.

One of the eligibilities of the voting right according to our constitution is paying taxes. With this eligibility, Sierra Leoneans in the diaspora are suited to pay all their national taxes, which will bring into the national coffer millions of dollars every year. That money alone will be more than enough to sponsor election process in different embassies around the world.

Our embassies will take the responsibility organizing and managing every electoral process within their individual countries.

So, if finance was the stumbling block for the extension of voting right to the diaspora, we hope it has been solved by this method.

We are currently working on a document that will answer and legislate this process and will be presented to you in due course if required.

At the moment, we would like you to tender this idea to the commission for further review.³⁷⁵

8.18 Recommendation

The CRC acknowledged the fact that Sierra Leoneans living abroad are directly or indirectly affected by socio-economic and political developments in the country and consequently should be eligible to participate in national decision-making processes, including elections. The CRC also took account of the suggestion made as to how this could be funded, namely by Sierra Leoneans in the diaspora paying some form of tax to the government of Sierra Leone.

The CRC therefore recommends that the government should consider allowing Sierra Leoneans in the diaspora to have the right to vote in elections in Sierra Leone.

³⁷⁵ Diaspora Initiative Project position paper

8.19 Theme - Political Parties Registration and Regulatory Commission

Current context

Section 34 of the 1991 Constitution states:

“34. (1) There shall be a Political Parties Registration Commission which shall consist of four members appointed by the President, namely—

- (a) the Chairman of the Commission, who shall be a person who has held Judicial office or is qualified to be appointed a Judge of the Superior Court of Judicature nominated by the Judicial and Legal Service Commission;
 - (b) the Chief Electoral Commissioner;
 - (c) a legal practitioner nominated by the Sierra Leone Bar Association; and
 - (d) a member nominated by the Sierra Leone Labour Congress.
- (2) The members of the Commission, other than the Chief Electoral Commissioner, shall be appointed by the President subject to the approval of Parliament.
- (3) The Administrator and Registrar-General shall be Secretary to the Commission.
- (4) The Commission shall be responsible for the registration of all political parties and for that purpose may make such regulations as may be necessary for the discharge of its responsibilities under this Constitution;

Provided that the first registration of political parties after the coming into force of this Constitution shall be undertaken by the Electoral Commission.

(5) In the exercise of any functions vested in it by this Constitution, the Commission shall not be subject to the direction or control of any person or authority, save only as regards the right to appeal contained in section 35.”

Observation

The 1991 Constitution recognises and details the appointment, roles and responsibilities of the Political Parties Registration Commission (PPRC).

The Political Parties Act 2002 added a regulatory element to the PPRC. The long title of the Act states:

“Being an Act to establish the Political Parties Registration Commission for the registration and regulation of the conduct of political parties in accordance with sections 34 and 35 of the Constitution and to provide for related matters.”

The regulatory aspect of the PPRC should be included in the revised Constitution.

The CRC received a position paper from the SLPP which stated:

“We propose and recommend that at section 34 of the extant 1991 Constitution should now be subtitled “Political Parties Regulatory Commission”. And the Commission established by the section should now be known as the Political Parties Registration and Regulatory Commission with an upgrade of its regulatory functions in ensuring that political parties adhere to the Constitution, conform to the precepts and ethics of democracy and contribute in ensuring free, fair and violent-free elections. We also believe that the Commission should be given punitive powers to deal with individuals and parties with an inclination to subvert the democratic process whether internally within their political parties or in the national polity, apart from applying for the de-registration of parties in the Supreme Court.”³⁷⁶

The All Political Parties Women’s Association (APPWA) also showed cross-party support on this issue, stating that the regulatory function of the PPRC should be recognised in the revised Constitution:

“APPWA agreed that the Political Party Registration Commission should be changed to Political Party Registration and Regulatory Commission.”³⁷⁷

CNU-SL commented that:

“Sierra Leone is at a critical stage, in view of the existing high level of mistrust, politics of divisiveness amongst and within political parties in Sierra Leone. Again, the sections and provisions contained in the 1991 Constitution are silent on the “Independence” of the National Political Parties Registration Commission (PPRC). Second, in terms of size and composition of PPRC decision-making process, there is no need to have the representative from the Labour Union, certainly a source of politicization of the union itself. The role or presentation of political parties and civil society organizations (CSOs) in the commission as defined currently in the 1991 constitution is limited. Above all, the selection and recruitment criteria for appointments of commissioners are entirely persons with legal qualifications. This tends to

³⁷⁶ SLPP position paper pages 3 and 4

³⁷⁷ Political Parties Engagement with CRC report page 8 The Legislature

limit the scope of qualified persons with experience in political mediation and conflict resolutions.”

It went on to recommend that “All Political Parties Association (APPA) and CSOs representation be enshrined in the PPRC structure and decision making process. We need to delete the Labour Union to avoid politicization of the Union membership itself. The criteria for appointment of commissioners, especially the Chief Commissioner must not be limited to legal professionals alone. We must consider in the new constitution the need for setting criteria for selection and appointment of Sierra Leonean experts not only in the field of law, but other social sciences such as public policy, political science, and peace and conflict resolution.”³⁷⁸.

The CRC received many submission forms from the public making the same case that the regulatory feature of the PPRC be recognised in the revised Constitution.³⁷⁹

8.20 Recommendation

The CRC recommends that the regulatory role of the PPRC should be included in the revised constitution. The new name should be the “Political Parties Registration and Regulation Commission (PPRRC)”.

The marginal note to section 34 should therefore read as “**Political Parties Registration and Regulation Commission**”.

Furthermore, the CRC recommends that the PPRRC shall decide candidate fees for Presidential, Parliamentary and Local Council elections in consultation with the NEC.

Section 34(4) should therefore be amended as follows:

“(4) The Commission shall be responsible for the registration of all political parties and for that purpose may make such regulations as may be necessary for the discharge of its responsibilities under this Constitution. Its functions shall include setting candidate fees for Presidential, Parliamentary and Local Council elections in consultation with the National Electoral Commission;”

8.21 Registration and Conduct of Political Parties

Current context

Section 35 of the 1991 Constitution states:

“35. (1) Subject to the provisions of this section, political parties may be established to participate in shaping the political will of the people, to disseminate information on political

³⁷⁸ CNU-SL position paper page 6

³⁷⁹ Summary report of public consultations of the CRC pages 7 and 8

ideas, and social and economic programmes of a national character, and to sponsor candidates for Presidential, Parliamentary or Local Government elections.

- (2) The internal organisation of a political party shall conform to democratic principles, and its aims, objectives, purposes and programmes shall not contravene, or be inconsistent with, any provisions of this Constitution.
- (3) A statement of the sources of income and the audited accounts of a political party, together with a statement of its assets and liabilities, shall be submitted annually to the Political Parties Registration Commission, but no such account shall be audited by a member of the political party whose account is submitted.
- (4) No political party shall have as a leader a person who is not qualified to be elected as a Member of Parliament.
- (5) No association, by whatever name called, shall be registered or be allowed to operate or to function as a political party if the Political Parties Registration Commission is satisfied that—
 - (a) membership or leadership of the party is restricted to members of any particular tribal or ethnic group or religious faith; or
 - (b) the name, symbol, colour or motto of the party has exclusive or particular significance or connotation to members of any particular tribal or ethnic group or religious faith; or
 - (c) the party is formed for the sole purpose of securing or advancing the interests and welfare of a particular tribal or ethnic group, community, geographical area or religious faith; or
 - (d) the party does not have a registered office in each of the Provincial Headquarter towns and the Western Area.
- (6) Subject to the provisions of this Constitution, and in furtherance of the provisions of this section, Parliament may make laws regulating the registration, functions and operation of political parties.
- (7) Any association aggrieved by a decision of the Political Parties Registration Commission under this section may appeal to the Supreme Court and the decision of the Court shall be final.
- (8) For the purposes of this section the expression—

"association" includes anybody of persons, corporate or incorporate, who agree to act together for any common purpose, or an association formed for any ethnic, social, cultural, occupational or religious purpose; and "political party" means any association registered as a political party as prescribed by subsection.”(5).

Observation

The CRC was reminded during nationwide consultations that representation of women should be guaranteed so that political parties are obliged to ensure women's representation in the political process. The issue of women's empowerment can be achieved by requiring political parties to nominate women as candidates in national and local government elections.

In order to reach a consensus amongst all stakeholders on the nomination of women in the electoral process, the CRC suggested that the PPRC should discuss the issue with stakeholders, particularly women's groups and political parties. On 1 August 2016, the PPRC held a meeting with stakeholders that included 10 political parties and women's representative groups. The objective of the meeting was to address the concerns of the 19-point resolution that had earlier been agreed upon in relation to women's representation.

Following debate and discussion, stakeholders resolved that at least 30% of election nominees for each political party must be women.³⁸⁰

8.22 Recommendation

The CRC recommends that section 35(3) should be amended to add the words "and Regulatory" after the word "Regulation". It should therefore read:

“(3) A statement of the sources of income and the audited accounts of a political party, together with a statement of its assets and liabilities, shall be submitted annually to the Political Parties Registration and Regulatory Commission, but no such account shall be audited by a member of the political party whose account is submitted.”

The CRC also recommends that section 35(2) should be amended to read as follows:-

“(e) The internal organisation of a political party shall conform to democratic principles, and its aims, objectives, purposes and programmes shall not contravene, or be inconsistent with, any provisions of this Constitution. At least 30% of the party's nominees for national and local government elections shall be women.”

³⁸⁰ Women's and political parties' joint resolution – PPRC, 1st August 2016

9 CHAPTER NINE

THE LEGISLATURE

9.1 Introduction

The Legislature is the body of elected representatives, the Members of Parliament, who are empowered to make, change or repeal the laws of the country. It is the law-making body of the country. Chapter VI of the 1991 Constitution (The Legislature) details the rules concerning the composition, procedure, and establishment of Parliament.

The chapter lays down the rules for qualification and disqualification as Members of Parliament, issues relating to the Speaker, Deputy Speaker and Clerk of Parliament, as well as tenure of seats of Members of Parliament, and the oath to be taken.

The chapter also deals with the life and sessions of Parliament, sittings of Parliament as well as general elections, responsibilities, privileges and immunities of Members of Parliament, legislative power, as well as the national budget of the country.

It is a significant chapter covering all aspects of Parliament and its relationship and role in governing the country. This chapter also defines the relationship of the Legislature with the Executive, and the Judiciary.

Before the CRC commenced reviewing chapter VI, it gave serious consideration to the PTC Report's first recommendation on the Legislature.

The existing parliamentary system in Sierra Leone is unicameral, and the PTC Report recommended that a bicameral system should be introduced by proposing that there should be a Senate and a House of Representatives.³⁸¹

This proposal had to be weighed carefully against a submission put forward by Paramount Chiefs and the feedback that had been given during public consultations.

Following these significant deliberations and proposals, the CRC considered and proposed a set of recommendations to strengthen the chapter on the Legislature in the revised Constitution.

9.2 Historical background

The Sierra Leone Parliament began as a Legislative Council, and owes its origin to colonial constitutional developments dating as far back as 1863 when British colonial authorities established Legislative and Executive Councils.

³⁸¹ PTCR page 55 para 80

The Legislative Council was inaugurated in 1863, but was re-named the House of Representatives in 1954.

“The Executive Council consisted of the following: the Governor, the Chief Justice, Queen’s Advocate (Attorney-General), Colony Secretary and the Officer Commanding Troops. These were known as the Official Members. The unofficial members were prominent citizens such as Charles Heddle, a European African and John Ezzidio a Sierra Leonean.

Both the official and unofficial members constituted the Legislative Council which was responsible for enacting Laws for the colony but too much of executive powers were vested in the Governor.”³⁸²

In the Colonial era, Sierra Leone was divided into two for administrative reasons. Freetown was known as the Colony and the rest of Sierra Leone was called the Protectorate. Up to 1948, it was standard practice for Britain to apply separate rules for those in the colony from those under British protection. Freetown was a crown colony and was ruled directly from Britain supervised by the Governor General.

The Protectorate was divided into districts. Each district was administered by a District Officer appointed by the Governor General. The District Officer supervised the whole area and also influenced the role of Paramount Chiefs.

“The was mounting anti- colonial pressure in the form of riots and strikes by railway workers which culminated in the formation of the National Congress for West Africa in 1920 with men like F.W Dove, a business man and H.C Bankole Bright, a Medical Doctor. This congress demanded the following: a party elected legislative council in each colony – this however met with failure even when the delegation was sent to London to press for action.

This historic process was ongoing when the governor came into the scene by the name of Sir Ransford Slater. He was prepared to concede to the demand for popular representation but to him it was absurd to have a legislator for both colony and protectorate. To satisfy their demands, Governor Slater planned a new constitution in 1924 which conceded the elective principles for colony, with some protectorate representation by chiefs.”³⁸³

The 1924 Ransford Slater’s Constitution of Sierra Leone made provision for just three Paramount Chiefs to represent the people of the Protectorate in the Legislative Council that was based in the Colony of Freetown.

Paramount Chiefs were chosen for this role because the British held that under the tribal system no others would have adequate title to speak with authority apart from the traditional rulers. This was recognised as a significant development for African representation in the Legislative Assembly.

³⁸² Parliament of Sierra Leone website – History of Parliament

³⁸³ Parliament of Sierra Leone website – History of Parliament

The 1947 Hubert Stevenson Constitution served to buttress the earlier Constitution of 1924. It suggested an increase in the number of Protectorate representatives to the Legislative Council and also that other educated people could be representatives but this suggestion was not acted upon.

The provision for the twelve reserved seats for Paramount Chiefs in Parliament originated in the 1951 Beresford Stooke Constitution, which increased the number of representatives in the Legislative Council to 57 members, 12 of whom were Paramount Chiefs elected by the Paramount Chiefs in each District.

The 1961 Constitution of Sierra Leone came into effect on the declaration of Independence, and this Constitution continued to allow 12 Paramount Chiefs, one elected from each District, to have a reserved seat in Parliament.

Section 29 of the 1961 Constitution (the composition of Parliament) stated: “There shall be a Parliament of Sierra Leone which will consist of Her Majesty, and a House of Representatives.”

Section 19 of the Republican Constitution of Sierra Leone 1971 (the 1971 Constitution) amended this to instead provide: “there shall be a Parliament of Sierra Leone which shall consist of the President, the Speaker and members of Parliament.” It was the 1971 Constitution that brought the President into the realm of Parliament to replace Her Majesty, and also created the position of Speaker of Parliament.

The Constitution of Sierra Leone 1978 replicated the provision for 12 reserved seats for Paramount Chiefs, as in the 1961 Constitution, and this was also adopted in the 1991 Constitution.

9.3 Dimension of the issues

- Whether to introduce a bicameral Parliament
- Role of the President in the composition of Parliament in order to ensure a separation of powers between the Executive and the Legislature
- Reserved seats for Paramount Chiefs in Parliament
- House of Paramount Chiefs
- Educational qualification for Members of Parliament
- Consequences of leaving a political party, sitting or voting in the Parliament contradictory to the political party’s position
- Introduction of a “recall clause” for non-performing Members of Parliament
- Timeframe for the High Court to deliver judgements, in particular in relation to cases concerning Parliamentarians

9.4 Theme - Establishment of Parliament

Current Context

Section 73(1) of the 1991 Constitution states:

“73. (1) There shall be a legislature of Sierra Leone which shall be known as Parliament, and shall consist of the President, the Speaker and Members of Parliament.”

Observation

Since the Declaration of Independence on 27th April 1961, Sierra Leone has had a unicameral system, one House of Representatives called Parliament.

Under the 1991 Constitution, Parliament is composed of the President, the Speaker, and Members of Parliament.

The majority of Members of Parliament are elected in a general election. Each of the 112 constituencies elects one Member of Parliament to represent that constituency. In addition, Paramount Chiefs have reserved seats in Parliament by District - Paramount Chiefs from each of the 12 Districts elects one Paramount Chief to represent the District in Parliament.

President and the Parliament

The TRC recognised that there had been unwillingness on the part of the Legislature to challenge the power of the Executive:

“Parliament, as the principal law-making body in Sierra Leone, has a special responsibility to check abuse by the executive branch. Since independence, however, Parliament has shown itself to be a servile agent of the executive, lacking courage and determination to resist tyranny and to ensure respect for democracy and human rights in Sierra Leone.”³⁸⁴

The CRC gave consideration to the fact that the PTC Report had recommended removing the Executive from Parliament.³⁸⁵ The CRC noted that this view was echoed in the ILRC/ABA expert paper.³⁸⁶

During the public consultations, there were repeated calls that the President should not form part of Parliament to ensure the transparency and effectiveness of the legislature in carrying out its functions.

In its position paper, the Native Consortium Think Tank made recommendations relating to rebalancing some of the powers of the Executive:

“The Executive Presidency is by its very definition 'anti-democratic'. When the enormous powers vested in the Executive Presidency is taken together with the immunity attached to it, are examined, it is self-evident that the very concept is the antithesis of democracy.”

³⁸⁴ TRC Volume 2 Chapter 3 page 155 para 240

³⁸⁵ PTCR page 55 para 80

³⁸⁶ ILRC/ABA Report 26 09 2014 page 57

“A review of the present Constitution should make provision for a ceremonial president who continues to be commander in chief of the armed forces. The executive power should be vested in a Prime Minister being the leader of the largest party in Parliament.”³⁸⁷

The CRC was conscious of the unanimous call throughout the country that there should be a separation of powers between the Executive and the Legislature.³⁸⁸

The CRC paid heed to the observation of the TRC that Parliament is one of the principle institutions to forestall any abuse of power by the Executive.

The CRC noted that in the view of the PTC Report, the TRC, expert opinion, and the overwhelming responses from the people of Sierra Leone, the President should not be included in the composition of Parliament.

The CRC reflected on the circumstances leading to the Executive being part of Parliament, and recognised that it emanated from the 1961 Constitution with the continuation of the link in the colonial era with the British Crown.

9.5 Recommendation

The CRC recommends that the President should cease to be part of the composition of Parliament. Section 73(1) should therefore be amended to read as follows:-

“73. (1) There shall be a legislature of Sierra Leone which shall be known as Parliament, and shall consist of the Speaker and Members of Parliament.”

9.6 Theme – Members of Parliament

Current Context

Section 74(1)(a) of the 1991 Constitution states:

“74. (1) Members of Parliament shall comprise the following—

- (a) one Member of Parliament for each District who shall, subject to the provisions of this Constitution, be elected in such manner as may be prescribed by or under any law from among the persons who, under any law, are for the time being Paramount Chiefs;”

³⁸⁷ The Native Consortium Think Tank position paper pages 4-5

³⁸⁸ Consultation Index at pages 12, 13, 14, 57, 59 and 60

9.7 Theme – Removal of Paramount Chiefs from Parliament

Observation

There was a consensus across the country that the current role of Paramount Chiefs and their representation in Parliament needs to be revisited. There was a significant concern that having reserved seats for Paramount Chiefs in Parliament had the effect of preventing the 12 Paramount Chiefs from carrying out their traditional administrative responsibilities and instead giving them a role wherein they became involved in party politics.

The position paper submitted by The National Council of Paramount Chiefs (NCPC) voiced their disquiet that their role was being entangled with party politics, and they made very strong recommendations in relation to this issue:

“Paramount Chiefs have made it clear in their detailed position paper, that they did not want to be part of the parliamentary system and that consequently Section 74(1)(a) of the 1991 Sierra Leone Constitution be revoked.”³⁸⁹

The Paramount Chiefs stated that “the interest of the Nation and the Institution of Chieftaincy as a non-political institution are better served if Paramount Chiefs are not part of the national legislature.”³⁹⁰

“The NCPC believes that chiefs should not take part in active party politics. They shall not actively support a political party or candidate. Chiefs must exercise their powers and be seen to behave and govern in a neutral manner without political favour.”³⁹¹

The NCPC also stated that: “the NCPC is committed to reinventing the institution of chieftaincy, to ensure its relevance and responsiveness to the needs, concern and interests of the people.”

“Chieftaincy is Sierra Leone’s oldest and most enduring social, cultural institution and critical in governance. Since pre-colonial time, chiefs have played a major role in ensuring peace and stability which are necessary conditions for economic and social development at the most local level.”³⁹²

“The NCPC recognises the long and illustrious service undertaken by Paramount chiefs within the legislature of Sierra Leone since colonial times, especially in the building up the independent nation of Sierra Leone. However the partisan nature of Parliament today precludes the Paramount Chiefs members from making any substantial impact, as by convention, they vote in line with the government of the day. Consequently, the NCPC accepts that the time has come

³⁸⁹ NCPC position paper page 9 para 15

³⁹⁰ NCPC position paper page 10 para 18

³⁹¹ NCPC position paper page 14 para 39

³⁹² NCPC position paper page 6 paras 2 and 3

when Paramount Chiefs should no longer sit as Members of Parliament. Therefore the NCPC proposes that section 74 (1) (a) of the 1991 Constitution be revoked.”³⁹³

During the nationwide consultations, two positions emerged: one that Paramount Chiefs should not form part of Parliament; the other that they should stay in Parliament. The vast majority of respondents wanted Paramount Chiefs to be taken out of the political arena and some respondents wanted Paramount Chiefs to have some alternative forum to fulfill their traditional and cultural roles.³⁹⁴

During the experience-sharing visit to Ghana, the CRC learnt that Ghana has a House of Traditional Chiefs, which the CRC considered could be replicated in Sierra Leone.

The position paper from the Sierra Leone Labour Congress (SLLC) reiterated the view that Paramount Chiefs should no longer be Members of Parliament: “the Sierra Leone Labour Congress supports the view that Paramount chiefs should be removed from Parliament.”³⁹⁵

The CRC took careful note of the feedback from the nationwide consultations, in particular the following observations from across all the regions:

- Paramount Chiefs should not be members of Parliament;³⁹⁶
- Paramount Chiefs should not be in Parliament, they are elected to serve their subjects/people in their chiefdoms;³⁹⁷
- A House of Paramount Chiefs should be created and charged with the responsibility of electing, disciplining and dismissing Paramount Chiefs as this will help them remain neutral in politics.

Stakeholders noted:

- Paramount Chiefs should be separated from Parliamentarians;³⁹⁸
- Paramount Chiefs should not be in Parliament.³⁹⁹

9.8 Recommendation

The CRC recommends that Paramount Chiefs should not form part of Parliament and that consequently section 74(1)(a) should be amended to delete the reference to Paramount Chiefs.

³⁹³ NCPC position paper page 9 paras 13-16

³⁹⁴ Summary Report of Public Consultations by CRC 2015 pages 6,7, 8 and 9

³⁹⁵ SLLC position paper page 15

³⁹⁶ Report on District Level (Kambia, Tonkolili and Koinadugu) consultations page 15

³⁹⁷ Report on Western Area Ward consultations page 17

³⁹⁸ Summary report of Public Consultations page 22

³⁹⁹ Summary report of Public Consultations page 23

In addition, the issue of gratuities and pensions for Parliamentarians was an area of great interest. Therefore the CRC recommends that the government should take appropriate measures with regard to entitlement to pensions and gratuities under section 74(4). To qualify for pensions and gratuities, a Member of Parliament should serve a minimum of two consecutive terms, and pensions and gratuities should be separated from salaries and allowances.

Section 74 should therefore read as follows:-

“74. (1) Members of Parliament shall comprise the following-

- (a) such number of Members as Parliament as may be prescribed who, subject to the provisions of this Constitution, shall be elected in such manner as may be prescribed by or under any law;**
 - (b) not less than 30% of Members of Parliament shall be women, details of which must be prescribed by Act of Parliament**
- (2) The number of Members of Parliament to be elected pursuant to subsection (1) shall not together be less than sixty.**
- (3) In any election of Members of Parliament the votes of the electors shall be given by ballot in such manner as not to disclose how any particular elector votes.**
- (4) Members of Parliament shall be entitled to such salaries, allowances; gratuities, pensions and such other benefit as may be prescribed by Parliament.”**

9.9 Theme – Introduction of Proportional Representation

Observation

During plenary sessions held in August 2016 and October 2016, the issue of the voting system was discussed, and there was general support from members for the introduction of proportional representation.

In his position paper, Dr Habib Sesay argued in favour of introducing proportional representation in Sierra Leone’s voting system: “many countries in Europe and Scandinavian countries: Norway, Denmark, Sweden and Finland and other on the hand Germany, Ireland, France and the United States of America adopt proportional representation in national elections not only for its attractiveness but because it is democratic.” He continued that “proportional representation underscores a vote-counting mechanism that accrues maximum benefit to electors, candidates and parties”, and that “a cardinal rationale for the use of proportional representation is to ensure that the national legislature and local councils reflect more or less mathematical exactness of the various divisions in the nation.”

He highlighted that the drawback of the present first-past-the-post voting system is that “minor political parties and small ethnic groups are disadvantaged. For example, in hypothetical Parliamentary elections, the candidate who receives the highest votes from a single member Parliamentary constituency is declared “elected” no matter how slim the margin of victory. This means no representation for those who supported candidates who lost, except if the representative elected chooses to give voice to those who did not vote for him. In the above scenario, the votes received by candidates of minor political parties and those cast by minority ethnic groups are and will not be represented in Parliament.”⁴⁰⁰

Recommendation

The CRC recommends that proportional representation should be included in the revised Constitution, and so section 74(1)(a) should be amended as follows:-

“74. (1) Members of Parliament shall comprise the following-

(a) such number of Members as Parliament may prescribe who, subject to the provisions of this Constitution, shall be elected in accordance with the system of proportional representation, the threshold for which shall be 30% of popular votes”.

9.10 Theme - Bicameral Parliament – Establishment of Senate

Observation

The PTC Report suggested changing from a unicameral system, consisting of a single chamber (Parliament) to a bicameral system consisting of two chambers (the Senate and the House of Representatives).⁴⁰¹

In relation to the reserved seats for the 12 Paramount Chiefs, the PTC Report commented that “the election procedure for the Paramount Chief Parliamentary Representatives was through a narrow based electoral college that is unusual in a modern democracy.”⁴⁰²

However, the PTC Report acknowledged the important role that Paramount Chiefs play in representing the people and felt that because of their status in their communities it was desirable to enable them to participate in the legislature independently from party political pressures.

The PTC Report submitted that the natural place for Paramount Chiefs to contribute to the legislative process in a non-partisan manner was in the second chamber which was to be called The Senate. The PTC Report therefore concluded that there should be a House of

⁴⁰⁰ Position paper of Dr Habib Sesay, pages 2 to 4

⁴⁰¹ PTCR page 55 para 80

⁴⁰² PTCR page 65 para 102

Representatives and that the House of Representatives “shall consist entirely of members elected by popular ballot.”⁴⁰³

In their position paper, the Native Consortium Think Tank suggested:

“There is a need to establish a second house of representation (about 60 persons) on a non-elective basis which will consist of Paramount Chiefs, Highly religious men and women, Retired judges, Ex-Senior Army and Police Officers, Ex- Prime Ministers/Presidents, very senior retired civil servants and Diplomats. Their role will include the

- Further scrutiny of bills coming from parliament for possible improvements
- Review existing pieces of legislation and make suggestions to Parliament.
- Originate new Bills.
- Serve as a source of inspiration and provide guidance on Governance issues and other matters of national importance.”⁴⁰⁴

The CRC also received a position paper from Mr Owen Kai Combey. In his submission, he said that politics in Sierra Leone presented a problem of non-participation of some of the country’s highly competent citizens. He suggested that in order to address this anomaly and to “promote effective participation in governance by many more competent citizens, a second chamber of Parliament should be established for non-partisan but highly competent citizens of our Republic.”⁴⁰⁵

He also suggested that the twelve Paramount Chiefs who are Members of Parliament and some selected senior citizens could also be part of this second chamber.

OSIWA’s position paper made the following comments that included a summary of public opinion:

“Parliament in a democracy is essentially a forum for articulating citizens’ interests, irrespective of political/ideological differences. The attributes that are desired for the efficacy of Parliament can largely be facilitated by the national constitution. The 1991 Constitution is seen by many to be in need of improvements in areas critical to the effectiveness of Parliament.”

Among the questions put to citizens was whether they thought the quality of laws made, and treaties and agreements approved by Parliament, could be enhanced by the scrutiny of a second chamber. There were calls made for a second house, with persons appointed by the President on the basis of competence, integrity and public standing. A significant number of people suggested that a separate House of Paramount Chiefs be established rather than a Senate. Some experts disagreed, arguing that a second chamber would be a waste of resources.

⁴⁰³ PTCR page 56 para 81

⁴⁰⁴ Native Consortium Think Tank position paper page 9

⁴⁰⁵ Individual submission Mr Owen M.M. Kai Combay Part II page 4

The CRC considered the feedback from the nationwide consultations, in which there was an overwhelming response to the question on the removal of Paramount Chiefs from Parliament. Those who opposed the idea of a second chamber claimed that “a second house of Parliament is an expensive venture that will turn out to be a financial burden on the Government.”⁴⁰⁶

9.11 Recommendation

The CRC recommends that the existing unicameral system be retained.

9.12 Theme - Establishment of National House of Chiefs

Observation

CRC weighed the representations, submissions and views expressed by Paramount Chiefs and members of the public throughout the country and considered them, together with the PTC Report recommendation that the Senate was the appropriate place for Paramount Chiefs to play a vital role in the administration of Sierra Leone and participation in the national political system in a non-partisan manner.⁴⁰⁷

The CRC noted that Paramount Chiefs had put forward an alternative to the PTC Report recommendation and that was that they would serve the country and their people better in their traditional role if a House of Paramount Chiefs⁴⁰⁸ was established instead of them being members of a Senate.

During the consultation process, the NCPC presented a position paper in which they made strong representations that they did not want to be part of the parliamentary system and that consequently section 74(1)(a) of the 1991 Constitution should be revoked.⁴⁰⁹

The CRC took due consideration of the fact that the Paramount Chiefs proposed “the establishment of a national House of Paramount Chiefs as the best alternative and appropriate mechanism by which to secure a recognised national voice for advising on matters relevant to tradition, custom and the institution of Chieftaincy.”⁴¹⁰

The CRC also noted that the Paramount Chiefs placed great significance on the need to uphold their traditional roles in society: “the role of chiefs is rooted in tradition and culture, and in ensuring peace and stability within the chieftdom for the benefit of all.”⁴¹¹

⁴⁰⁶ Summary report of Public Consultations page 7

⁴⁰⁷ PTCR page 53 para 102

⁴⁰⁸ Within the CRC, there was an opinion that the Chiefs of the Western Area should also be accommodated in the new National House of Chiefs.

⁴⁰⁹ Paramount Chiefs’ position paper page 9 para 15

⁴¹⁰ NCPC position paper page 10 para 19

⁴¹¹ NCP position paper page 14 para 9

During the fact-finding mission to Ghana, the CRC was informed that Ghana has established a House of Chiefs.

The CRC paid particular attention to the views expressed during the nationwide consultations where the consensus was that Paramount Chiefs should have their own House of Paramount Chiefs:

“A House of Paramount Chiefs should be created and charged with the responsibility of electing, disciplining and dismissing Paramount Chiefs as this will help them remain neutral in politics.”⁴¹²

The All Political Parties Youth Association (APPYA) in an engagement with the CRC indicated that they supported the establishment of a House of Chiefs: “the youth supported the idea of House of Chiefs, but added that the Chiefs should also be made to sign performance contracts.”⁴¹³

The CRC also reflected that if the overwhelming view was that a House of Paramount Chiefs should be established, then the question arose as to where it fitted within the revised Constitution. It was clear that the establishment of a new House of Paramount Chiefs with its emphasis on traditional and local matters would not fit within the remit of a chapter on the Legislature.

The issue of the establishment of a House of Paramount Chiefs was also considered during the discussions for the proposed new chapter on local government in the revised Constitution. The CRC recommends that the House of Paramount Chiefs should be included in the proposed new local government chapter.

9.13 Recommendations

The CRC recommends that a national House of Chiefs should be established and enshrined in the Constitution.

- A. The creation of a national House of Chiefs should be included in the Local Government chapter.**
- B. The establishment, composition, role, responsibilities, power, location, mode of election and such other matters should be determined through consultation between local government, stakeholders, and the National Council of Paramount Chiefs.**

9.14 Theme - Qualification for Membership of Parliament

Current Context

⁴¹² Summary report of Public Consultations page 11

⁴¹³ Political Parties Engagement with CRC page 13

Section 75 of the 1991 Constitution states:-

“75. Subject to the provisions of section 76, any person who—

- (a) is a citizen of Sierra Leone (otherwise than by naturalization); and
- (b) has attained the age of twenty-one years; and
- (c) is an elector whose name is on a register of electors under the Franchise and Electoral Registration Act, 1961, or under any Act of Parliament amending or replacing that Act; and
- (d) is able to speak and to read the English Language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of Parliament,

shall be qualified for election as such a Member of Parliament:

Provided that a person who becomes a citizen of Sierra Leone by registration by law shall not be qualified for election as such a Member of Parliament or of any Local Authority unless he shall have resided continuously in Sierra Leone for twenty-five years after such registration or shall have served in the Civil or Regular Armed Services of Sierra Leone for a continuous period of twenty-five years.”

Observation

The reference to “the Franchise and Electoral Registration Act 1961” should be replaced with a reference to “the Public Elections Act 2012”.

The Sierra Leone Parliament recommended that there should be a separate section in the Constitution dealing with academic qualifications of Members of Parliament.

Representatives of the National Democratic Alliance Party, Alhajie A. C. Kamara and Thomas Dickson Kallon, in their respective position papers recommended that there should be a minimum qualification level of a university degree to stand for election to Parliament.

OSIWA’s position paper stated: “There should be an educational qualification added to the criteria for becoming a parliamentarian, which is that every person vying for the position should have at least a first degree from any recognized university.”⁴¹⁴ A minority of stakeholders agreed with this position.⁴¹⁵

The CRC recommended that the educational qualification criterion should remain the same, namely that an aspirant must be “able to speak and read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of Parliament.”

⁴¹⁴ OSIWA position paper pages 3 and 4

⁴¹⁵ Summary Report of Public Consultations by CRC 2015 page 9

9.15 Recommendation

The CRC recommends that section 75 should remain as it is in the 1991 Constitution, save that the reference in section 75(c) to “the Franchise and Electoral Registration Act 1961” should be replaced with a reference to “the Public Elections Act 2012”. Section 75 should therefore read:

“75. Subject to the provisions of section 76, any person who—

- (a) is a citizen of Sierra Leone (otherwise than by naturalization); and
- (b) has attained the age of twenty-one years; and
- (c) is an elector whose name is on a register of electors under the **Public Elections Act 2012**, or under any Act of Parliament amending or replacing that Act; and
- (d) is able to speak and to read the English Language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of Parliament,

shall be qualified for election as such a Member of Parliament:

Provided that a person who becomes a citizen of Sierra Leone by registration by law shall not be qualified for election as such a Member of Parliament or of any Local Authority unless he shall have resided continuously in Sierra Leone for twenty-five years after such registration or shall have served in the Civil or Regular Armed Services of Sierra Leone for a continuous period of twenty-five years.”

9.16 Theme - Disqualification for Membership of Parliament

Current Context

Section 76 of the 1991 Constitution states:-

“76. (1) No person shall be qualified for election as a Member of Parliament—

- (a) if he is a naturalised citizen of Sierra Leone or is a citizen of a country other than Sierra Leone having become such a citizen voluntarily or is under a declaration of allegiance to such a country; or
- (b) if he is a member of any Commission established under this Constitution, or a member of the Armed Forces of the Republic, or a public officer, or an employee of a Public Corporation established by an Act of Parliament, or has been such a member, officer or employee within twelve months prior to the date on which he seeks to be elected to Parliament; or
- (c) if under any law in force in Sierra Leone he is adjudged to be a lunatic or otherwise declared to be of unsound mind; or

- (d) if he has been convicted and sentenced for an offence which involves fraud or dishonesty; or
 - (e) if he is under a sentence of death imposed on him by any court; or
 - (f) if in the case of the election of such member as is referred to in paragraph (b) of subsection (1) of section 74, he is for the time being a Paramount Chief under any law; or
 - (g) if being a person possessed of professional qualifications, he is disqualified (otherwise than at his own request) from practising his profession in Sierra Leone by order of any competent authority made in respect of him personally within the immediately preceding five years of an election held in pursuance of section 87; or
 - (h) if he is for the time being the President, the Vice-President, a Minister or a Deputy Minister under the provisions of this Constitution.
- (2) A person shall not be qualified for election to Parliament if he is convicted by any court of any offence connected with the election of Members of Parliament:
- Provided that in any such case the period of disqualification shall not exceed a period of five years from the date of the general election following the one for which he was disqualified.
- (3) Any person who is the holder of any office the functions of which involve responsibility for, or in connection with, the conduct of any election to Parliament or the compilation of any register of voters for the purposes of such an election shall not be qualified for election to Parliament.
- (4) A person shall not be disqualified for election as a Member of Parliament under paragraph (b) of subsection (1) by reason only that he holds the office of member of a Chiefdom Council, member of a Local Court or member of any body corporate established by or under any of the following laws, that is to say, the Freetown Municipality Act, the Chiefdom Councils Act, the Rural Area Act, the District Councils Act, the Sherbro Urban District Council Act, the Bo Town Council Act, and the Townships Act or any law amending or replacing any of those laws.
- (5) Save as otherwise provided by Parliament, a person shall not be disqualified from being a Member of Parliament by reason only that he holds office as a member of a Statutory Corporation.”

9.17 Theme – Time Limit for Public Officials to Qualify for Elections

Observation

The CRC debated section 76 at length, and committee members identified several ambiguities in this provision that relate to the disqualification from being a Member of Parliament.

Although section 76(1)(b) does not expressly prevent members of the teaching profession from being eligible to stand as Members of Parliament, the teaching profession believes that section 76(1)(b) should explicitly state that the teaching profession is exempt from the application of that provision.

In addition, the issue of the time limit in section 76(1)(b) was thoroughly discussed. The CRC reached a consensus that the twelve month-time limit prior the date on which a person seeks to be elected to Parliament should be reduced to six months.

The CRC also deliberated on the issue of the phrase “lunatic or otherwise declared to be of unsound mind” in section 76(1)(c), and recommended that it should be replaced with the phrase “clinically certified”.

The CRC also deliberated on the issue of the word “fraud” in section 76(1)(d), and recommended that it should be replaced with the word “misconduct”.

Therefore, the CRC recommends the following amendments to section 76 of the 1991 Constitution:-

“76. (1) No person shall be qualified for election as a Member of Parliament—

- (a) if he is a naturalised citizen of Sierra Leone or is a citizen of a country other than Sierra Leone having become such a citizen voluntarily or is under a declaration of allegiance to such a country; or
- (b) if he is a member of any Commission established under this Constitution, or a member of the Armed Forces of the Republic, or a public officer, or an employee of a Public Corporation established by an Act of Parliament, or has been such a member, officer or employee, except people of teaching profession, within **six months** prior to the date on which he seeks to be elected to Parliament; or
- (c) if under any law in force in Sierra Leone he is **clinically certified** to be a lunatic or otherwise declared to be of unsound mind; or
- (d) if he has been convicted and sentenced for an offence which involves **misconduct** or dishonesty; or
- (e) if he is under a sentence of death imposed on him by any court; or

- (f) if in the case of the election of such member as is referred to in paragraph (b) of subsection (1) of section 74, he is for the time being a Paramount Chief under any law; or
 - (g) if being a person possessed of professional qualifications, he is disqualified (otherwise than at his own request) from practising his profession in Sierra Leone by order of any competent authority made in respect of him personally within the immediately preceding five years of an election held in pursuance of section 87; or
 - (h) if he is for the time being the President, the Vice-President, a Minister or a Deputy Minister under the provisions of this Constitution.
- (2) A person shall not be qualified for election to Parliament if he is convicted by any court of any offence connected with the election of Members of Parliament:

Provided that in any such case the period of disqualification shall not exceed a period of five years from the date of the general election following the one for which he was disqualified.

- (3) Any person who is the holder of any office the functions of which involve responsibility for, or in connection with, the conduct of any election to Parliament or the compilation of any register of voters for the purposes of such an election shall not be qualified for election to Parliament.
- (4) A person shall not be disqualified for election as a Member of Parliament under paragraph (b) of subsection (1) by reason only that he holds the office of member of a Chiefdom Council, member of a Local Court or member of any body corporate established by or under any of the following laws, that is to say, the Freetown Municipality Act, the Chiefdom Councils Act, the Rural Area Act, the District Councils Act, the Sherbro Urban District Council Act, the Bo Town Council Act, and the Townships Act or any law amending or replacing any of those laws.
- (5) Save as otherwise provided by Parliament, a person shall not be disqualified from being a Member of Parliament by reason only that he holds office as a member of a Statutory Corporation.

9.18 Theme - Tenure of Seats of Members of Parliament

Current Context

Section 77 of the 1991 Constitution states:

“77. A Member of Parliament shall vacate his seat in Parliament—

- (a) on the dissolution of Parliament next following his election; or
- (b) if he is elected Speaker of Parliament; or

- (c) if any other circumstances arise that if he were not a Member of Parliament would cause him to be disqualified for election as such under section 76; or
- (d) if he ceases to be a citizen of Sierra Leone; or
- (e) if he is absent from sittings of Parliament for such period and in such circumstances as may be prescribed in the rules of procedure of Parliament; or
- (f) if in the case of such a Member as is referred to in paragraph (b) of subsection (1) of section 74, he becomes a Paramount Chief under any law; or
- (g) if he ceases to be qualified under any law to be registered as an elector for election of Members to Parliament; or
- (h) if he is adjudged to be a lunatic or declared to be of unsound mind or sentenced to death; or
- (i) if he is adjudged or otherwise declared a bankrupt under any law and has not been discharged; or
- (j) if he resigns from office as a Member of Parliament by writing under his hand addressed to the Speaker, or if the Office of Speaker is vacant or the Speaker is absent from Sierra Leone, to the Deputy Speaker; or
- (k) if he ceases to be a member of the political party of which he was a member at the time of his election to Parliament and he so informs the Speaker, or the Speaker is so informed by the Leader of that political party; or
- (l) if by his conduct in Parliament by sitting and voting with members of a different party, the Speaker is satisfied after consultation with the Leader of that Member's party that the Member is no longer a member of the political party under whose symbol he was elected to Parliament; or
- (m) if, being elected to Parliament as an independent candidate, he joins a political party in Parliament; or
- (n) if he accepts office as Ambassador or High Commissioner for Sierra Leone or any position with an International or Regional Organization.

(2) Any Member of Parliament who has been adjudged to be a lunatic, declared to be of unsound mind, or sentenced to death or imprisonment, may appeal against the decision in accordance with any law provided that the decision shall not have effect until the matter has been finally determined.”

9.19 Theme – Party Allegiance

Observation

There were two closely-related issues in section 77(1) of the 1991 Constitution. These were concerned with Members of Parliament who changed, or were perceived to change, political parties once they had been elected.

The current position is that once elected on a party ticket to be a Member of Parliament, the Member must remain with that political party. There are therefore provisions in the 1991 Constitution to deal with the eventuality of someone changing party allegiance to ensure they are forced to leave their parliamentary seat. Those provisions may leave Members of Parliament vulnerable to political cliques within their own parties.

The PTC Report recommended inserting the word “voluntarily” between the words “he” and “ceases” under section 77(1)(k) to avoid political parties exerting their political will over members of the legislature. The PTC Report also recommended that section 77(1)(l) should be deleted.⁴¹⁶

After due deliberation on section 77(1)(k), taken together with the recommendation of the PTC Report, the CRC endorses the recommendation of the PTC Report that the word “voluntarily” should be added before the word “ceases”; justifiable reasons or evidence should also be given by the political party for this decision.

Section 77 of the 1991 Constitution sets out the criteria on which a Member of Parliament must vacate his seat. They include the following two criteria:

Section 77(1)(k) states that a Member shall vacate his seat “if he ceases to be a member of the political party of which he was a member at the time of his election to Parliament and he so informs the Speaker, or the Speaker is so informed by the leader of the political party”;

Section 77(1)(l) states that “if by his conduct in Parliament by sitting and voting with members of a different party, the Speaker is satisfied after consultation with the Leader of that Member's party that the Member is no longer a member of the political party under whose symbol he was elected to Parliament;”

OSIWA in its position paper made the following recommendation:-

“Another critical issue that the people reflected on was Section 77K of the 1991 Constitution which stipulates that a Member of Parliament (MP) loses his/her parliamentary seat when he ceases to be member of the party under which he/she was elected. That the reviewed constitution expunges section 77K so that nobody loses his/her seat in Parliament as a result of losing membership of the party under which he/she was elected.”⁴¹⁷

The CRC decided that it was preferable to strike a balance on this matter to prevent undue influence by political parties and to discourage political cross-carpeting.

⁴¹⁶ PTCR page 59 para 85

⁴¹⁷ OSIWA additional position paper pages 3 and 4

The CRC therefore recommends amending Section 77(1)(k) to add the word “**voluntarily**” before the word “cease”.

In addition, in section 77(1)(l), to add the word “**persistently**” before “sitting”, and the phrase “**and upon sufficient evidence**” after the phrase “member’s party”.

The CRC further recommends changing the phrase “**any position**” to the word “**employment**” in section 77(1)(n).

The CRC also proposes a recall clause which was thoroughly discussed and recommended by a large number of stakeholders during the consultations.

In their position paper, the Movement for Social Progress stated that “the idea behind the proposed recall clause is to further strengthen our democracy and accountability of elected representatives. The recall clause means that the citizens should have the right to recall their respective Member of Parliament from their constituency through a democratic process such signatures or other means as specified by law if they are not satisfied with the conduct and performance of the respective Member.”⁴¹⁸

However, the CRC recommends that Parliamentarians should consider a recall clause for non-performing Parliamentarians based on their personal, professional and institutional experience.

9.20 Recommendations

The CRC recommends several amendments to section 77, as set out below. In addition, on the basis of public demand, the CRC recommends that a recall clause be added to section 77(o), and Parliament needs to decide on this.

“77. A Member of Parliament shall vacate his seat in Parliament—

- (a) on the dissolution of Parliament next following his/her election; or
- (b) if she/he is elected Speaker of Parliament; or
- (c) if any other circumstances arise that if she/he were not a Member of Parliament would cause him/her to be disqualified for election as such under section 76; or
- (d) if she/he ceases to be a citizen of Sierra Leone; or
- (e) if she/he is absent from sittings of Parliament for such period and in such circumstances as may be prescribed in the rules of procedure of Parliament; or
- (f) if in the case of such a Member as is referred to in paragraph (b) of subsection (1) of section 74, she/he becomes a Paramount Chief under any law; or

⁴¹⁸ Movement For Social Progress position paper page 2

- (g) if she/he ceases to be qualified under any law to be registered as an elector for election of Members to Parliament; or
- (h) if she/he is adjudged to be a lunatic or declared to be of unsound mind or sentenced to death; or
- (i) if she/he is adjudged or otherwise declared a bankrupt under any law and has not been discharged; or
- (j) if she/he resigns from office as a Member of Parliament by writing under his hand addressed to the Speaker, or if the Office of Speaker is vacant or the Speaker is absent from Sierra Leone, to the Deputy Speaker; or
- (k) if she/he **voluntarily** ceases to be a member of the political party of which he was a member at the time of his election to Parliament and he so informs the Speaker, or the Speaker is so informed by the Leader of that political party; or
- (l) if by his conduct in Parliament by **persistently** sitting and voting with members of a different party, the Speaker is satisfied after consultation with the Leader of that Member's party **and upon sufficient evidence** that the Member is no longer a member of the political party under whose symbol she/he was elected to Parliament; or
- (m) if, being elected to Parliament as an independent candidate, he joins a political party in Parliament; or
- (n) if she/he accepts office as Ambassador or High Commissioner for Sierra Leone or any **employment** with an International or Regional Organization.
- (o) **The constituents shall have the right to recall a respective Member of Parliament of the same constituency before the end of their term.**

Provided that Parliament shall enact legislation and procedure for the grounds on which a member maybe recall.

(2) Any Member of Parliament who has been **clinically certified** to be a lunatic, declared to be of unsound mind, or sentenced to death or imprisonment, may appeal against the decision in accordance with any law provided that the decision shall not have effect until the matter has been finally determined.”

9.21 Theme - The Speaker

Current Context

Section 79 of the 1991 Constitution, as amended by section 1 of the Constitution of Sierra Leone (Amendment) Act 2013, states:

“79. (1) The Speaker of Parliament shall be elected by the Members of Parliament from among persons who are—

(a) Members of Parliament and who had served as such for not less than five years; or

(b) qualified to be Members of Parliament and who had served as such for not less than ten years”, and who are not less than forty years.”

Observation

Section 79 of the 1991 Constitution was amended in 2013 when the CRC process was already in progress. There was little consultation and deliberation before the amendment was enacted, and therefore the issue revisited during the CRC process.

The CRC deliberated on section 79 and recommended that the 2013 amendment should be repealed and that the original section should be reinstated and made simple and understandable. In order to simplify it, certain amendments need to be made to the language of the section.

The CRC therefore recommends that in section 79(4) the word “**vacate**” should be replaced with the word “**leave**”, and in section 79(7), the clause “**except when the President is present**” should be deleted to ensure separation of powers between the Executive and the Legislature.

9.22 Recommendation

The CRC recommends that the amendment made to section 79(1) by the Constitution of Sierra Leone (Amendment) Act 2013 should be repealed. It also recommends that section 79 of the 1991 Constitution prior to 2013 amendment be retained with minor changes, as follows:.

The Speaker

“**79.** (1) 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 and who are qualified to be appointed Judges of the Superior Court of Judicature or have held such office:

Provided that a person shall be eligible for election as Speaker of Parliament notwithstanding that such person is a Public Officer or a Judge of the High Court, a Justice of the Court of Appeal or a Justice of the Supreme Court, and such person, if elected, shall retire from the Public Service on the day of his election with full benefits.

- (3) 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:

Provided that if three successive resolutions proposing the election of a Speaker fail to receive the votes of two-thirds of the Members of Parliament, the Speaker shall be elected by a resolution passed by a simple majority of all the Members of Parliament.

- (3) No person shall be elected as speaker—

- (a) if she/he is a member of the Armed Forces; or
- (b) if she/he is a Minister or a Deputy Minister.

- (4) The Speaker shall **leave** his office—

- (a) if she/he becomes a Minister or a Deputy Minister; or

- (b) if any circumstances arise that, if he were not the Speaker, would disqualify him from election as Speaker; or
- (c) when Parliament first meets after any dissolution; or
- (d) if she/he is removed from office by a resolution of Parliament supported by the votes of not less than two-thirds of the Members of Parliament.

(5) No business shall be transacted in Parliament (other than an election to the office of Speaker) at any time if the office of Speaker is vacant.

(6) Any person elected to the office of Speaker who is not a Member of Parliament shall before entering upon the duties of his office, take and subscribe before Parliament the oath as set out in the Third Schedule in this Constitution.

(7) The Speaker, or in his absence the Deputy Speaker, shall preside over all sittings of Parliament.”

9.23 Theme - Clerk of Parliament - Parliamentary Service Commission

Current Context

Section 82 of the 1991 Constitution states:-

“**82.** (1) There shall be a Clerk of Parliament who shall be appointed by the President acting in consultation with the Public Service Commission and shall be appointed for the administration of parliament

(2) the office of the Clerk of Parliament and the offices of the members of his staff shall be public offices.”

Observation

The CRC was informed by Parliament’s position paper that the Parliamentary Service Commission has been established under the Parliamentary Service Act 2007. Therefore the phrase “Public Service Commission” in section 82 of the 1991 Constitution should be replaced with “the Parliamentary Service Commission”.

The Parliamentary Service Act of 2007 establishes the Parliamentary Service Commission and makes provisions regarding its functions, membership, allowances of members, financial provision, and annual reporting requirements. Therefore it is necessary to update section 82 to reflect the 2007 Act.

9.24 Recommendation

The CRC recommends that section 82(1) and (2) should be amended to read as follows:

“82. (1) There shall be a **Parliamentary Service Commission to support the Parliament of Sierra Leone to perform its constitutional and other functions as specified in the Parliamentary Service Act”.**

(2) There shall be a Clerk of Parliament who shall be appointed by the President in consultation with the Parliamentary Service Commission and shall be responsible for the administration of Parliament. The office of the Clerk of Parliament and the offices of the Parliamentary service shall be public”.

9.25 Theme - Sessions of Parliament

Current Context

Section 84 of the 1991 Constitution states:

“84. (1) Each session in Parliament shall be held at such place within Sierra Leone and shall commence at such time as the President may by Proclamation appoint.

(2) There shall be a session of Parliament at least once in every year, so that a period of twelve months shall not intervene between the last sitting of Parliament in one session and the first sitting thereof in the next session:

Provided that there shall be a session of Parliament not later than twenty-eight days from the holding of a general election of Members of Parliament

(3) The President shall at the beginning of each session of Parliament present to Parliament an address on the state of the nation.”

Observation

The CRC debated the following issues:-

- A. The President should consult with the Speaker to determine the time and place that each session of Parliament is held.
- B. The time for the first sitting of Parliament following a general election should be reduced from 28 days to 14 days.
- C. The provision that there should be a session of Parliament at least once in every year should be retained.

In order to reinforce the separation of powers between the Executive and the Legislature, the President should be required to consult with the Speaker to decide the time and place for each session of Parliament rather than make a Proclamation.

The CRC was informed that by law, official election results must be declared fourteen days after a general election has been held in order for the first session of Parliament to be held fourteen days after the declaration of the results. The CRC recognised that emergencies may hamper this.

The CRC is of the view that the President should consult with the Speaker as to the time and place of sessions of Parliament, and that the President should issue a Proclamation to that effect. Parliament should therefore have a calendar to outline parliamentary activities, except emergencies.

9.26 Recommendation

CRC recommends that section 84 be amended to read as follows:-

“84. (1) Each session in Parliament shall be held at such place within Sierra Leone and shall commence at such time as the President in consultation with the Speaker shall decide the place and time for each session of Parliament may be Proclamation appoint.

(2) There shall be a session of Parliament at least once in every year, so that a period of twelve months shall not intervene between the last sitting of Parliament in one session and the first sitting thereof in the next session:

Provided that there shall be a session of Parliament not later than **forty-eight** days from the holding of a general election of Members of Parliament

(4) The President shall at the beginning of each session of Parliament present to Parliament an address on the state of the nation.”

9.27 Theme - Sitting of Parliament

Current Context

Section 86 of the 1991 Constitution states:-

“86. (1) The President may at any time summon a meeting of Parliament.

(2) Notwithstanding the provision of subsection (1), at least twenty *per centum* of all the Members of Parliament may request a meeting of Parliament and the Speaker shall, within fourteen days after the receipt of that request, summon a meeting of Parliament.

(3) Subject to the provisions of subsection (1) and of Sections 29 and 84 of this Constitution, sittings of Parliament in any session after the commencement of that session shall be held at such times and on such days as Parliament shall appoint.

(4) Parliament shall sit for a period of not less than one hundred and twenty days in each year.”

Observation

The CRC observed that and was informed by Parliament’s position paper that Parliamentary practice is that the President consults the Speaker concerning summoning of Parliament except in emergencies. The CRC therefore proposed that this practice should be enshrined in the Constitution.

9.28 Recommendation

The CRC therefore recommends that section 86(1) should be amended as follows:

“86. (1) The Speaker of Parliament in consultation with the President shall decide a summoning of Parliament, emergencies exempted”.

9.29 Theme - Unqualified Persons Sitting or Voting

Current Context

Section 92 of the 1991 Constitution states:-

“92. Any person who sits or votes in Parliament knowing or having reasonable ground for knowing that he is not entitled to do so shall be liable to a penalty 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, which shall be recoverable by action in the High Court at the suit of the Attorney-General and Minister of Justice.”

Observation

The CRC observed that the penalty of Le 1,000 (one thousand Leones) is very small. The CRC therefore recommended that it should be increased to five million Leones.

However, Members of Parliament in their position paper suggested that section 92 should be deleted and such penalty should be placed in the Standing Orders of Parliament.

9.30 Recommendation

The CRC recommends that the fine should be increased, and therefore recommends that section 92 should be amended as follows:-

Section 92 – Unqualified persons sitting or voting

“92. Any person who sits or votes in Parliament knowing or having reasonable ground for knowing that she/he is not entitled to do so shall be liable to a penalty not exceeding **Five**

Million Leones or such other sum as may be prescribed by Parliament for each day in which she/he so sits or votes in Parliament, which shall be recoverable by action in the High Court at the suit of the Attorney-General.”

9.31 Theme - Committees of Parliament

Current Context

Section 93 (1) of the 1991 Constitution states:

“**93.** (1) At the beginning of each session of Parliament, but in any case not later than twenty-one days thereafter, there shall be appointed from among its members the following Standing Committees, that is to say—

- (a) the Legislative Committee;
 - (b) the Finance Committee;
 - (c) the Committee on Appointments and Public Service;
 - (d) the Foreign Affairs and International Cooperation Committee;
 - (e) the Public Accounts Committee;
 - (f) the Committee of Privileges;
 - (g) the Standing Orders Committee;
 - (h) such other Committees of Parliament as the rules of procedure of Parliament shall provide.
- (2) In addition to the Committees referred to in subsection (1), Parliament shall appoint other Committees which shall perform the functions specified in subsection (3).
- (3) It shall be the duty of any such Committee as is referred to in subsection (2) to investigate or inquire into the activities or administration of such Ministries or Departments as may be assigned to it, and such investigation or inquiry may extend to proposals for legislation.
- (4) Notwithstanding anything contained in subsections (1) and (2), Parliament may at any time appoint any other Committee to investigate any matter of public importance.
- (5) The composition of each of the Committees appointed under subsections (1), (2) and (4) shall, as much as possible, reflect the strength of the political parties and Independent Members in Parliament.

- (6) For the purposes of effectively performing its functions, each of the Committees shall have all such powers, rights and privileges as are vested in the High Court at a trial in respect of—
- (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
 - (b) compelling the production of documents; and
 - (c) The issue of a commission or request to examine witnesses abroad.”

Observation – Standing Committee on Judicial Appointments

There should be an additional Standing Committee to oversee all judicial appointments.

The CRC deliberated on the issue of judicial appointments, and suggested that it would be appropriate for Parliament to create a Standing Committee for judicial appointments.

In their position paper, Members of Parliament proposed relevant amendments to section 93 to make it clearer and more effective. They proposed the following amendment: “At the beginning of each session of Parliament, but not in any case not later than 21 days thereafter, there shall be appointed from among its members the following Standing, **Sessional, special and Ad-hoc Committees necessary for the efficient discharge of its functions as may be specified in the standing Orders.**” They also proposed that section 93(2) should be deleted, and that section 93(3) should be amended to add the phrase any such “**sessional committees**” and the word “**Agencies**” at the appropriate place.

9.32 Recommendation

The CRC therefore recommends that section 93 should be amended as follows:-

“93. (1) At the beginning of each session of Parliament, but in any case not later than twenty-one days thereafter, there shall be appointed from among its members the following Standing, Sessional, special and Ad-hoc Committees necessary for the efficient discharge of its functions as may be specified in the standing Orders, and

Standing Committees, that is to say—

- a. the Legislative Committee;
- b. the Finance Committee;
- c. the Committee on Appointments and Public Service;
- d. the Foreign Affairs and International Co-operation Committee;
- e. the Public Accounts Committee;
- f. the Committee of Privileges;

- g. the Standing Orders Committee;
 - h. such other Committees of Parliament as the rules of procedure of Parliament shall provide.
- (2) It shall be the duty of any such “**sessional committees**” such Committee as is referred to in subsection (2) to investigate or inquire into the activities or administration of such Ministries or Departments or “**Agencies**” as may be assigned to it, and such investigation or inquiry may extend to proposals for legislation.
- (3) Notwithstanding anything contained in subsections (1) and (2), Parliament may at any time appoint any other Committee to investigate any matter of public importance.
- (4) The composition of each of the Committees appointed under subsections (1), (2) and (4) shall, as much as possible, reflect the strength of the political parties and Independent Members in Parliament.
- (5) For the purposes of effectively performing its functions, each of the Committees shall have all such powers, rights and privileges as are vested in the High Court at a trial in respect of—
- (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
 - (b) compelling the production of documents; and
 - (c) The issue of a commission or request to examine witnesses abroad.”

9.33 Theme - Parliamentary Privileges - Avoiding Double Jeopardy

Current Context

Section 99 of the 1991 Constitution states:

“**99.** (1) Subject to the provisions of this section, but without prejudice to the generality of section 97, no civil or criminal proceedings shall be instituted against a Member of Parliament in any court or place out of Parliament by reason of anything said by him in Parliament.

(2) Whenever in the opinion of the person presiding in Parliament a statement made by a Member is *prima facie* defamatory of any person, the person presiding shall refer the matter for inquiry to the Committee of Privileges which shall report its findings to Parliament not later than thirty days of the matter being so referred.

(3) Where the Committee of Privileges reports to Parliament that the statement made by the Member is defamatory of any person, the Member who made the statement shall, within seven days of that report, render an apology at the bar of Parliament, the terms of which shall be

approved by the Committee of Privileges and communicated to the person who has been defamed.

(4) Where a Member refuses to render an apology pursuant to the provisions of subsection (3), the Speaker shall suspend that Member for the duration of the session of Parliament in which the defamatory statement was made and a Member so suspended shall lose his Parliamentary privileges, immunities and remuneration which shall be restored to him if at any time before the end of the session he renders the apology as required under the provisions of subsection (3).

(5) Any person who may have made a contemporaneous report of the proceedings in Parliament including a statement which has been the subject of an inquiry pursuant to the provisions of subsection (2) shall publish the apology referred to in subsection (3) or the suspension or the apology referred to in subsection (4) with the same prominence as he published the first report; and if any such person fails to publish that apology he shall not be protected by privilege.”

Observation

Parliamentary privilege should not protect Members of Parliament from making reckless and malicious statements. Parliament may decide to institute contempt proceedings or refer the matter to court in some circumstances. An alleged breach should be thoroughly investigated and if substantiated there should be some punishment.

The CRC was of the view that that, depending on the offence, Parliament may decide to institute contempt proceedings or refer the matter to court. This is to avoid double jeopardy.

The CRC also considered whether or not to delete section 99(2), (3), (4) and (5) because they refer to defamation claims against Members of Parliament even though Parliamentary privilege is designed to grant immunity against defamation claims. It was, however, decided that section 99(2) should remain to prevent Members of Parliament from making reckless and malicious statements or speeches about other persons who do not have the right of reply.

9.34 Recommendation

The CRC recommends that section 99(1) and (2) should remain and that section 99(3), (4) and (5) should be deleted. Section 99 of the revised Constitution should therefore read as follows:-

“99. (1) Subject to the provisions of this section, but without prejudice to the generality of section 97, no civil or criminal proceedings shall be instituted against a Member of Parliament in any court or place out of Parliament by reason of anything said by him in Parliament.

(2) Whenever in the opinion of the person presiding in Parliament a statement made by a Member is *prima facie* defamatory of any person, the person presiding shall refer the matter for inquiry to the Committee of Privileges which shall report its findings to Parliament not later than thirty days of the matter being so referred.”

9.35 Theme– Immunity for Publication of Proceedings

Current Context

Section 103 of the 1991 Constitution states:

“103. Subject to the provisions of this Constitution, no person shall be under any civil or criminal liability in respect of the publication of—

- (a) the text or a summary of any report, papers, minutes, votes or proceedings of Parliament; or
- (b) a contemporaneous report of the proceedings of Parliament,

unless it is shown that the publication was effected maliciously or otherwise in want of good faith.”

Observations

Section 103 should be amended to delete the words “or otherwise in good faith”. This is because the language needs to be modernized.

9.36 Recommendation

The CRC recommends deleting the phrase “or otherwise in good faith” so that section 103 reads:

“103. Subject to the provisions of this Constitution, no person shall be under any civil or criminal liability in respect of the publication of—

- (a) the text or a summary of any report, papers, minutes, votes or proceedings of Parliament; or
- (b) a contemporaneous report of the proceedings of Parliament,

unless it is shown that the publication was effected maliciously.”

9.37 Theme - Mode of Exercising Legislative Power

Current Context

Section 106 of the 1991 Constitution states:

“106. (1) The power of Parliament to make laws shall be exercised by Bills passed by Parliament and signed by the President.

(2) Subject to the provisions of subsection (8), a Bill shall not become law unless it has been duly passed and signed in accordance with this Constitution.

(3) An Act signed by the President shall come into operation on the date of its publication in the *Gazette* or such other date as may be prescribed therein or in any other enactment.

(4) When a Bill which has been duly passed and is signed by the President in accordance with the provisions of this Constitution it shall become law and the President shall thereupon cause it to be published in the *Gazette* as law.

(5) No law made by Parliament shall come into operation until it has been published in the *Gazette*, but Parliament may postpone the coming into operation of any such law and may make laws with retroactive effect.

(6) All laws made by Parliament shall be styled "Acts", and the words of enactment shall be "Enacted by the President and Members of Parliament in this present Parliament assembled."

(7) Where a Bill has been passed by Parliament but the President refuses to sign it, the President shall within fourteen days of the presentation of the Bill for his signature cause the unsigned Bill to be returned to Parliament giving reasons for his refusal.

(8) Where a Bill is returned to Parliament pursuant to subsection (7) and that Bill is thereafter passed by the votes of not less than two-thirds of the Members of Parliament, it shall immediately become law and the Speaker shall thereupon cause it to be published in the *Gazette*.

(9) Nothing in this section or in section 53 of this Constitution shall prevent Parliament from conferring on any person or authority the power to make statutory instruments."

Observation

- A. There should be clarity as to which bodies have the power to make statutory instruments.
- B. The phrase "laws with retroactive effect" should be deleted.
- C. The language needs modernising and simplifying.

The CRC recommends that the Clerk should cause Bills to be published to avoid delay and bureaucracy.

In subsection (5), the CRC recommended deleting the phrase "and may make laws with retroactive effect", so that it reads "No law made by Parliament shall come into operation until it has been published in the *Gazette*, but Parliament may postpone the coming into operation of any such law".

In subsection (8), the CRC recommended inserting the word “all” between “two-thirds” and “the Members of Parliament”, and deleting the words “pursuant” and “deemed” so that it reads “(8) Where a Bill is returned to Parliament at the expiration of the period stated at subsection (7) and the Bill is thereafter passed by the votes of not less than two thirds of all Members of Parliament, it shall immediately become law and the Speaker shall thereupon cause it to be published in the Gazette.”

9.38 Recommendation

The CRC recommends that section 106 should read as follows:-

“**106.** (1) The power of Parliament to make laws shall be exercised by Bills passed by Parliament and signed by the President.

(2) Subject to the provisions of subsection (8), a Bill shall not become law unless it has been duly passed and signed in accordance with this Constitution.

(3) An Act signed by the President shall come into operation on the date of its publication in the *Gazette* or such other date as may be prescribed therein or in any other enactment.

(4) When a Bill which has been duly passed and is signed by the President in accordance with the provisions of this Constitution it shall become law and the President shall thereupon cause it to be published in the *Gazette* as law.

(5) No law made by Parliament shall come into operation until it has been published in the *Gazette*, but Parliament may postpone the coming into operation of any such law.

(6) All laws made by Parliament shall be styled "Acts", and the words of enactment shall be "Enacted by the President and Members of Parliament in this present Parliament assembled."

(7) Where a Bill has been passed by Parliament but the President refuses to sign it, the President shall within fourteen days of the presentation of the Bill for his/her signature cause the unsigned Bill to be returned to Parliament giving reasons for his refusal.

(8) Where a Bill is returned to Parliament at the expiration of the period stated at subsection (7) and the Bill is thereafter passed by the votes of not less than two thirds of all Members of Parliament, it shall immediately become law and the Speaker shall thereupon cause it to be published in the *Gazette*.

(9) Nothing in this section or in section 53 of this Constitution shall prevent Parliament from conferring on any person or authority the power to make statutory instruments.”

9.39 Theme - Alteration of the Constitution

Current Context

Section 108 of the 1991 Constitution states:-

“**108.** (1) Subject to the provisions of this section, Parliament may alter this Constitution.

(2) A Bill for an Act of Parliament under this section shall not be passed by Parliament unless—

(a) before the first reading of the Bill in Parliament the text of the Bill is published in at least two issues of the *Gazette*:

Provided that not less than nine days shall elapse between the first publication of the Bill in the *Gazette* and the second publication; and

(b) the Bill is supported on the second and third readings by the votes of not less than two-thirds of the Members of Parliament.

(3) A Bill for an Act of Parliament enacting a new Constitution or altering any of the following provisions of this Constitution, that is to say—

(a) this section

(b) Chapter III,

(c) sections 46, 56, 72, 73, 74(2), 74(3), 84(2), 85, 87, 105, 110-119, 120, 121, 122, 123, 124, 128, 129, 131, 132, 133, 135, 136, 137, 140, 151, 156, 167,

shall not be submitted to the President for his assent and shall not become law unless the Bill, after it has been passed by Parliament and in the form in which it was so passed, has, in accordance with the provisions of any law in that behalf, been submitted to and been approved at a referendum.

(4) Every person who is entitled to vote in the elections of Members of Parliament shall be entitled to vote at a referendum held for the purposes of subsection (3) and no other person may so vote; and the Bill shall not be regarded as having been approved at the referendum unless it was so approved by the votes of not less than one-half of all such persons and by not less than two-thirds of all the votes validly cast at the referendum:

Provided that in calculating the total number of persons entitled to vote at such referendum, the names of deceased persons, of persons disqualified as electors, and of persons duplicated in the register of electors and so certified by the Electoral Commission, shall not be taken into account.

(5) The conduct of any referendum for the purposes of subsection (3) of this section shall be under the general supervision of the Electoral Commission and the provisions of subsections (4), (5) and (6) of section 38 of this Constitution shall apply in relation to the exercise by the Electoral Commission of its functions with respect to a referendum as they apply in relation to the exercise of its functions with respect to elections of Members of Parliament.

(6) A Bill for an Act of Parliament under this section shall not be submitted to the President for his signature unless it is accompanied by a certificate under the hand of the Speaker of

Parliament (or, if the Speaker is for any reason unable to exercise the functions of his office, the Deputy Speaker) that the provisions of subsections (3) and (4) of this section have been complied with, and every such certificate shall be conclusive for all purposes and shall not be inquired in any court.

(7) No Act of Parliament shall be deemed to amend, add to or repeal or in any way alter any of the provisions of this Constitution unless it does so in express terms.

(8) Any suspension, alteration, or repeal of this Constitution other than on the authority of Parliament shall be deemed to be an act of Treason.

(9) In this section—

- (a) references to this Constitution include references to any law that amends or replaces any of the provisions of this Constitution; and
- (b) references to the alteration of this Constitution or of any Chapter or section of this Constitution include references to the amendment, modification or re-enactment, with or without amendment or modification, of any provision for the time being contained in this Constitution or Chapter or section thereof, the suspension or repeal of any such provision, the making of different provision in lieu of such provision and the addition of new provisions to this Constitution or Chapter or section thereof, and references to the alteration of any particular provision of this Constitution shall be construed likewise.”

Observation

The CRC has identified three issues relating to this section:

The CRC received submissions that section 108(2)(b) should be amended to state that for a Bill to become an Act of Parliament, it must be supported on the second and third readings by the votes of two-thirds of all Members of Parliament. This ensures that the Parliamentary procedure has been followed.

For clarity, at section 108(4) the word “and” should be amended to “or” after the phrase “one-half of all such persons”.

The NEC should follow the democratic principle of public participation, and must therefore allow sufficient time for the public to review the matter which is the subject of any referendum. There should therefore be an addition to section 108(5) which states “a referendum should be clearly presented to the public by ensuring there is sufficient time for public review”.

In addition, the CRC suggested that there should also be clarity as regards the percentage of votes required for the outcome of a referendum – consideration should be given to whether it should be 50% or two-thirds of votes cast.

9.40 Recommendation

The CRC therefore recommends that section 108(2)(b), (4) and (5) should read as follows:

“(2) A Bill for an Act of Parliament under this section shall not be passed by Parliament unless—

- (a) before the first reading of the Bill in Parliament the text of the Bill is published in at least two issues of the *Gazette*:

Provided that not less than nine days shall elapse between the first publication of the Bill in the *Gazette* and the second publication; and

- (b) the Bill is supported on the second and third readings by the votes of not less than two-thirds of **all** the Members of Parliament.”

“(4) Every person who is entitled to vote in the elections of Members of Parliament shall be entitled to vote at a referendum held for the purposes of subsection (3) and no other person may so vote; and the Bill shall not be regarded as having been approved at the referendum unless it was so approved by the votes of not less than one-half of all such persons **or** by not less than two-thirds of all the votes validly cast at the referendum:

Provided that in calculating the total number of persons entitled to vote at such referendum, the names of deceased persons, of persons disqualified as electors, and of persons duplicated in the register of electors and so certified by the Electoral Commission, shall not be taken into account.

“(5) The conduct of any referendum for the purposes of subsection (3) of this section shall be under the general supervision of the National Electoral Commission and the provisions of subsections (4), (5) and (6) of section 38 of this Constitution shall apply in relation to the exercise by the Electoral Commission of its functions with respect to a referendum as they apply in relation to the exercise of its functions with respect to elections of Members of Parliament.

A referendum should be clearly presented to the public by ensuring there is sufficient time for public review.”

9.41 Theme - Establishment of Office and Functions of Auditor-General

Current Context

Section 119 of the 1991 Constitution states:-

“**119.** (1) There shall be an Auditor-General for Sierra Leone whose office shall be a public office, and who shall be appointed by the President after consultation with the Public Service Commission, and subject to the approval of Parliament.”

Observation

The Public Service Commission should now be replaced with the Audit Service Commission.

In its position paper, the Audit Service Commission stated:

“The Audit Service Sierra Leone (ASSL) is the Supreme Audit Institution (SAI) in Sierra Leone. This is the term given to public sector audit offices as per the International Organisation of Supreme Audit Institution (INTOSAI) of which Sierra Leone is a member.

INTOSAI has in place various principles which many SAIs around the world are striving to achieve in order to ensure that there is accountability and transparency in the use of public funds for the benefit of citizens.

Sierra Leone is internationally recognized as a young democracy. However, based on the current mandates under the Sierra Leone 1991 constitution, and the current 2014 Audit Service Act, Audit Service Sierra Leone is now been viewed as an Institution working towards achieving the core principles of the Lime and Mexico declarations which are considered as essential requirements for public sector auditing”.

One of the core eight principles of the International Standards of Supreme Audit Institution (ISSAI) which ensure independence from the Executive and protection from outside influence is the existence of an appropriate and effective constitutional/statutory/legal framework and of de facto application provisions of this framework:

“The ASSL is agreeable to this sub-section as it agrees with the second preamble of ISSAI 1, which requires each country to have a Supreme Audit Institution

In addition, we want a qualification requirement to be included under this sub-section in agreement with section 14 (1) of ISSAI 1 which requires that "members of the Supreme Audit Institution shall have the qualification and moral integrity required to competently carry out their duties". The guidelines on “Principle 2 of ISSA 11” require that legislation should provide for the conditions of appointment of the Auditor General.

c. ASSL Proposal

There shall be an Auditor-General for Sierra Leone whose office shall be a public office, and who shall be appointed by the President after consultation with the Public Service Commission, and subject to the approval of Parliament.

A person shall not be appointed Auditor General unless that person:

(a) is a professional accountant of not less than ten years’ standing; and

(b) is a person of high moral character and proven integrity.”⁴¹⁹

The CRC took consideration of the importance that the ISSAI gave to the fact that there must be an effective constitutional, statutory, legal framework and of de facto application provisions of this framework to ensure independence from the Executive.

The CRC also suggested that the following should be considered as regards the requirements for appointment as Auditor-General:

“A person shall not be appointed Auditor General unless that person:

(a) is a professional accountant of not less than ten years’ standing; and

(b) is a person of high moral character and proven integrity.”

9.42 Recommendation

The CRC recommends replacing the reference to “the Public Service Commission” in section 119(1) with “the Audit Service Commission” so that it now reads as follows:

“**119. (1)** There shall be an Auditor-General for Sierra Leone whose office shall be a public office, and who shall be appointed by the President after consultation with the **Audit Service Commission**, and subject to the approval of Parliament.”

⁴¹⁹ Audit Service Commission position paper page 3

10 CHAPTER TEN

THE JUDICIARY

10.1 Introduction

The Judiciary of Sierra Leone comprises the Supreme Court, the Court of Appeal, and the High Court. In addition, there are magistrates and local courts, and from these appeals lie to the Superior Courts of Judicature.

The Judiciary is the third arm of Government and ensures that the rights of all citizens are protected and that the rule of law prevails. It is the guarantor and protector of law, and in order to perform its duties well, the Judiciary should be independent. Judges are therefore appointed by a special procedure and are also protected from arbitrary dismissal by the Executive by provision of a special process for their removal. This is usually provided for in the constitutions of many countries, but the method varies from country to country⁴²⁰.

The Constitution of Sierra Leone, Act No.6 of 1991, establishes the Judiciary as an independent organ of government, and the Chief Justice is responsible for its effective and efficient administration. It is the third branch of Government, and operates a court system that administers justice. The Judiciary is independent of the other two branches of Government, the Executive and the Legislature.

The Judiciary is recognised as critical to the nation's democracy; the right to bring complaints to and be heard by a competent and impartial adjudicatory body is the bedrock of the rule of law and democracy. So too are provisions that ensure access to justice and the effective enforcement of judgments. This notion underlines the need for the independence and impartiality of institutions at the forefront of the administration of justice.

During the review process, there was an overwhelming call to secure the institutional integrity and independence of the Judiciary. The essence of an independent Judiciary has been endorsed by the United Nations General Assembly by its adoption of the Basic Principles on the Independence of the Judiciary at its seventh Congress in 1985. Through these principles, each member state is expected to guarantee the independence of its Judiciary in its constitution or the laws of the country.

10.2 Historical Background

The origin of Sierra Leone's court system lies in the status of West Africa as a British Crown Colony: divided between superior and subordinate courts, Protectorate judicial systems

⁴²⁰ Law Reform Commission position paper page 2 para 1

functioned on both regional and local levels, the former according to which administrative regions they were a part.

The superior system consisted of a Supreme Court, with jurisdiction over the entire colony, and a High Court, with jurisdiction over an individual Protectorate. The subordinate system provided Magistrates' Court and native or customary courts, both of which functioned on local levels and were limited in the offences that could be tried and punishments that could be decreed under their jurisdictions.

After independence in 1961, the first Sierra Leonean substantive Chief Justice was Sir Salako Benka-Coker. Sir Henry Lightfoot Boston had acted as Chief Justice pre-independence and before he became Speaker of the then Legislative Council, the precursor of Parliament. He became the first Sierra Leonean Governor-General after Sir Maurice Dorman retired in 1962.

Sir Salako was succeeded by Sir Samuel Bankole-Jones. In 1966, he was appointed the first Sierra Leonean President of the Court of Appeal in succession to Mr. Justice Cecil Geraint Ames.

Post 1961 and before 1971, the person appointed Chief Justice was the most senior Judge of the High Court (then called the Supreme Court) bench. The Chief Justice was the person who acted as Governor-General in the absence of that personality, so, even though the President of the Court of Appeal heard appeals from judgments given by the Chief Justice, the latter was still head of the Judiciary. This was a left-over from the pre-independence days when appeals from High Court judgments were heard by the West African Court of Appeal, a bench of substantive but peripatetic Judges drawn from the then British West African colonies: Sierra Leone, Nigeria, Ghana and Gambia; and then after the dissolution of that Court by the Sierra Leone and Gambia Court of Appeal. Appeals from those Courts went to the Privy Council in the UK, the final Court of Appeal.

After Sir Samuel went up to the Court of Appeal, the next most senior High Court Judge, Mr. Justice C. Okoro E. Cole was appointed acting Chief Justice. Early in 1967, Justice Okoro Cole was removed as Acting Chief Justice and replaced by Dr. Gershon Collier.

The military took over political power in 1967 and formed the National Reformation Council (NRC). The NRC appointed the then Speaker of Parliament, Mr. (later, Sir) Banja Tejan-Sie, as Chief Justice. He remained until 18 April, 1968 when the NRC was overthrown by the army.

Justice Tejan-Sie oversaw the orderly transfer of power to Mr. (later, HE Dr.) Siaka Stevens 13 days later, and he became Acting Governor-General. Justice R. B. Marke was then appointed Acting Chief Justice but he died in August, 1968. Justice Okoro Cole was re-appointed acting Chief Justice, and later Chief Justice.

On 19 April, 1971 Sierra Leone became a Republic, and Justice Cole became its first ceremonial President. Mr. Siaka Stevens remained Prime Minister. Mr. Justice J. B. Marcus-Jones, then a Justice of Appeal was appointed Chief Justice. On 21st April, 1971 Mr. Stevens became 1st Executive President, and so Justice Cole reverted to his position as Chief Justice.

A Supreme Court was established as the final Court of Appeal. Appeals to the Privy Council were abolished. Thereafter, appointment to the office of Chief Justice no longer depended on one's seniority on the High Court Bench. As under the 1961 Independence Constitution, responsibility for judicial affairs rested with the political head, i.e. The President, and before that, the Prime Minister.

Just before the passing into law of the 1978 Constitution, an Act was passed to amend the 1971 Constitution. Responsibility for judicial affairs was transferred to the newly created office of Attorney-General and Minister of Justice. Between 1961 and April, 1971 the office of Attorney-General had been a public office.

As of 21 April, 1971 the holder became a Minister with Cabinet rank, though still not responsible for judicial affairs. After, 1978, the holder of the office was also given responsibility for judicial affairs.

The Judiciary under the one-party All People's Congress (APC) regime was progressively politicized and subsumed under government control: "The 1978 Republican Constitution combined the positions of the Office of Attorney General and Minister of Justice. The Attorney General/Minister of Justice is the principal legal adviser to the Government and the principal State Prosecutor, assisted by the Director of Public Prosecutions (DPP). Although the functions of Minister of Justice are not identified in the Constitution, the Minister is the official link between the Judiciary and Parliament/Cabinet and is responsible for judicial affairs."⁴²¹

Current Context

The Judiciary of Sierra Leone is established by Chapter XVI of the Constitution of Sierra Leone, 1991 with the Chief Justice as its head. All other Judges are subordinate to him. The 1991 Constitution set up the Superior Court of Judicature, composed of the Supreme Court of Sierra Leone, the Court of Appeal, and the High Court of Justice.

"The 1991 Constitution established the Judiciary as an independent third organ of government. The Chief Justice is the head of the Judiciary and is responsible for its effective and efficient administration. The working language of the Judiciary is English and local language interpreters are used when necessary. The formal Court System is comprised on the Magistrates Courts, the High Court, the Court of Appeal and the Supreme Court."⁴²²

The Supreme Court is the final Court of Appeal, and has exclusive jurisdiction to determine all questions relating to the interpretation of the Constitution. The next Court in order of seniority is the Court of Appeal. It has no original jurisdiction in the sense that no proceedings of whatever nature can be instituted in that Court. It can only hear appeals from the High Court, in cases decided by that Court at first instance, or, on appeal from the Magistrates' Courts.

⁴²¹ Sierra Leone World Bank Report, Judiciary page 5

⁴²² Sierra Leone World Bank Report, Judiciary page 5 para 2

The Supreme Court sits to hear cases which require final decision with a bench of five Justices maximum. All of them need not be substantive Justices of that Court: two of them could be Justices of Appeal. If the matter before the Supreme Court does not require a final decision of the Court, say for instance, interlocutory applications, such as an application for leave to file documents after the time for doing so has expired, three Judges can form a quorum. The party which loses the application could ask for that decision to be reviewed by the full bench of five Justices, and their decision is final.

The Court of Appeal is fully constituted for the hearing of appeals, with a bench of three Justices of Appeal. However, a single justice can preside over an application which does not require the final determination of an appeal. If a party is dissatisfied with that decision, it can apply to a full panel of three Justices for that decision to be reversed.

The High Court has original jurisdiction to hear and determine all civil claims save those which might involve the interpretation of a Constitutional provision. It also has jurisdiction to try serious criminal cases, i.e. generally speaking, cases which warrant sending the convicted person to a term of imprisonment exceeding five years.

Exceptionally, Magistrates' Courts, could try and determine cases which they believe could be punished with a maximum term of imprisonment of seven years; but those cases have to be started by way of preliminary investigation in the Magistrates' Courts, first, and only later can they be converted to trials in accordance with procedure laid down in the Criminal Procedure Act, 1965.

Magistrates' Courts are not provided for in the Constitution. They are established by the Courts' Act, 1965. They are described as inferior Courts - i.e. Courts subordinate to the High Court. Questions have been asked why this is so. The answer is tied up with our colonial past. In English legal history, the Common law Courts, such as the original Court of King's Bench (now the Queen's Bench Division - i.e. the present High Court) and the Court of Common Pleas, were the only Courts with jurisdiction to try criminal cases - cases dealing with the Common Law Offences. Magistrates' Courts were in later years established to deal with less serious offences which were entirely statutory.

This distinction between the two kinds of courts has been maintained in post-independence Sierra Leone. So, whilst all Judges are appointed by the President on the recommendation of the Judicial and Legal Service Commission by Warrant under his hand, Magistrates are recommended for appointment, but their appointment is done by the Human Resource Management Office.

The Judiciary cannot cope, and so cannot deliver justice, without inordinate delay with the present number of Judges. Presently, the public is crying out for Judges to sit in the different Districts and not just in the provincial headquarters as at present. In some places, ordinary people are asking why the Court of Appeal sits only in Freetown, and not in other places in the Provinces.

The Judicial and Legal Service Commission (JLSC) serves as an adviser to the Chief Justice, and is composed of the Chief Justice, the most Senior Justice of the Court of Appeal, the

Solicitor-General, a practicing litigator appointed by the president, the Chairman of the Public Service Commission, and two other individuals approved by the President and Parliament.

The primary function of the JLSC is to advise the Chief Justice when the “effective and efficient administration of the court” is in question⁴²³. This process is expedited by the creation of a Rules of Court Committee, which establishes and governs the tasks and rules of legal proceedings⁴²⁴.

A final noteworthy aspect of the Sierra Leonean judicial system is its Ombudsman and Commissions of Inquiry. As special offices of the Judiciary, they investigate cases concerning the government. The Ombudsman is charged with investigating any Ministry or Government department, corporations or institutions of higher learning, and any member of a public service agency. A Commission of Inquiry has power to enforce the attendance of witnesses and examine them on oath, and compel the production of documents as part of its inquiry into any matter referred to it. The report of a Commission of Inquiry must be published within six months of the conclusion of the Commission’s inquiry.

Under the present system there continues to be an office of Attorney-General and Minister of Justice, as introduced in the 1978 Constitution. The Attorney-General is the government’s legal advisor and is also responsible for judicial affairs.

Thus there is an inherent dichotomy within the 1991 Constitution as to who is ultimately responsible for the affairs, administration and supervision of the Judiciary.

“The 1991 Constitution combines the two positions to be held by one person. There are those who say that should not be the case. Those who hold that view argue that we cannot have the Attorney-General, who is the government’s legal adviser, also responsible for the administration of the judiciary.”⁴²⁵

10.3 Dimension of the Issues

Independence of the Judiciary, including financial autonomy

Appointment and removal of Judges and other judicial officers

Administration of Justice

Revision of the legal system

Increase in the number of Judges

Separation of powers between the Executive and the Judiciary

⁴²³ Section 140 of the 1991 Constitution

⁴²⁴ Section 145 of the 1991 Constitution

⁴²⁵ A Citizen’s position paper by the Campaign for Good Governance page 9, para 345

Alternative dispute resolution.

10.4 Theme - Establishment of the Judiciary

Current Context

Section 120(1), (4), and (9) of the 1991 Constitution state:

“**120.** (1) The Judicial power of Sierra Leone shall be vested in the Judiciary of which the Chief Justice shall be the Head.”

“(4) The Judicature shall consist of the Supreme Court of Sierra Leone, the Court of Appeal and the High Court of Justice which shall be the superior courts of record of Sierra Leone and which shall constitute one Superior Court of Judicature, and such other inferior and traditional courts as Parliament may by law establish.”

“(9) A Judge of the Superior Court of Judicature shall not be liable to any action or suit for any matter or thing done by him in the performance of his judicial functions.”

10.5 Observation

Section 120 consists of 16 subsections; the CRC reviewed only subsection (1), and identified the issue of the independence of the Judiciary.

The PTC Report made the following comment on sections 64(1) and 120(1):

“In the 1991 Constitution, section 120(1) simply states:

“The Judicial power of Sierra Leone shall be vested in the Judiciary of which the Chief Justice shall be the Head.”

Section 64(1) reads:

“There shall be an Attorney-General and Minister of Justice who shall be the principal legal adviser to the Government and a Minister.”

The purpose of the first recommendation in the PTC Report is to include the responsibilities of the Chief Justice as being the person responsible for the administration of the judiciary.

“**Proposed Amendment:** The Judicial power of Sierra Leone shall be vested in the Judiciary of which the Chief Justice shall be the Head **and shall be responsible for the administration and supervision thereof.**”⁴²⁶

⁴²⁶ PTCR page 59 para 109

This proposed amendment must be taken in tandem with the PTC Report recommendation in relation to section 64(1) of the 1991 Constitution:

“Section 64 of the 1991 Constitution reads:

There shall be an Attorney-General & Minister of Justice who shall be the principal legal adviser to the Government and a Minister;”

Proposed amendment:

(1) by the deletion of the words “Attorney-General and Minister of Justice” to be replaced by the word “Attorney-General”,⁴²⁷

These two amendments taken together would give authoritative and conclusive direction as to who ultimately is responsible for the Judiciary.

An expert opinion by Thomas W. Simon endorsed the addition to the section 120(1) of the phrase “and shall be responsible for the administration and supervision thereof.”⁴²⁸

The TRC commented that “for good governance to obtain, the three branches of government – the executive, the legislature and the judiciary - must be separate and independent of one another, and each must have the requisite power to fulfill its functions. The constitutional provisions that ensure the separation of powers must not merely exist on paper, but rather must be developed and reaffirmed continuously in their application. A failure to respect this separation inevitably allows one branch of government – most often the executive – to act in an unaccountable fashion and to influence or undermine the work of the other two.”⁴²⁹

The TRC went on to comment that: “the starting point in establishing the rule of law is the creation of an independent, impartial and autonomous judiciary.”⁴³⁰

Judicial independence the world over has been recognized as the touchstone of modern constitutionalism. The Law Reform Commission in its position paper on the issue of judicial independence highlighted the practice in several jurisdictions. The paper argued that the judiciary is the arm of government that provides checks and balances on the power and authority of the legislature and the executive branches of government, and is responsible for ensuring the protection of fundamental rights and freedoms, and dealing with violations of constitutional limits:

“It is therefore not uncommon that modern Constitutional reforms that have taken place in some other countries like Ghana, Kenya, Gambia, Uganda, to name a few, have brought in provisions

⁴²⁷ PTCR pages 39-40

⁴²⁸ Thomas W Simon, American Bar Association page 154

⁴²⁹ TRC Report Volume III page 43

⁴³⁰ TRC Report Volume II Chapter 3

to strengthen and enhance the independence of the judiciary to make it more responsive, effective and impartial in the performance of its constitutional mandate.”⁴³¹

During the nationwide public consultations, there was an overwhelming recommendation that the Judiciary should be free from interference. The majority of participants stated that: “the Judiciary should be free from all forms of internal and external interference, they must have all their finances and logistics in order to operate independently.”

Stakeholders also recommended that it was imperative to ensure the independence of the judiciary:

The Sierra Leone Labour Congress (SLLC) in its position paper commented on section 120(16) of the 1991 Constitution, which makes provision for the delivery of judgments within 3 months of final arguments and addresses - the SLLC believes that the timeframe is sufficient⁴³².

The SLLC also commented on section 120(3) of the 1991 Constitution and recommended that: “the Minister of Justice is not the head of the Judiciary and must not have any control over the Judiciary. He is part of the Executive branch and seats in Cabinet. In order to maintain the independence of the Judiciary, the Minister of Justice must not have any control over the Judiciary. The Head of the Judiciary is the Chief Justice and must not hold a political office.”⁴³³

The Sierra Leone Women’s position paper “Many Messages, One Voice”, and also Oxfam in collaboration with the 50-50 group, in their position papers echoed similar concerns in relation to the independence of the Judiciary. They recommended: “to abolish the office of Minister of Justice who appears to direct or supervise the Chief Justice and the Judiciary as this gives the impression that the Judiciary is NOT an Independent arm of the State and raises concerns about lack of separation of the three arms of government”.⁴³⁴

The Sierra Leone Women also stated that: “no minister to be appointed to be in charge of the Court Judges; this is to ensure Judicial Independence and Impartiality”, and argued that to ensure independent and impartiality of the Judiciary, no Minister should be in charge of the Court Judges.⁴³⁵

During the consultation process with the youths, they called for the separation of the office of the Attorney-General and the Minister of Justice.⁴³⁶

The Governance Stakeholders’ Coordination Forum (GSCF) in their position paper stated that:

“The current weak governance is due to ineffective Separation of Powers between the three arms of Government and an ‘Overmighty’ Executive. The President, through his powers to

⁴³¹ Law Reform Commission position paper

⁴³² SLLC position paper page 10

⁴³³ SLLC position paper page 12

⁴³⁴ Sierra Leone Women’s position paper “Many Messages, One Voice” page 14

⁴³⁵ Political Parties Engagement with CRC Report page 9 para 6

⁴³⁶ Youth Engagement with CRC 24th Feb 2016 page 4 para 5

appoint MPs as ministers and also temporary judges without parliamentary approval, can exercise undue influence over the legislature and the judiciary.

Moreover, the current merger of the office of the Attorney-General with the Minister of Justice lays the judiciary open to interference by the executive branch and undermines the cardinal legal principle of the independence of the judiciary. This unsatisfactory state of affairs could be remedied by at least three major changes in the current constitutional position”.

The GSCF went on to recommend that:

“The office of the Attorney-General (AG) should be separated from that of the Minister of Justice, thus removing scope for interference by the Executive in the judiciary. This is also a TRC recommendation. The PTRC proposal is for the Attorney-General to become a public officer appointed (subject to parliamentary approval), on the advice of the Judicial and Legal Service Commission while the Minister of Justice is a political appointment.

However this proposal would still leave the judiciary subject to the political control of the Minister of Justice and continue to undermine judicial independence and separation from the executive. An alternative would be to eliminate the office of Minister of Justice and leave the Attorney General as ‘principal legal adviser to the Government and a Minister’. If this happened there would be no minister with power and responsibility to supervise the judges and thus political influence from the executive branch would be reduced.”⁴³⁷

The CRC received many submissions in relation to ensuring a clear separation of power between the Judiciary and any other branches of the government, in particular the Executive which appeared to retain some power over the judiciary under section 64(1).

The All Political Parties Women’s Association (APPWA) also made a firm statement relating to ensuring appropriate line management and authority over the Judiciary.

During the public consultations it was remarked: “delay in the administration of justice was attributed to a number of factors including interference into the activities of the Court by the Executive arm of Government.”⁴³⁸

The CRC noted that in order to reach a conclusive position on control of the Judiciary, the anomaly within the 1991 Constitution needed to be addressed in conjunction with the due allocation of responsibility, control and accountability for the judiciary. These needed to be stated in absolute terms within the revised Constitution.

Greg Robbins, a public and human rights lawyer from New Zealand, in his expert paper noted that the 1991 Constitution has a strong commitment to an independent and impartial Judiciary and court system through the right to:

- Protection of the law (s 15(a));

⁴³⁷ GSCF position paper pages 29-30

⁴³⁸ Summary Report of Public Consultations by the CRC 2015 page 15

- A fair hearing through independent and impartial courts (s 23(1) and (2)); and
- A judiciary that is not subject to control or direction by any other person or authority (s 120(3)).

Stakeholders submitted that the role of the Attorney-General was to prosecute Government matters, state offences and provide legal support to people who cannot afford the service of a lawyer to defend them in Court and that he should have no interlinking role in the judiciary as that could create a conflict of interest.⁴³⁹

The National Commission for Democracy (NCD) stated that the Court administration should have executive control of vital state resources needed for administration of the Judiciary. To promote the management and administration of justice, the Judiciary and other justice sector MDAs should adopt a self-accounting system.⁴⁴⁰

The NCD recommended that the constitutional provision with regard to the establishment of the Judiciary endorses the amendment to include a statement as recommended in the PTC Report as this will enhance and preserve the independent operation of the judiciary. The CRC recognised that this should be amended simultaneously with the proposed changes removing any role for the Ministry of Justice in relation to the administration or supervision of the Judiciary

10.6 Recommendation

After examining the recommendations made in the PTC Report, and taking into account all expert opinions as well as the overwhelming demands from the people through their position papers and responses from the public consultation exercises, the CRC acknowledged that in order to establish an independent Judiciary there must be a clear line of control in the administrative, financial, and supervisory aspects of judicial power, and responsibility for the Judiciary must be vested in one individual to enhance accountability.

The CRC therefore proposes the following amendment to section 120(1), and minor amendments to subsections (4) and (9) of Constitution:

“Establishment of the Judiciary

120. (1) The Judicial power of Sierra Leone shall be vested in the Judiciary of which the Chief Justice shall be the Head **and shall be responsible for the administrative, financial, and supervisory aspects thereof”.**

“(4) The Judicature shall consist of the Supreme Court of Sierra Leone, the Court of Appeal and the High Court of Justice which shall be the superior courts of record of Sierra Leone and which shall constitute one Superior Court of Judicature, and such other **subordinate** and traditional courts as Parliament may by law establish.”

⁴³⁹ Summary report of the Public Consultations of the CRC page 17

⁴⁴⁰ NCD position paper pages 7 and 8

“(9) A **Justice or** Judge of the Superior Court of Judicature shall not be liable to any action or suit for any matter or thing done by him/her in the performance of his/her judicial functions.”

10.7 Theme - Composition of the Supreme Court

Current Context

Section 121(1) and (3) of the 1991 Constitution state:

“**121.** (1) The Supreme Court shall consist of—

- (a) the Chief Justice;
- (b) not less than four other Justices of the Supreme Court; and
- (c) such other Justices of the Superior Court of Judicature or of Superior Courts in any State practising a body of law similar to Sierra Leone, not being more in number than the number of Justices of the Supreme Court sitting as such, as the Chief Justice may, for the determination of any particular cause or matter by writing under his hand, request to sit in the Supreme Court for such period as the Chief Justice may specify or until the request is withdrawn.”

“(3) The Chief Justice shall preside at the sittings of the Supreme Court and in his absence the most senior of the Justices of the Supreme Court as constituted for the time being shall preside.”

Observation

The CRC reviewed the section and recommended that the number of judges in the Supreme Court should be increased from four to seven to ensure effective and timely delivery of justice.

The PTC Report proposed amending section 121 to increase the number of Judges of the Supreme Court to seven as the four judges currently stated in the 1991 Constitution is insufficient.

Under section 120(16) of the 1991 Constitution, a judgment must be made within three months of the conclusion of the hearing, but delays occur routinely due to the shortage of judges and other constraints, such as heavy caseloads and poor conditions of service.

There are no stenographers in the Judiciary. Although all courts are courts of record, even at the Supreme Court Level judges have to prepare the transcripts of each hearing in longhand. This system slows the work of the courts as magistrates and judges essentially take dictation from witnesses and barristers.⁴⁴¹

⁴⁴¹ In Pursuit of Justice – A report on the judiciary in Sierra Leone, Commonwealth Human right initiative 2002

The International Legal Resource Centre/American Bar Association expert review paper on the 1991 Constitution endorsed the suggestion of increasing the number of Justices of the Supreme Court from “not less than four” to “not less than seven”, as recommended in the PTC Report. The paper suggested that section 121(1)(b) should be altered to read “not more than [a given number]” regardless of the number four or seven or any other precise number of judicial seats⁴⁴².

Although improvements in the court infrastructure have been made, Greg Robbins believes that delays in the civil justice system are still pervasive.⁴⁴³

The Law Reform Commission stated that the recruitment of more judges will mean that they will be able to diversify and preside over specialized courts such as land tribunals.

The Sierra Leone Labour Congress (SLLC) in its position paper commented on the issue of undue delay of justice. They recommended that the State should appoint additional magistrates and judges, remove the police’s prosecution powers, and mandate government lawyers to deal with prosecution, and employ more state counsels.

The SLLC further stated that: “low/poor remuneration and salary and poor conditions workers in the Judiciary leads to undue delay of justice and hence recommended that: “to improve on the conditions of service and increase remuneration and salary of all workers in the Judiciary and Benchers.”

The Centre for Accountability and Rule of Law (CARL) in its position paper disagreed with the PTC Report proposal to amend section 121 to provide for seven judges of the Supreme Court instead of the current four: “CARL would support the oral submissions by the former Chief Justice that it is already difficult to get the current number of Judges to sit, and that the problem is one of competence not numbers. It would not, in the opinion of CARL, assist the caliber of Judicial reasoning to increase the numbers required to sit, and would merely add an extra burden and cause unnecessary delay to cases, and as such it is recommended that there be no change to the current section.”⁴⁴⁴

During the Western Area consultations, the majority of the participants recommended that in order to ensure effective justice delivery the number of judges and magistrates must be increased to avoid undue delay of justice.

The CRC recommended that the number of Judges should be increased as follows: Supreme Court, 7; Court of Appeal, 9; High Court, 15.

⁴⁴² ILRC/ABA Expert review paper pages 155-156

⁴⁴³ Greg Robbins – Review of the Constitution of Sierra Leone 1991

⁴⁴⁴ CARL’s position paper page 14

10.8 Recommendation

The CRC considered the majority view that the number of Judges should be increased due to the increase in litigation. There needs to be adequate judicial personnel such as Judges and Magistrates to manage caseloads in the courts and so uphold the integrity of the court system.

The CRC recommends that the number of Judges in the Supreme Court should be increased to not less than seven, and therefore section 121(1) should read as follows.

“**121.** (1) The Supreme Court shall consist of—

- (a) the Chief Justice;
- (b) not less than **seven** other Justices of the Supreme Court; and
- (c) such other Justices of the Superior Court of Judicature or of Superior Courts in any State practising a body of law similar to Sierra Leone, not being more in number than the number of Justices of the Supreme Court sitting as such, as the Chief Justice may, for the determination of any particular cause or matter by writing under his hand, request to sit in the Supreme Court for such period as the Chief Justice may specify or until the request is withdrawn.”

In addition, the CRC recommends the following amendment to subsection (3):

“(3) The Chief Justice shall preside at the sittings of the Supreme Court and in his/her absence the most senior of the Justices of the Supreme Court, **not including such Justices as are appointed under Section 121(1)(c)**, as constituted for the time being shall preside.”

10.9 Theme – Jurisdiction of the Supreme Court

Current Context

Section 122 of the 1991 Constitution states:

“**122.** (1) The Supreme Court shall be the final court of appeal in and for Sierra Leone and shall have such appellate and other jurisdiction as may be conferred upon it by this Constitution or any other law:

Provided that notwithstanding any law to the contrary, the President may refer any Petition in which he has to give a final decision to the Supreme Court for a judicial opinion.

- (2) The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears right so to do; and all other Courts shall be bound to follow the decision of the Supreme Court on questions of law.
- (3) For the purposes the hearing and determining any matter within its jurisdiction and the amendment, execution or the enforcement of any judgement or order made on any such matter, and for the purposes of any other authority, expressly or by necessary implication given to it, the Supreme

Court shall have all the powers, authority and jurisdiction vested in any Court established by this Constitution or any other law.”

10.10 Recommendation

The CRC recommends that the proviso to section 122(1) should be enlarged to make further provision for the circumstances in which a matter may be referred to the Supreme Court. Section 122(1) should therefore be amended as follows:

“**122.** (1) The Supreme Court shall be the final court of appeal in and for Sierra Leone and shall have such appellate and other jurisdiction as may be conferred upon it by this Constitution or any other law:

Provided that:

- (i) Notwithstanding any law to the contrary, the President may refer any Petition in which he has to give a final decision to the Supreme Court for a judicial opinion.
- (ii) **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 a judicial opinion.**

(4) The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears right so to do; and all other Courts shall be bound to follow the decisions of the Supreme Court on questions of law.

(5) For the purposes the hearing and the determination of any matter within its jurisdiction and the amendment, execution or the enforcement of any judgement or order made on any such matter, and for the purposes of any other authority, expressly or by necessary implication given to it, the Supreme Court shall have all the powers, authority and jurisdiction vested in any Court established by this Constitution or any other law.”

10.11 Theme - Appeals to the Supreme Court

Current Context

The section 123(1) of the 1991 Constitution states:

“**123.** (1) An appeal shall lie from a judgment, decree or order of the Court of Appeal to the Supreme Court—

- (a) as of right, in an civil cause or matter;

(b) as of right, in any criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgement, decree or order of the High Court of Justice in the exercise of its original jurisdiction or from a judgement of a Court Martial; or

(c) with leave of the Court of Appeal in any criminal cause or matter, where the Court of Appeal is satisfied that the case involves a substantial question of law or is of public importance.”

Observation

Issue – Court of Appeal power to hear cases from Court Martial

The CRC was of the opinion that the Court of Appeal should hear cases from military courts.

The PTC Report proposed amending section 123(1)(b) “by the deletion of the words "In the exercise of its original jurisdiction" and the insertion of the words "or Court Martial”.⁴⁴⁵

In The International Legal Resource Centre/American Bar Association expert review paper, two experts recommended adopting the PTC Report proposal to remove the requirement that a case taken on appeal must arise under the High Court’s original jurisdiction. This change supports appeals being taken from any court. One of the experts also recommended adding the words “*or Court-Martial,*” to section 123(1)(b) to allow the Court of Appeal to hear cases from military courts⁴⁴⁶.

The CRC recognised the importance of the right of appeal being included in the Constitution for all court hearings, which includes both civilian and military courts.

The right to a fair trial and due process in the law is a fundamental human right that needs to be upheld as a cornerstone of democracy.

10.12 Recommendation

The CRC therefore recommends amending section 123(1) and (1)(b) to add the phrase “or from a judgment of a Court Martial”. The sub-section should therefore read as follows:-

“123. (1) An appeal shall lie from a judgment, decree or order of the Court of Appeal or from a judgment of a Court Martial to the Supreme Court—

(a) as of right, in an civil cause or matter;

⁴⁴⁵ PTC Report page 60 para 113

⁴⁴⁶ ILRC/ABA expert review paper page 75

(b) as of right, in any criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment, decree or order of the High Court of Justice in the exercise of its original jurisdiction **or from a judgment of a Court Martial;** or

(c) with leave of the Court of Appeal in any criminal cause or matter, where the Court of Appeal is satisfied that the case involves a substantial question of law or is of public importance.”

Subsection (2) remains the same.

10.13 Theme - Enforcement of the Constitution

Current Context

Section 127 of the 1991 Constitution states:

“**127.** (1) A person who alleges that an enactment or anything contained in or done under the authority of that or any other enactment is inconsistent with, or is in contravention of a provision of this Constitution, may at any time bring an action in the Supreme Court for a declaration to that effect.

(2) The Supreme Court shall, for the purposes of a declaration under subsection (1), make such orders and give such directions as it may consider appropriate for giving effect to, or enabling effect to be given to, the declaration so made.

(3) Any person to whom an order or direction is addressed under subsection (1) by the Supreme Court shall duly obey and carry out the terms of the order or direction.

(4) Failure to obey or to carry out the terms of an order or direction made or given under subsection (1) shall constitute a crime under this Constitution.”

Observation

The International Legal Resource Centre/American Bar Association expert review paper on the 1991 Constitution suggested deleting section 127(4), as proposed in the PTC Report. The paper noted that a “*failure to obey*” is vague wording, and carries with it an unnecessary penalty since the contempt powers are adequate to deal with the matter. The paper also suggested that the crime be specified more clearly⁴⁴⁷.

There is a major challenge when it comes to the enforcement of the constitution in Sierra Leone; several people have been calling on the government to ensure that the constitution is followed to the letter without no fear or favour.

⁴⁴⁷ ILRC/ABA expert review paper page 76

The CRC considered the position paper of Mr. Owen Kai Combey in relation to enforcement of the Constitution. He stated that: “a new legal and administrative instrument to be known as “the Constitutional Courts of Sierra Leone” be established in our new constitution. The new Constitutional Court should be made to enjoy exclusive and final jurisdiction over constitutional matters that are referred to it. Such an institution is very important because our public officers should begin to learn that the use of public authority, including legislative and executive authorities, are lawful only in so far as they conform with the constitutional laws of the land.

Thus, the judges of the Constitutional Court Salone should be able to invalidate a law or an act of public authority as unconstitutional, while the ‘ordinary courts (the non-constitutional courts) should be prohibited from doing so. The Constitutional court in turn should not preside over others litigations, which should remain the function of other judges. The Supreme Court, on the other hand, will remain a court of ‘general jurisdiction’ and the highest court of appeal for all disputes about rights in the land. It is expected that the implementation of such a system will not only expedite justice delivery in our country, but will also increase public confidence in the activities of the Judiciary.”⁴⁴⁸

The Centre for Accountability and Rule of Law (CARL) in its position paper commented on section 124 of the 1991 Constitution: “the Supreme Court is the arbiter of all constitutional matters, but the TRC Report recommends that serious consideration be given to extending constitutional jurisdiction to other courts making up the judicature, namely the High Courts of Justice and the Court of Appeal. While CARL appreciates this recommendation, however, it strongly recommends the setting up of a separate Constitutional Court to arbitrate all constitutional matters as this would contribute to the development of a more vibrant constitutional jurisprudence in Sierra Leone. This would, therefore, require an amendment to section 124 of the Constitution.”⁴⁴⁹

10.14 Recommendation

CRC recommends that section 127(4) be replaced, as follows:-

“(4) The Supreme Court shall treat or deal with failure to obey or to 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.”

10.15 Theme - Composition of the Court of Appeal

Current Context

Section 128 of the 1991 Constitution states:

⁴⁴⁸ Mr. Owen Kai Combey’s position paper part II page 3

⁴⁴⁹ CARL’s position paper page 14

“128. (1) The Court of Appeal shall consist of—

- (a) The Chief Justice;
 - (b) not less than seven Justices of the Court of Appeal; and
 - (c) such other Justices of the Superior Court of Judicature as the Chief Justice may, for the determination of any particular cause or matter by writing under his hand, request to sit in the Court of Appeal for such period as the Chief Justice may specify or until the request is withdrawn.
- (2) 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.
- (3) Subject to the provisions of subsection (1) and (2) of section 122 of this Constitution, the Court of Appeal shall be bound by its own previous decisions and all Courts inferior to the Court of Appeal shall be bound to follow the decisions of the Court of Appeal on questions of law.
- (5) Parliament may create such Divisions of the Court of Appeal as it may consider necessary—
- (a) consisting of such number of Justices as may be assigned thereto by the Chief Justice;
 - (b) sitting at such places in Sierra Leone as the Chief Justice may determine; and
 - (c) presided over by the most senior of the Justices of the Court of Appeal constituting the Court.”

Observation

The CRC recommended that the number of judges in the Court of Appeal should be increased from seven to nine to ensure effective and timely delivery of justice.

The ILRC/ABA expert review paper on the 1991 Constitution referred to the comments made and changes proposed with respect to section 121(1)(b) and (c), so as to specify a maximum number of judges, rather than a minimum.

The paper also proposed adopting the recommendation of the PTC Report to change the number of judges from seven to nine. The paper commented that this change would leave a total of ten judges, and could therefore result in split decisions.

The CRC endorsed the majority view that the number of Judges should be increased due to the increase in litigation. There needs to be an adequate system of judicial personnel such as judges and magistrates to manage caseloads in the courts so as to uphold the integrity of the court system.

10.16 Recommendation

The CRC recommends that the number of judges should be increased from seven to nine.

Section 128 should be amended as follows:

”**128.** (1) The Court of Appeal shall consist of—

- (a) The Chief Justice;
 - (b) not less than **nine** Justices of the Court of Appeal; and
 - (c) such other Justices of the Superior Court of Judicature as the Chief Justice may, for the determination of any particular cause or matter by writing under his/her hand, request to sit in the Court of Appeal for such period as the Chief Justice may specify or until the request is withdrawn.
- (2) 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.**
- (3) Subject to the provisions of subsection (1) and (2) of section 122 of this Constitution, the Court of Appeal shall be bound by its own previous decisions and all Courts inferior to the Court of Appeal shall be bound to follow the decisions of the Court of Appeal on questions of law.
- (4) The **Chief Justice** shall by **Statutory Instrument** create such Divisions of the Court of Appeal as she/he may consider necessary—
- a) consisting of such number of Justices as may be assigned thereto by the Chief Justice
 - b) sitting at such places in Sierra Leone as the Chief Justice may determine; and
 - c) 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.**

10.17 Theme - Jurisdiction of the Court of Appeal

Current Context

Section 129(2) of the 1991 Constitution states:

“(2) Save as otherwise provided in this Constitution or any other law, an appeal shall lie as of right from a judgement, decree or order of the High Court of Justice to the Court of Appeal in any cause or matter determined by the High Court of Justice.”

10.18 Recommendation

The CRC recommends that section 129(2) should be amended as follows to add a reference to the Court Martial in order to be consistent with section 123:

“(2) Save as otherwise provided in this Constitution or any other law, an appeal shall lie as of right from a judgement, decree or order of the High Court of Justice **or of a Court Martial** to the Court of Appeal in any cause or matter determined by the High Court of Justice **or the Court Martial.**”

10.19 Theme - Composition of the High Court

Current Context

Section 131(1) of the 1991 Constitution states:

“**131.** (1) The High Court of Justice shall consist of—

- (a) the Chief Justice;
- (b) not less than nine High Court Judges; and
- (c) such other Judges of the Superior Court of Judicature as the Chief Justice may, for the determination of any particular cause or matter, by writing under his hand request to sit in the High Court of Justice for such period as the Chief Justice may specify or until the request is withdrawn.”

Observation

The ILRC/ABA expert review paper on the 1991 Constitution noted that the concerns expressed about the number of judges in the Court of Appeal and the Supreme Court did not apply to the High Court because High Court judges sit alone. However, additional High Court judges may be needed to deal with the volume of cases in the High Court.

The paper therefore proposed that section 131(1)(b) of the 1991 Constitution could be amended to read:

“Not less than nine High Court Judges the number of judges prescribed by an Act of Parliament.”⁴⁵⁰

⁴⁵⁰ ILRC/ABA Expert review paper page 77

10.20 Recommendation

The CRC endorses the majority view that the number of High Court Judges should be increased due to the increase in litigation. There needs to be an adequate system of judicial personnel such as judges and magistrates to manage caseloads in the courts so as to uphold the integrity of the court system.

The number of High Court judges should not be less than 15, and so section 131(1) should be amended to read as follows:

“**131.** (1) The High Court of Justice shall consist of—

- (a) the Chief Justice;
- (b) not less than **fifteen** High Court Judges; and
- (c) such other Judges of the Superior Court of Judicature as the Chief Justice may, for the determination of any particular cause or matter, by writing under his/her hand request to sit in the High Court of Justice for such period as the Chief Justice may specify or until the request is withdrawn.”

10.21 Theme - Jurisdiction of the High Court

Current Context

Section 132 of the 1991 Constitution states:

“**132. (1)** The High Court of Justice shall have jurisdiction in civil and criminal matters and such other original appellate and other jurisdiction as may be conferred upon it by this Constitution or any other law.

(2) The High Court of Justice shall have jurisdiction to determine any matter relating to industrial and labour disputes and administrative complaints.

(3) Parliament shall, by an Act of Parliament, make provision for the exercise of the jurisdiction conferred on the High Court of Justice by the provisions of the immediately preceding subsection.

(4) For the purposes of hearing and determining an appeal within its jurisdiction and the amendment, execution or the enforcement of any judgement 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 from which the appeal is brought.

(5) Any Judge of the High Court of Justice may, in accordance with the Rules of Court made in that behalf, exercise in Court or in Chambers all or any part of the jurisdiction vested in the High Court of Justice by this Constitution or any other law.”

Observation

The ILRC/ABA expert review paper on the 1991 Constitution recommended that the High Court should have “unlimited and original” jurisdiction in the matters specified under Subsection 132 (1). The paper commented that this would increase access to justice under Chapter IV of the Constitution.⁴⁵¹

10.22 Recommendation

The CRC therefore recommends that the word “original” in section 132(1) should be deleted and that amendments be made to subsections (2) and (3), as follows:

“**132.** (1) The High Court of Justice shall have jurisdiction in civil and criminal matters and such other appellate and other jurisdiction as may be conferred upon it by this Constitution or any other law.”

(10) 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.**

(11) 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.”

10.23 Theme - Supervisory Jurisdiction of the High Court

Current Context

Section 134 of the 1991 Constitution states:

”**134.** The High Court of Justice shall have supervisory jurisdiction over all inferior and traditional Courts in Sierra Leone and any adjudicating authority, and in the exercise of its supervisory jurisdiction shall have power to issue such directions, writs and orders, including writs of *habeas corpus*, and orders of *certiorari*, *mandamus* and *prohibition* as it may consider appropriate for the purposes of enforcing or securing the enforcement of its supervisory powers.”

⁴⁵¹ ILRC/ABA expert review paper page 78

10.24 Recommendation

The word “inferior” should be deleted and replaced with “subordinate”.

The CRC recommends deleting the word “inferior” and replacing it with “subordinate” as it is more appropriate. Section 134 should therefore be amended to read:

“Supervisory jurisdiction of the High Court:

134. The High Court of Justice shall have supervisory jurisdiction over all **subordinate** and traditional Courts in Sierra Leone and any adjudicating authority, and in the exercise of its supervisory jurisdiction shall have power to issue such directions, writs and orders, including writs of habeas corpus, and orders of certiorari, mandamus and prohibition as it may consider appropriate for the purposes of enforcing or securing the enforcement of its supervisory powers.”

10.25 Theme - Appointment of Judges

Current Context

Section 135 of the 1991 Constitution states:

“**135.** (1) The President shall, acting on the advice of the Judicial and Legal Service Commission and subject to the approval of Parliament, appoint the Chief Justice by warrant under his hand from among persons qualified to hold office as Justice of the Supreme Court.

(2) The other Judges of the Superior Court of Judicature shall be appointed by the President by warrant under his hand acting on the advice of the Judicial and Legal Service Commission and subject to the approval of Parliament.

(3) A person shall not be qualified for appointment as a Judge of the Superior Court of Judicature, unless he is entitled to practise as Counsel in a Court having unlimited jurisdiction in civil and criminal matters in Sierra Leone or any other country having a system of law analogous to that of Sierra Leone and approved by the Judicial and Legal Service Commission, and has been entitled as such Counsel in the case of appointment to—

- (a) the Supreme Court, for not less than twenty years;
- (b) the Court of Appeal, for not less than fifteen years;
- (c) the High Court of Justice, for not less than ten years.

(4) For the purposes of subsection (3), a person shall be regarded as entitled to practise as Counsel if 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.

(5) For the purposes of this section, a person shall not be regarded as not being entitled to practise in a court by reason only that he is precluded from doing so by virtue of his holding or acting in any office. “

10.26 Observation

To ensure separation of powers between the Executive and the Judiciary, the CRC was informed by many position papers and experts. An open and impartial appointment system would ensure the independence of the Judiciary. In addition, the Judicial and Legal Service Commission should, subject to the approval of Parliament, appoint the Chief Justice from among persons qualified to hold office as Justice of the Supreme Court

Citing article 166(2)(c) of the Kenya Constitution 2010, the ILRC/ABA expert review paper on the 1991 Constitution recommended adding a new subsection (6), as follows:

“(6) Any person appointed as a Judge of the Superior Court of Judicature must have a high moral character, integrity and impartiality.”

The paper further commented that section 135(3) is too restrictive and so sections 135(3)(a) to (c) should be deleted. He further recommended deleting the provision in 135(3) that allows a person to be eligible to be appointed as a judge if he is entitled to practice as Counsel in another country.

The appointment of judges during the one-party rule under the All People’s Congress (APC) was highly politicized. It was used as a key patronage tool and the judicial ranks were filled with loyal members of the APC party. The system of ‘self-accounting’ used by the Judiciary, which enabled it to use the income it received for services provided to fund its operations, was abandoned in the 1970s and the Judiciary became wholly financially dependent by the Ministry of Finance which controlled the Consolidated Fund. The Attorney-General was given powers over ‘judicial affairs’ in 1978.⁴⁵²

Section 135 (1) of the 1991 Constitution provides that judges, including the Chief Justice, are appointed by the President acting on the advice of the Judicial and Legal Service Commission and subject to Parliamentary approval.

Section 135(3) states that a person shall not be qualified to be appointed as a Judge of the Superior Court of Judicature, “unless he is entitled to practice as Counsel in a Court having unlimited jurisdiction in civil and criminal matters in Sierra Leone or any other country having a system of law analogous to that of Sierra Leone and has been entitled as such Counsel in the case of appointment to—(a) the Supreme Court, for not less than twenty years; (b) the Court of Appeal, for not less than fifteen years; (c) the High Court of Justice, for not less than ten years.”

⁴⁵² HRCSL position paper page 11 para 34

The Law Reform Commission in its position paper suggested that there are an insufficient number of judicial officers. The Commission recommended that the conditions of service for judges should be improved so as to make the Bench more attractive.⁴⁵³

The HRCSL made a recommendation for the qualifications of judges to be increased to ensure a broader pool from which members of the Judiciary are recruited.

The Sierra Leone Labour Congress (SLLC) in its position paper supported the current procedure under section 135 whereby the President appoints all Judges, including the Chief Justice, acting on the advice of the Judicial and Legal Service Commission and subject to the approval of Parliament.

The SLLC agreed that the removal of any Judge including the Chief Justice must be done by the President who, acting in consultation with the Judicial and the Legal Service Commission, must appoint a Tribunal consisting of three persons qualified to hold office as Supreme Court Judge and two members of the public. If there is a decision to remove the judge then his removal must be approved by a two-third majority in Parliament.⁴⁵⁴

The SLLC went on to further state that: “The current provision in the 1991 Constitution in relation to appointment or removal of judges is transparent as it is made public and Parliament will have to approve the appointment or removal. And that all judges of the Superior Court of Justice must be subjected to final approval by Parliament.”⁴⁵⁵

The SLLC also recommended that more State Counsels be assigned to carry out pro-bono work for members of the public who cannot afford lawyers.⁴⁵⁶

The SLLC further noted that corruption and political interference are factors that lead to undue delay of justice and recommended that: “the judiciary be hard on corrupt practices and prosecute all offenders. The Judiciary must be independent and be seen to be very independent from the other branches and must be respected.”⁴⁵⁷

Section 231 of the 1999 Constitution of Nigeria provides that for the President to appoint the Chief Justice and other Justices, based on the recommendation of the National Judicial Council subject to the confirmation of such appointment by the Senate.

Under the 1992 Constitution of Ghana, the Chief Justice is appointed by the President acting in consultation with the Council of State and with the approval of Parliament. Judges of the Supreme Court of Ghana are appointed by the President acting on the advice of the Judicial Council, in consultation with the Council of State and approval of Parliament. The current status in Sierra Leone is that only the JLSC is consulted in the appointment of the Chief Justice and all other judges of the Superior Courts of Judicature.

⁴⁵³ Law Reform Commission position paper

⁴⁵⁴ SLLC position paper page 9

⁴⁵⁵ SLLC position paper page 9

⁴⁵⁶ SLLC position paper pages 9-10

⁴⁵⁷ SLLC position paper pages 9-10

During the nationwide consultations in 2015, there was an overwhelming consensus that the Judiciary should be completely independent. They recommended that the appointment, removal and approval of Judges and other judicial officers, should be done by an independent committee/body and not by the President. As to which body should perform such function, the majority of the stakeholders suggested the JLSC. However, they added that the decision of this Commission must be subject to approval by Parliament.⁴⁵⁸

In 2016, during the validation of the draft CRC report, stakeholders and the general public recommended that the Executive should play a role in the appointment of Judges, but that the JLSC should nominate Judges.⁴⁵⁹

In an individual submission, Mr. Owen Kai Combey commented that: “the function of appointing members of the Superior Judicature of the Republic should be exclusively reserved for the Judicial and Legal Service Commission, while the President, just like the Monarchy in the British System of Government, only performs a ceremonial function therein. But empowering the President, who is the Head of the Executive Organ of Government, to appoint members of the third organ of government, is not only an abuse of the Principles of Separation of Powers, but also a recipe for producing a highly compromised Judiciary – as has more often than not been the case in the constitutional history of our beautiful country”!

He further stated that: “in a similar vein, the powers of the President to hire and fire members of other state agencies and departments should be seriously circumscribed. In my considered opinion, there should be a significant role for an independent body, such as the Public Service Commission, in such appointments. Otherwise, the independence and integrity of the different office holders will always be at the whims and caprices of the President, which is not good for an effective democracy.”⁴⁶⁰

However, trends in the West Africa region and many other democracies demonstrate that the President, as the chief executive, has a role to play in the appointment of Judges. To ensure transparency, the JLSC follows a procedure set in the Constitution and relevant legislation. The CRC therefore recommended that section 135(3) should remain the same.

10.27 Recommendation

The CRC debated on the issue of the appointment of Judges, and recognised that it is the responsibility of the Executive and the JLSC to ensure that the perception about Executive interference in the appointment of Judges is addressed. The CRC also took into consideration the public view on the need for transparency and impartiality in appointing Judges so as to improve public trust in the appointment of Judges.

⁴⁵⁸ Summary Report on the Public Consultations

⁴⁵⁹ CRC validation report 2016

⁴⁶⁰ Mr. Owen Kai Combey’s position paper part I page 10

The CRC therefore recommends that section 135(1), (2), (3), and (5) should remain the same, and that a minor amendment be made to section 135(4), as follows:-

“(4) 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.**”

10.28 Theme - Judicial Vacancies

Current Context

“**136.** (1) Where the office of the Chief Justice is vacant or if the Chief Justice is for any reason unable to perform the functions of his office, then—

- (a) until a person has been appointed to and has assumed the functions of that office; or
- (b) Until the person holding that office has resumed the functions of that office, as the case may be, those functions shall be performed by the most senior for the time being of the Justices of the Supreme Court.

(2) Where the office of a Judge of the High Court is vacant or for any reason a Judge thereof is unable to perform the functions of his office or if the Chief Justice advises the President that the state or business in the High Court of Justice so requires, the President may, acting in accordance with the advice of the Judicial and Legal Service Commission, appoint a person who has held office as, or a person qualified for appointment as, a Judge of the Superior Court of Judicature to act as a Judge of the High Court of Justice, notwithstanding the fact that he has already attained the retiring age prescribed by section 137.

(3) Any person appointed under the provisions of subsection (2) of this section to act as a Judge of the High Court of Justice shall continue to act for the period of his appointment or if no such period is specified until his appointment is revoked by the President, acting in accordance with the advice of the Judicial and Legal Service Commission.

(4) Where the office of a Justice of the Supreme Court or of the Court of Appeal is vacant or for any reason a Justice thereof is unable to perform the functions of his office or if the Chief Justice advises the President that the state of business in the Supreme Court or in the Court of Appeal, as the case may be, so requires the President may, acting in accordance with the advice of the Judicial and Legal Service Commission, appoint a person who has held office as or a person qualified for appointment as a Judge of the Superior Court of Judicature to act as a Justice of the Supreme Court or of the Court of Appeal, as the case may be, notwithstanding the fact that he has already attained the retiring age prescribed by section 137.

(5) Any person appointed under the provisions of subsection (4) of this section to act as a Justice of the Supreme Court or of the Court of Appeal shall continue to act for the period of his appointment or if no such period is specified until his appointment is revoked by the President acting in accordance with the advice of the Judicial and Legal Service Commission.

(6) Notwithstanding the expiration of the period of his appointment, or the revocation of his appointment, a Judge appointed pursuant to the provisions of subsection (2) or (4) of this section, may thereafter continue to act, for a period not exceeding three months, to enable him to deliver judgement or do any other thing in relation to proceedings that were commenced before him previously thereto.”

Observation

The Centre for Accountability and Rule of Law (CARL) in its position paper emphasised that: “currently, if there are not enough judges, the President is allowed to appoint other judges without the consent of Parliament. The appointment of temporary judges or ‘contract judges’ by the President has been sometimes very controversial, as it does tend to undermine the independence of the judiciary. The Peter Tucker Report proposes that judges must all be approved by Parliament, whether they are temporary or permanent. With the current shortage of judges, some flexibility can in practice be useful, as encouraging people to move between private practice, academia and the bench, for the benefit of the judicial system as a whole, as people of the highest calibre can be attracted to sit on the bench. In addition, CARL recommends that the qualifications of members of the bench as set out in the 1991 Constitution be reviewed. The 1991 Constitution provides that to be eligible for appointment as a High Court Judge, a person must have been called to the bar for at least ten years, while justices of the Court of Appeal and the Supreme Court must have been at the bar for 15 and 20 years, respectively. CARL recommends a review of these eligibility criteria so that the length of service at the bar is reduced by five years each for appointment as a Judge of the Court of Appeal and the Supreme Court, and by three years for the High Court.”⁴⁶¹

10.29 Recommendation

The CRC took note of the CARL’s comments and the PTC Report, and therefore recommends that section 136(4) and (6) be amended to read as follows:

“(4) Where the office of a Justice of the Supreme Court or of the Court of Appeal is vacant or for any reason a Justice thereof is unable to perform the functions of his/her office or if the Chief Justice advises the President that the state of business in the Supreme Court or in the Court of Appeal, as the case may be, so requires, the President may, acting in accordance with the advice of the Judicial and Legal Service Commission, **and subject to the approval of Parliament**, appoint a person who has held office as, or a person qualified for appointment as a Justice of the Superior Court of Judicature to act as a Justice of the Supreme Court or of the Court of Appeal, as the case may be.”

⁴⁶¹ CARL’s position paper page 15

“(6) Notwithstanding the expiration of the period of his appointment, or the revocation of his/her 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.”

10.30 Theme - Tenure of Office of Judges

Current Context

Section 137 of the 1991 Constitution states:

“**137.** (1) Subject to the provisions of this section, a Judge of the Superior Court of Judicature shall hold office during good behaviour.

- (2) A person holding office as a Judge of the Superior Court of Judicature—
 - (a) may retire as a Judge at any time after attaining the age of sixty-five years;
 - (b) shall vacate that office on attaining the age of sixty-five years.
- (3) Notwithstanding that he has attained the age at which he is required by the provisions of this section to vacate his office, a person holding the office of a Judge of the Superior Court of Judicature may continue in office after attaining that age, for a period not exceeding three months, to enable him to deliver judgement or do any other thing in relation to proceedings that were commenced before him previously thereto.
- (4) Subject to the provisions of this section, a Judge of the Superior Court of Judicature may be removed from office only for inability to perform the functions of his office, whether arising from infirmity of body or mind or for statement misconduct, and shall not be so removed save in accordance with the provisions of this section
- (5) If the Judicial and Legal Service Commission represents to the President that the question of removing a Judge of the Superior Court of Judicature, other than the Chief Justice, under subsection (4) ought to be investigated then—
 - (a) the President, acting in consultation with the Judicial and Legal Service Commission, shall appoint a tribunal which shall consist of a Chairman and two other members, all of whom shall be persons qualified to hold or have held office as a Justice of the Supreme Court; and
 - (b) the tribunal appointed under paragraph (a) shall enquire into the matter and report on the facts thereof and the findings thereon to the President and recommend to the President whether the Judge ought to be removed from office under subsection (7).

- (6) Where the question of removing a Judge of the Superior Court of Judicature from office has been referred to a tribunal under subsection (5), the President may suspend the Judge from performing the functions of his 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.
- (7) A Judge of the Superior Court of Judicature shall be removed from office by the President—
- (a) if the question of his removal from office has been referred to a tribunal appointed under subsection (5) and the tribunal has recommended to the President that he ought to be removed from office; and
 - (b) if his removal has been approved by a two-thirds majority in Parliament.
- (8) If the President is satisfied on a petition presented to him in that behalf, that the question of removing the Chief Justice ought to be investigated, then—
- (a) the President shall, acting in consultation with the Cabinet, appoint a tribunal which shall consist of—
 - (i) three Justices of the Supreme Court, or legal practitioners qualified to be appointed as Justices of the Supreme Court; and
 - (ii) two other persons who are not Members of Parliament or legal practitioners;
 - (b) the tribunal shall enquire into the matter and report on the facts thereof and the findings thereon to the President whether the Chief Justice ought to be removed from office under subsection (10), and the President shall act in accordance with the recommendations of the tribunal.
- (9) Where the question of removing the Chief Justice from office has been referred to a tribunal under subsection (8), the President may by warrant under his hand suspend the Chief Justice from performing the functions of his 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 Chief Justice shall not be removed from office.
- (10) The Chief Justice shall be removed from office by the President—
- (a) if the question of his removal from office has been referred to a tribunal appointed under subsection (8) and the tribunal has recommended to the President that he ought to be removed from office; and
 - (b) if his removal has been approved by a two-thirds majority in Parliament.”

Observation

The PTC Report recommended that section 137(2)(b) be amended by the deletion of the word “sixty-five” to be replaced by the word “seventy.”⁴⁶²

Greg Robbins in his expert paper commented that Judges are protected as regards their conditions of service and removal from office:

“First, section 137 (“Tenure of Office of Judges, etc”) provides in subsection (1): “Subject to the provisions of this section, a Judge of the Supreme Court of Judicature shall hold office during good behaviour.” Subsection 137(4) further states: “Subject to the provisions of this section, a Judge of the Superior Court of Judicature may be removed from office only for inability to perform the functions of his office, whether arising from infirmity of body or mind or for statement misconduct, and shall not be so removed save in accordance with the provisions of this section”.

Subsections 137(5)-(10) then state the procedure for removing a Judge. It is not clear, however, whether s 137(1) (holding office during good behaviour) is subject to the procedure set out in subsections 137(5)-(10), or whether it operates as a standalone ground for removing a Judge. If the latter, the questions arise:

- On what standard of failing to meet “good behaviour” may a Judge be removed?
- Who initiates and decides upon the removal of that Judge?

In order to better safeguard the position of judges, Sierra Leone may wish to consider the repeal of S 137(1) and the amendment of s 137(4) to read:

“A Judge of the Superior Court of Judicature may be removed from office only for gross incompetence, gross misconduct or inability to perform the functions of his office, whether arising from infirmity of body or mind, and shall not be so removed save in accordance with the provisions of this section”. Such an amendment would reflect the terms on which a Judge in South Africa may be removed.

The second concern arises not from the Constitution, but the recommendations in the Peter Tucker Report. The Report would permit a Judge to retain an extra-judicial income if approval is obtained from the Chief Justice, subject to appeal to the judicial and Legal Service Commission in case of disapprovals. It is generally not advisable to permit Judges to retain salaries or obtain financial benefits outside of their official salary for fear:

The Judge may be unduly influenced by their employers or benefactors in the determination of cases before them; or, at least, a Judge would have to step aside in cases in which a conflict merely appears to arise. Regardless of whether or not a conflict of interest would actually affect a Judge’s conduct in a case, it is a fundamental principle of fairness that justice must not only be

⁴⁶² PTCR page 62

done, but be seen to be done: *R v Sussex Justices, Ex parte McCarthy* [1924] 1 KB 256, [1923] All ER Rep 233.”⁴⁶³

Greg Robbins concluded that Sierra Leone should not adopt that amendment.

The PTC Report recommended extending the mandatory judicial retirement age from 65 to 70 and providing for a six-month period beyond retirement during which Judges may continue to exercise certain functions of office (compared to the present three months).

Greg Robbins commented on this that: “In principle, both recommendations seemed sensible: as life expectancy in Sierra Leone grows, it is reasonable to assume the tenure of Judges should too. Lengthening judges’ tenure would also mitigate some of the understaffing of the judiciary which contributes to the delays in the justice system. Whether 65 or 70 is an appropriate mandatory retirement age, I leave that for the people of Sierra Leone.”⁴⁶⁴

The age of retirement for judges was also a cause for concern during the nationwide consultations. While the majority of submissions proposed that the retirement age for Judges should remain as 65 years, a few others suggested that the retirement age should be increased to 75 years because of the limited number of judges in the country.

Section 137(1) of the 1991 Constitution states: “subject to the provisions of this section, a Judge of the Superior Court of Judicature shall hold office during good behaviour.” Greg Robbins commented on this that it is not clear whether s 137(1) is subject to the procedure set out in sections 137(5)-(10), or whether it operates as a standalone ground for removing a Judge. If it is the latter, the question arises what constitutes good behaviour. Robbins recommended that in order to safeguard the position of judges, section 137(1) should be repealed section 137(4) should be amended.

During the plenary session, the CRC endorsed Robbins’ amendment of section 137(4) to include the words “gross misconduct” or “incompetence”, and so the section should be amended to read as follows:

“(4) A Judge of the Superior Court of the Judicature may be removed from office only for gross incompetence, gross misconduct or inability to perform the functions of his office, whether arising from infirmity of body or mind, and shall not so be removed save in accordance with the provisions of this section”

In its position paper, the Law Reform Commission proposed that the retirement age for Judges should be the same as that in Nigeria, the Gambia and Ghana, namely 65 years of age for voluntary retirement of all Judges of the Superior Courts of Judicature and mandatory retirement on attaining the age of 70 years. They added that this should apply to all judges, from the High Court to the Chief Justice to ensure that there is no ambiguity in the revised Constitution.⁴⁶⁵

⁴⁶³ Greg Robbins expert paper page 19

⁴⁶⁴ Greg Robbins expert paper page 19

⁴⁶⁵ Law Reform Commission position paper page 3

The Sierra Leone Labour Congress (SLLC) in its position paper proposed that the tenure of judges be increased as follows: Voluntary retirement at sixty-five years and mandatory retirement at seventy.⁴⁶⁶

The All People's Congress (APC) in its position paper stated that: "in order to continue to tap from the wisdom and experience of seasoned members of the Bar and the Bench we propose the extension of the age of retirement of judges to 70 (seventy)."⁴⁶⁷

10.31 Recommendation

Increasing the age limit of retirement from 65 to 70 would mitigate some of the understaffing of the Judiciary, which contributes to the delays in the justice system. The CRC therefore endorses the Nigerian, Gambian and the Ghanaian models for the age of retirement for Judges such that it should be increased from 65 for voluntary retirement and 70 for mandatory retirement..

The CRC therefore recommends that the following amendments be made to section 137:-

- “**137.** (1) Subject to the provisions of this section, **a Justice or** a Judge of the Superior Court of Judicature shall hold office during good behaviour.
- (2) A person holding office as Chief Justice, Justice of the Supreme Court, Justice of Appeal, or, a Judge of the High Court—
- (a) may retire as **a Justice or** Judge at any time after attaining the age of sixty-five years;
- (b) shall vacate that office on attaining the age of **seventy years**
- (3) Notwithstanding that she/he has attained the age at which she/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 to deliver judgment or do any other thing in relation to proceedings that were commenced before him/her previously thereto.
- (4) 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.
- (5) If the Judicial and Legal Service Commission represents to the President that the question of removing a Judge of the Superior Court of Judicature, other than the Chief Justice, under subsection (4) ought to be investigated then—

⁴⁶⁶ SLLC position paper page 9

⁴⁶⁷ All People's Congress position paper page 2

- (a) the President, acting in consultation with the Judicial and Legal Service Commission, shall appoint a tribunal which shall consist of a Chairperson and two other members, all of whom shall be persons qualified to hold or have held office as a Justice of the Supreme Court; and
 - (b) the tribunal appointed under paragraph (a) shall enquire into the matter and report on the facts thereof and the findings thereon to the President and recommend to the President whether the Justice or Judge ought to be removed from office under subsection (7).
- (6) 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.
- (7) A **Justice or** a Judge of the Superior Court of Judicature shall be removed from office **only** by the President—
- (a) if the question of his removal from office has been referred to a tribunal appointed under subsection (5) and the tribunal has recommended to the President that she/he ought to be removed from office; and
 - (b) if his/her removal has been approved by a two-thirds majority in Parliament.
- (8) If the President is satisfied on a petition presented to him/her in that behalf, that the question of removing the Chief Justice ought to be investigated, then—
- (a) the President shall, acting in consultation with the Cabinet, appoint a tribunal which shall consist of—
 - i. three Justices of the Supreme Court, or legal practitioners qualified to be appointed as Justices of the Supreme Court; and
 - ii. two other persons who are not Members of Parliament or legal practitioners;
 - (b) the tribunal shall enquire into the matter and report on the facts thereof and the findings thereon to the President whether the Chief Justice ought to be removed from office under subsection (10), and the President shall act in accordance with the recommendations of the tribunal.
- (9) Where the question of removing the Chief Justice from office has been referred to a tribunal under subsection (8), the President **shall** by warrant under his/her hand suspend the Chief Justice from performing the functions of his 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 Chief Justice shall not be removed from office.
- (10) The Chief Justice shall be removed from office **only** by the President—

- (a) if the question of his/her removal from office has been referred to a tribunal appointed under subsection (8) and the tribunal has recommended to the President that she/he ought to be removed from office; and
- (b) if his/her removal has been approved by a two-thirds majority in Parliament.”

10.32 Theme - Remuneration of Judges

Current Context

Section 138 of the 1991 Constitution states:

“**138.** (1) The salaries, allowances, gratuities and pensions of Judges of the Superior Court of Judicature shall be a charge upon the Consolidated Fund.

“(2) A Judge of the Superior Court of Judicature shall on retiring from office as such Judge, be entitled to such gratuity and pension as may be determined by Parliament.

- (3) The salary, allowances, privileges, right in respect of leave of absence, gratuity or pension and other conditions of service of a Judge of the Superior Court of Judicature shall not be varied to his disadvantage.
- (4) A Judge of the Superior Court of Judicature shall not while he continues in office, hold any other office of profit or emolument, whether by way of allowances or otherwise, whether private or public, and either directly or indirectly.”

Observation

The PTC Report recommended that section 138(4) should be amended to read as follows:

“(4) A Judge of the Superior Court of Judicature may undertake any job for remuneration if approval is obtained from the Chief Justice, subject to appeal to the Judicial and Legal Service Commission in cases of disapprovals.”⁴⁶⁸

10.33 Recommendation

The CRC endorses the PTC Report recommendation and therefore proposes the following amendment to section 138(4):

“(4) A Judge of the Superior Court of Judicature shall not while she/he continues in office, hold any other employment or office or profit or emolument, whether by way of allowances or

⁴⁶⁸ PTCR page 63

otherwise, whether private or public, and either directly or indirectly, **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**”.

10.34 Theme - Judicial and Legal Services Commission

Current Context

Section 140(1) of the 1991 states:

“140. (1) There shall be established a Judicial and Legal Service Commission which shall advise the Chief Justice in the performance of his administrative functions and perform such other functions as provided in this Constitution or by any other law, and which shall consist of—

- (a) the Chief Justice, who shall be the Chairman;
- (b) the most Senior Justice of the Court of Appeal;
- (c) the Solicitor General;
- (d) one practicing Counsel of not less than ten years standing nominated by the Sierra Leone Bar Association and appointed by the President;
- (e) the Chairman of the Public Service Commission; and
- (f) two other persons, not being legal practitioners, to be appointed by the President, subject to the approval of Parliament.

(2) The Chief Justice shall, acting in accordance with the advice of the Judicial and Legal Service Commission and save as otherwise provided in this Constitution, be responsible for the effective and efficient administration of the Judiciary.

(3) The following provisions shall apply in relation to a member of the Judicial and Legal Service Commission who is appointed pursuant to paragraphs (d) and (f) of subsection (1)—

- (a) subject to the provisions of this subsection, such member shall vacate office at the expiration of three years from the date of his appointment;
- (b) any such member may be removed from office by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct; and
- (c) such member shall not be removed from office except in accordance with the provisions of this subsection.

- (5) A member of the Judicial and Legal Service Commission shall, before assuming the functions of his office, take and subscribe before the President the oath as set out in the Third Schedule to this Constitution.”

Observation

The PTC Report recommended: “section 140(1) of the 1991 Constitution: Proposed amendment: By creating a new subsection (g) which reads: (g) A Judge of the High Court of Justice.”

The HRCSL advocated that access to justice for the public would be enhanced if the composition of the Judicial and Legal Services Commission was expanded to include representatives of civil society and members of the public.

The Sierra Leone Labour Congress (SLLC) in its position paper proposed: “to establish a Judicial and Legal Service Commission which shall compose of the Chief Justice, the Most Senior Justice of the Court of Appeal, the Solicitor-General, one practising lawyer of not less than 10 years standing, the Chairman of the Public Service Commission and two other persons not legal practitioners. The Sierra Leone Labour Congress wishes to suggest that a Judge of the High Court of Sierra Leone be included in the Commission.”⁴⁶⁹

The Law Reform Commission in its position paper commented on the lack of effective complaints processes and disciplinary mechanisms to deal with misbehaviour amongst judges; “this should be the role of the Judicial and Legal Service Commission to ensure that the judiciary is of a professional nature”.

The Law Reform Commission recommended that the JLSC should be restructured and expanded to include representation from other law-related institutions and that its the functions should be broadened to include performance management, disciplinary control over judges, investigation of complaints against judicial officers, and advising the Government on ways of improving the administration of justice.

The Sierra Leone Labour Congress (SLLC) in its position paper noted that corruption is another factor that leads to undue delay of justice and recommended that: “the judiciary be hard on corrupt practices and prosecute all offenders.”⁴⁷⁰

During district level consultations, there was a consensus in the Kambia District⁴⁷¹ that the appointment and promotion of judges should be carried out by the JLSC: “the independent body that appoints adjudicators (judges, magistrates, court chairmen, clerks etc.) should be responsible for dismissing them. An independent body should be set for the appointment/approval and removal from office. That body should have no political link”.

⁴⁶⁹ SLLC position paper page 12

⁴⁷⁰ SLLC position paper pages 9-10

⁴⁷¹ District level consultations Kambia District Report to the CRC pages 1, 6 and 8

During the stakeholder consultations, there were also proposals that the JLSC rather than the President should be responsible for the appointment, transfer and removal of judges. Suggestions were also made regarding the composition and roles of the JLSC. They recommended that the JLSC should comprise the Chief Justice, four Judges of the Supreme Court, representatives of the Bar Association, and representatives of civil society, and that the JLSC should be responsible for determining the scale and remuneration of the Judges.

The CRC noted the recommendations regarding the expansion of the composition of the Judicial and Legal Service Commission to include the following:

- (a) the Chief Justice
- (b) the two most Justices of the Supreme Court;
- (c) The most senior Justice of the Court of Appeal;
- (d) the most senior judge of the High Court;
- (e) the Solicitor-General;
- (f) two practising Counsels of not less than 10 years' standing and nominated by the Sierra Leonean Bar Association and appointed by the President;
- (g) the Director-General of HRMO;
- (h) the Financial Secretary; and
- (i) two other persons not being legal practitioners to be appointed by the President subject to the approval of Parliament.

Members appointed under paragraphs (f) and (h) under subsection (1) shall vacate office at the expiration of three years from the date of his appointment;

10.35 Recommendation

The CRC recommends that a proviso be added at the end of section 140 to have a fully established Judicial and Legal Service Commission with funding from the Consolidated Fund. The Judicial and Legal Service Commission members should be increased by having a new composition that includes: two lay representatives; the Chief Justice (Chair); one Judge from each Court (the Supreme Court, the High Court and the Court of Appeal); and a representative from: - Human Resource Management Office, the Financial Secretary, the Sierra Leone Bar Association, and the Solicitor-General.

The amended section 140 should therefore read as follows:-

”140. (1) There shall be established a Judicial and Legal Service Commission which shall advise the Chief Justice in the performance of his/her administrative functions and perform such other functions as provided in this Constitution or by any other law, and which shall consist of—

- (a) the Chief Justice, who shall be the Chairperson;

- (b) **the most senior Justice of the Supreme Court;**
 - (c) the most Senior Justice of the Court of Appeal;
 - (d) **the most senior Judge of the High Court;**
 - (e) the Solicitor-General;
 - (f) **two practising Counsels** of not less than ten years standing nominated by the Sierra Leone Bar Association and appointed by the President;
 - (g) **the Director-General of the Human Resource Management Office, or other public officer charged with managing the public service establishment;**
 - (h) **the Financial Secretary;**
 - (i) two other persons, not being legal practitioners, to be appointed by the President, subject to the approval of Parliament.
- (2) The Chief Justice shall, acting in accordance with the advice of the Judicial and Legal Service Commission and save as otherwise provided in this Constitution, be responsible for the effective and efficient administration and financial management of the Judiciary.
- (3) The following provisions shall apply in relation to a member of the Judicial and Legal Service Commission who is appointed pursuant to paragraphs **(b), (c),** (d), (f) and **(i)** of subsection (1)—
- (a) subject to the provisions of this subsection, such member shall vacate office at the expiration of three years from the date of his/her appointment; **and in the case of (b), (c) and (d), upon vacating his membership, the next most senior Justice or Judge shall replace him**
 - (b) any such member may be removed from office by the President for inability to discharge the functions of his/her office (whether arising from infirmity of mind or body or any other cause) or for misconduct, **or, for gross incompetence;** and
 - (c) such member shall not be removed from office except in accordance with the provisions of this subsection.
- (5) A member of the Judicial and Legal Service Commission shall, before assuming the functions of his office, take and subscribe before the President the oath as set out in the Third Schedule to this Constitution.”

10.36 Theme - Appointment of Judicial and Legal Officers

Current Context

Section 141 of the 1991 Constitution states:

“**141.** (1) The power to appoint persons to hold or act in an office to which this section applies (including the power to make appointments on promotion and transfer from one office to another and to confirm appointments) and to dismiss and exercise disciplinary control over persons holding or acting in such office shall vest in the Judicial and Legal Service Commission;

Provided that the Commission may, with the approval of the President and subject to such conditions as it may think fit, delegate any of its powers under this section, by direction in writing, to any of its members, or to any Judge of the High Court, or to the holder of any office to which this section applies, or, in the case of a power relating to an office connected with the Court of Appeal or the Supreme Court, to any Justice of either of those Courts.

(2) This section applies to the offices of Administrator and Registrar-General, Registrar and Deputy Registrar of the Supreme Court, Registrar and Deputy Registrar of the Court of Appeal, Master and Registrar of the High Court, Deputy Master and Registrar of the High Court, any Registrar of the High Court, Deputy Administrator and Registrar-General, any Principal Magistrate, Senior Magistrate, Magistrate, Under Sheriff, First Parliamentary Counsel, Second Parliamentary Counsel, Principal State Counsel, Customary Law Officer, Senior State Counsel, Senior Parliamentary Counsel, Research Counsel, Parliamentary Counsel, State Counsel, Assistant Customary Law Officer and such other officers as may be prescribed by Parliament.”

Observation

Increase the number of magistrates to adjudicate cases to avoid undue delay of justice.

The Human Rights Commission of Sierra Leone (HRCSL) called for a constitutional recognition of the office of magistrate, and a constitutional requirement that every district has a functioning permanent stipendiary resident magistrate.⁴⁷²

During the nationwide consultations, many participants stated that in order to ensure effective and timely delivery of cases, the number of judges and magistrates must be increased to avoid undue delay of justice.⁴⁷³

10.37 Recommendation

The CRC has already proposed to increase the number of judges in the High Court, the Court of Appeal, and the Supreme Court. However, it strongly recommends that the government should consider increasing the number of magistrates at district level to ensure effective dispensation of justice.

The CRC recommends a minor amendment to section 141(1), as follows:

⁴⁷² HRCSL position paper page 10 para 30

⁴⁷³ Western Area Public consultation report

“141. (1) The power to appoint persons to hold or act in an office to which this section applies (including the power to make appointments on promotion and transfer from one office to another and to confirm appointments) and to dismiss and exercise disciplinary control over persons holding or acting in such office shall vest in the Judicial and Legal Service Commission **to the exclusion of any other body or authority.**”

10.38 Theme - Appointment of Court Officers

Current Context

Section 142 of the 1991 Constitution states:

“142. (1) The appointment of officers and servants of the Courts of Sierra Leone shall, subject to the provisions of section 141 of this Constitution, be made by the Chief Justice or such other Justice or Judge or officer as the Chief Justice may direct, acting in consultation with the Judicial and Legal Service Commission.

(2) The Judicial and Legal Service Commission may, acting in consultation with the Public Service Commission and with the prior approval of the President, make regulations by statutory instrument prescribing the terms and conditions of service of officers and other employees of the Courts and of the Judicial and the Legal Services established by this Constitution or any other law.”

10.39 Recommendation

The CRC recommends that in view of the change made to section 140(1) whereby the reference to the Public Service Commission is substituted with a reference to the Human Resource Management Office, section 142(2) must correspondingly be amended, as follows:-

“142. (1) The appointment of officers and servants of the Courts of Sierra Leone shall, subject to the provisions of section 141 of this Constitution, be made by the Chief Justice or such other Justice or Judge or officer as the Chief Justice may direct, acting in consultation with the Judicial and Legal Service Commission.

(2) The Judicial and Legal Service Commission may, acting in consultation with the **Human Resource Management Office** and with the prior approval of the President, make regulations by statutory instrument prescribing the terms and conditions of service of officers and other employees of the Courts and of the Judicial and the Legal Services established by this Constitution or any other law.”

10.40 Theme - Fees of Court

Current Context

Section 143 of the 1991 Constitution states:

“**143.** Any fees, fines or other moneys taken by the Courts shall form part of the Consolidated Fund”.

Observation

The CRC was informed in positions papers and through consultations that there is a need to ensure the financial independence of the Judiciary. It was also suggested that Court fees and fines should be retained in a Judiciary account rather than paid to the Consolidate Fund.

The Law Reform Commission in its position paper gave a detailed analysis of the need for financial autonomy of the Judiciary. They commented that one way in which this has been dealt with in other countries was by making provisions that entrench the financial autonomy of the Judiciary. Financial autonomy is the ability to access the funds reasonably required to enable the Judiciary to discharge its functions:

“One way in which financial autonomy of the judiciary has been effected by some countries is by enabling the judicial branch to have the right to present its budget directly to the legislature rather than having to submit its budget to the executive for inclusion as an item in its annual Appropriation Bill to the legislature. Some countries have gone further by making the judiciary a self- accounting institution. This means that the judiciary is in control of not only the preparation of its own budget, but also of the right to table and defend same before Parliament. Other countries have done so by limiting the influence the executive can exercise over the budget presented to it by the judiciary. This has been done by stipulating provisions in the Constitution whereby the judicial budget presented at the legislature would not suffer any revision or amendment by the executive, though it may attach to them any comments, observation or recommendation that it may have. This is the practice in Ghana, the Gambia and Uganda. Additionally, in other jurisdictions, the financial autonomy of the judiciary is being strengthened by inserting provisions in the constitution authorising provisions to be made under an Act of Parliament which will authorise the judiciary to retain and expend certain percentages of monies received by it for defraying its administrative expenses.

To appreciate the extent to which countries have drafted constitutions that support and entrench the financial autonomy of the judiciary, the relevant provisions in their constitutions are reproduced as against the relevant provisions in the 1991 Constitution of Sierra Leone.

Gambia

Section 143 of the Gambian Constitution of 1997 as amended, gives responsibility for the administration of the courts and financial matters to the Chief Justice, who in the performance

of such duties is assisted by a judicial Secretary to be appointed by the President on the recommendation of the judicial and Legal Service Commission. Under section 144(1) of the Constitution, the Chief Justice “shall submit the annual estimates of expenditure for the Judicature to the President for presentation to the National Assembly in accordance with the Constitution. The President shall then cause the estimates to be placed before the National Assembly without amendment, but may attach to them his or her own comments and observations”. Section 144(2) further provides that “the Judicature shall be self-accounting, and the moneys charged on the Consolidated Fund or appropriated by an Act of the National Assembly for the Judicature, shall be paid by the Accountant General to the accounting officer for the Judicature as required by the Chief Justice”.

“Uganda

A similar provision obtains in Uganda. Section 128(6) of the 1995 Ugandan Constitution provides that the judiciary is self-accounting and may deal directly with the Ministry responsible for finance.

Section 155(2) further provides that the head of any self-accounting Department, Commission or Organisation set up under the Constitution “shall cause to be submitted to the President at least two months before the end of each financial year estimates of administrative and development expenditure and estimates of revenues of the respective Department, Commission or Organisation for the following year”. The estimates prepared under subsection (2) of this section must be laid before Parliament by the President under section 155(1) article without revision but with any recommendations that the Government may have on them (section 155(3)).

Ghana

The Constitution of Ghana 1992 gives the judiciary autonomy in the preparation, administration, and control of its own budget. Section 127 (1) provides that “in the exercise of its judicial power, the Judiciary, “in both its judicial and administrative functions, including financial administration, is subject only to this Constitution and shall not be subject to the control or direction of any person or authority”. Section 127(7) goes further to define “financial administration” for the purposes of subsection 127(1) to include “the operation of banking facilities by the Judiciary without the interference of any person or authority, other than for the purposes of audit by the Auditor-General, of the funds voted by Parliament or charged on the Consolidated Fund by this Constitution or any other law, for the purposes of defraying the expenses of the Judiciary in respect of which the funds were voted or charged”.

Under the provisions of section 179(3) “The Chief Justice shall, in consultation with the Judicial Council, cause to be submitted to the President at least two months before the end of each financial year and thereafter as and when the need arises:

a) the estimates of administrative expenses of the Judiciary charged on the Consolidated Fund under article 127 of this Constitution; and (b) Estimates of development expenditure of the Judiciary”.

Under section 127(4), “the President shall, at the time specified in clause (1) of this article, or thereafter, as and when submitted to him under clause (3) of this article, cause the estimated referred to in clause (3) of this article to be laid before Parliament”.

Section 127(5) further provides that the President shall cause such estimates referred to in subsection (3) to be laid before Parliament. And such estimates shall be laid before Parliament without revision but with any recommendations that the government may have on them”.

Kenya

Section 161(2)(c) of the Kenyan Constitution establishes the office of the Chief Registrar of the Judiciary, who shall be the Chief Administrator and accounting officer of the Judiciary. Section 173 (1) of the constitution further provides for the establishment of a judiciary fund “which shall be administered by the Chief Registrar of the Judiciary”. Section 173(2) provides that “such Fund shall be used for defraying the administrative expenses of the Judiciary and such other purposes as may be necessary for the discharge of the functions of the Judiciary”. Under section 173(3) and (4) the Chief Registrar shall, at the start of each financial year prepare estimates of expenditure for the following year, to be laid before the National Assembly for approval. Upon approval by the National Assembly, the expenditure of the Judiciary shall be a charge on the Consolidated Fund and the funds shall be paid directly into the Judiciary Fund”.

From the provisions highlighted in the four constitutions above, some means are revealed by which the Sierra Leone framework could be improved to better preserve and strengthen the independence of the Judiciary. The threats to judicial independence posed by the current funding arrangement could be avoided by several means.

One such measure could be by enabling the judiciary through an Act of Parliament or by way of constitutional instrument to retain funds paid into court in the form of fees, costs and some other related purposes. Under the current provision, the Constitution prohibits the courts from retaining any moneys received by them, be it in the form of fines, fees or otherwise. Section 143 of the Constitution provides that any fees, fines, or other moneys taken by the court shall form part of the consolidated funds”. This provision is further strengthened by section 111(1)(a) of the constitution which stipulates that “all revenues or other moneys raised or received for the purpose of or on behalf of government” shall be paid into the consolidated fund.”

However in exceptional circumstances as provided under section 111(2)(b), where this is authorised by an Act of Parliament, revenues collected for and on behalf of government may be retained for the purpose of defraying administrative expenses.

This provision has been applied to several other Government Agencies and Departments. An example is the Civil Aviation Authority established under section 2 of the Civil Aviation Act 2008. Section 20 of this Act makes provision for certain monies received on behalf of the government to be retained by the Civil Aviation Authority, to defray the administrative expenses of the that Department.

A similar provision is made in the National Revenue Authority Act 2002. Section 27(2) provides that “notwithstanding section 474(1) or any other law, the minister may from time to time for the purposes of ensuring interrupted supply of funds to the Authority, authorise the authority in writing to retain percentages of the revenue referred to in paragraph (a) of subsection 24(1) to meet its expenditure for the financial year concerned, as if the Authority were a department of Government under section 114(1) of the constitution. Section 24(1)(a) of the said Act authorises the National Revenue Authority established under the Act to retain three percent (3%) of the revenue collected annually.

It is worth noting that the judiciary, like these other Agencies and Departments also receives certain funds on behalf of the Consolidated Fund. Notwithstanding how laudable the idea of authorising the judiciary to retain some percentage of revenue received on behalf of government might be, it may not be conveniently applied to the judiciary. This is because the judiciary should not be seen as a fund-raising entity but rather as the body responsible for the dispensation of justice. A provision enabling the judiciary to raise funds to defray its own administrative expenses may create a tendency for the judiciary to impose excessive fines and costs on indigent litigants in a bid to increase the percentage that would be retained, though there exists a possibility for this to be obviated to an extent by an Act of Parliament which would regulate the costs and fines imposed by the judiciary. Such an Act would also enhance the perception of justice by entrenching predictability which is one of the tenets of access to justice and the rule of law.

Another measure can be by making the judiciary a self-accounting institution. This means that the judiciary would be in control of the preparation of its own budget, the tabling and the right to defend the said budget before Parliament. The Master and Registrar would cause to be prepared and laid before Parliament in each financial year estimates of the revenues and expenditures of the judiciary for the following financial year. This in effect means that the Minister of Finance will not be responsible for the control and management of not only the budget but implementation and monitoring of such budget allocated to the judiciary. It follows therefore that section 3(2)(b) of the Government Budget and Accountability Act 2005 would not be applicable to the judiciary.

Conclusion and Recommendation

The Commission recognises that financial autonomy of the judiciary is closely linked to the issue of the independence of the judiciary, in that it determines the conditions in which the courts perform their functions. It is therefore axiomatic that the proper performance of judicial functions is each essential to the maintenance of the rule of law, and the promotion and protection of human rights within a society. The Commission therefore concludes that financial autonomy of the judiciary should be given due consideration by the current constitutional review process.

Consequent upon the foregoing, the provisions in the constitutions of the four commonwealth countries hereinabove reveal two obvious models of financial autonomy of the judiciary. Under

⁴⁷⁴ Section 27(1) of the Revenue Authority Act 2002 provides that “subject to sub-section (2) all revenues collected by or due and payable to the authority under this Act shall be paid to the Consolidates Fund”.

the model which applies in Gambia, Uganda and Ghana, the judiciary has autonomy and control in the preparation of its budget; in the sense that it is not subject to any amendment, revision, control or direction of any person or authority. In these countries, the presidents who are charged with the responsibilities of presenting them to parliament may attach to the said budgets any comments, observations, or recommendations as the case may be before tabling them in Parliament. These funds once approved are charged upon the Consolidated Fund.

On the other hand, in Kenya the judiciary has wider autonomy, not only in terms of the preparation of its budget but also in terms of its implementation.

Like Kenya, the Ghana Constitution also gives the judiciary autonomy in not only the preparation of its budget, but the administration and control as well. However there is a difference with regard the implementation of such budget. Under the Kenyan provision it is the Chief Registrar who administers the judicial budget. Whilst in Ghana, it is the chief justice, in consultation with the judicial council who is responsible for the implementation of such budget.

Hence, for the purpose of an effective and efficient financial autonomy of the judiciary and taking into consideration our peculiar situation the Commission recommends a *mutatis mutandis* application of the Ghanaian model.”⁴⁷⁵

In its position paper, the GSCF stated that: “the Judiciary operated a self-accounting system in the 1960s and 1970s where revenue generated by the then judicial sub-Treasury from Court fees and fines were used to fund the Judiciary. However this system was discontinued in the late 1970s.

Sierra Leone post-war governance system has seen a more participatory budget process involving all sectors in monitoring budget and public finance management. While these development partners prompted initiatives, they are now being embedded in our governance culture.”

The Sierra Leone Labour Congress (SLLC) in its position paper noted that: “the available resources according to members of the Judiciary are not adequate to ensure the independence of the Judiciary.” They went on to recommend that: “the Judiciary should do a budget on the quantum of resources needed by them to be approved by the Legislative branch. The Judiciary must be responsible for the efficient management of such resources”.

The SLLC also recommended that fees and fines be paid into the consolidated fund because “most of the expenditures by the Judiciary including salaries of Benchers are from the consolidated fund.”⁴⁷⁶

The SLLC also noted that due to lack of financial resources, the case management system in the courts was also adversely affected: “the IT system must be improved and equipped to meet

⁴⁷⁵ Law Reform Commission position paper

⁴⁷⁶ SLLC position paper page 12

modern standards. This could only be guaranteed if the judiciary had sufficient financial resources through fees and court fines to embark.”⁴⁷⁷

The Law Reform Commission in its position paper commented that competent staff, and also with adequate structural facilities and equipment were essential for the smooth and transparent running of the procedural aspects of a legal system: “in the administration of litigation, the uses of stenographers and or recording equipment are basic, internationally recognised methods of keeping an accurate record of the proceedings at trial. However, there are no stenographers at all in the Sierra Leone Judiciary, and so it is left to the judges and magistrates to write down in longhand all the evidence that is given at trials. This considerably slows down the continuity and conduct of trials, and encumbers judges and magistrates with a task to which they are not suited – rather than concentrating solely on listening to testimony and legal argument, they are instead distracted by having to carry out a wholly administrative task. Doubts have also often been expressed about the accuracy of their record taking.”⁴⁷⁸

The Commission also noted that inadequate financial resources to properly manage the courts in the country; unethical conduct on the part of some judicial officers and staff that impedes the fair and impartial dispensation of justice; lack of operational financial autonomy; poor terms and conditions of service make it difficult for the judiciary to attract and retain more judges and magistrates:

“The Commission believes that with adequate and self-accounting system the judiciary will establish a system for recording and publishing court proceedings and court judgments so as to enhance accountability and transparency in relation to the conduct of proceedings and also ensure computerisation is essential to court management – case files can be accessed more easily and more widely by judges and magistrates if they are computerised rather than on paper; further, a networked computer system would enable court staff, judges, and magistrates to access records in courts in all parts of the country rather than restricting them to case files in the court in which they are situated.”

The National Commission for Democracy (NCD) in its position paper stated that: “the executive is still in control of vital state resources needed for administration of the judiciary. To promote the management and administration of justice the practice of self-accounting systems to the judiciary and other justice sector MDAs is essential. It is hoped that this will enable the judiciary to overcome most difficulties in accessing the funding needed for its smooth operation.”⁴⁷⁹

⁴⁷⁷ SLLC position paper pages 9-10

⁴⁷⁸ Law Reform Commission position paper

⁴⁷⁹ NCD position paper page 8

10.41 Recommendation

The CRC endorses the PTC Report and the various position papers and recommendations that the Judiciary should be self-financing. Fees and other monies should be retained by the Judiciary, whilst fines should be paid into the Consolidated Fund.

The CRC therefore recommends that section 143 should be replaced as follows:

“143. 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”.

10.42 Theme – Alternative Dispute Resolution Mechanism**Recommendation**

The CRC recommends that a new section be added, as follows:-

”In the exercise of judicial authority, the Court shall promote alternative forms of dispute resolution including conciliation, mediation, arbitration, and other traditional dispute resolution mechanisms. Traditional mechanisms shall not be used in a way that is repugnant to justice or morality, inconsistent with this Constitution, or any written law.”

11 CHAPTER ELEVEN

LOCAL GOVERNMENT AND DECENTRALIZATION

11.1 Introduction

The growing demand of Sierra Leoneans is the desire to build a local government system with the administrative synergy for efficacy and the overall interest of their locality. The need to devolve functions and resources from the centre to local governmental units is therefore critical to building a local government system. The new chapter of the revised Constitution will articulate issues relevant to achieving a decentralized system of governance.

The TRC in its imperative recommendation emphasizes the need to establish local councils across the country:

“The Commission found that prior to the conflict the Provinces had become totally excluded by the centralisation of political and economic power in Freetown. Local government was in demise across the country”. The Commission emphasized its recommendation that to bring government and service delivery to people throughout Sierra Leone the Government must be seen to be establishing infrastructure and delivering health, education, justice and security services in all Provinces.”⁴⁸⁰

The TRC went on to state that: “local government must be democratic. The primary aim of local government must be to enable the progressive social and economic development of local communities and to ensure access to essential services that are affordable. New local government must be premised on the active engagement of communities in the affairs of the local structure, including planning, service delivery and performance assessment. Local councils must use their resources in the best interests of the local community. Services should be provided in a financially sustainable manner. Local government must give members of the local community full and accurate information about the level and standard of services they are entitled to receive.”⁴⁸¹

At Independence in 1961, elected local government councils were part of the governance system inherited from the British until this tier was unilaterally suspended by central government in the 1970s. By 1991, as pointed out by the TRC, the principle of decentralization was not included in the Constitution.

Following the passing of the Local Government Act 2004, decentralized local government once again became a feature of democratic governance. The GSCF in their position paper stated that it is a system “that needs to be protected. This should be done through recognition and entrenchment in the constitution of the various elements of the Local Government system,

⁴⁸⁰ TRC Volume II page 123 para 41

⁴⁸¹ TRC Volume II page 158 para 254

including the quotas for women's representation on the ward committee as well as the status and functions of local councils and their subsidiary bodies."⁴⁸²

The objective of local government is to take development and governance to the grassroots level and provide equal opportunities for participation and representation for sustainable development at local level, and for overall sustenance of democracy in Sierra Leone.

The new chapter on local government and decentralization in the revised Constitution will outline principles of local government and the obligations of local government structures in terms of their establishment and functions.

As stated in a recent report commissioned by the UK Government's Department for International Development regarding the importance and impact of the local government system "within international development, democratic decentralization has acquired a dual rationale: a) improving development planning and service delivery (poverty reduction and good governance); b) reincorporating alienated populations into national bodies politic (peace building)."

The report went on to state that this dual rationale was particularly pertinent to Sierra Leone: "several studies identify the over-concentration of political, administrative and economic power in the capital Freetown as a root cause of rural poverty and the chaotic civil war of the 1990s."

The report further stated that another reason to decentralize was to reform and replace the archaic and conflicted system of governance in the provinces, inherited from colonial "indirect rule". Chieftaincy, the backbone of this governance system, appeared to be undergoing a terminal crisis of popular legitimacy at the end of the civil war."⁴⁸³

These arguments coincide with public concerns about the over-centralised system of governance in Sierra Leone, and the demand for decentralisation. During the nationwide consultations, the public strongly advocated that the revised Constitution should make provision for a fully-empowered local government system.

The CRC reviewed the Constitution of Sierra Leone 1991 (the 1991 Constitution), the Peter Tucker Constitution Commission Report 2008 (the PTC Report), and the TRC recommendations, and also took into consideration best practices and regional experiences with regard to local government system. The CRC was also informed by expert opinions, various position papers reports from special engagement sessions with different interest groups and stakeholders, and feedback from the nationwide consultations on issues relating to local government and decentralisation.

The CRC recommends that for better service delivery, effective governance, and inclusive and sustainable development, the local government and decentralisation process must be enshrined in the Constitution and implemented.

⁴⁸² GSCF position paper page 24

⁴⁸³ Decentralisation in Sierra Leone Impact Constrains and Prospect section 2 page 11

The proposed new chapter is subdivided into the principles, composition, responsibilities of the local government system.

11.2 Historical Background

Local government in Sierra Leone prior to the civil war had changed remarkably since the days of colonial “indirect rule”. During the colonial period, it comprised a system of field administration coordinated by District Officers, and chieftaincy structures at local level.

District councils were established in 1946 and took on responsibility for primary education - all native administrative schools came under the direct administration and supervision of the District Councils, and Supervisors appointed by district councils were in charge of primary school supervision. Education campaigns were carried out to encourage people to send their children to schools, and scholarships were awarded by district councils to enable students to pursue both secondary and tertiary education outside their indigenous communities.

As a result, educational and political commentators argued that district councils positively contributed to educational development in the provinces.⁴⁸⁴

The primary objective of creating district councils was to involve local people in the governance of their districts and the country as a whole. According to the District Councils Act, Cap 79 of the Laws of Sierra Leone, district councils had the following responsibilities:

- To promote the development of the district and the welfare of its people;
- To advise on any matter brought before it by government;
- To make recommendations to government on issues affecting the welfare of districts;
- To act as commissions of enquiry into local matters such as boundary disputes and complaints against chiefs.

The establishment of district councils in the provinces laid the foundation for social, cultural, economic, educational and political development in the provinces. The councils formed training grounds for young ambitious talented rural people who were interested in governance to actively participate in the local politics of their communities, and the education gained during their apprenticeship in councils paved ways for their absorption into national politics:

“National political leaders such as Sir Milton Margai, Sir Albert Margai and Siaka .P. Stevens, who became heads of state, went through the District Councils to gain political prominence. As a result of the training and knowledge gained during their participation at district level, they became the leading advocates of independence of Sierra Leone in 1961. Against this backdrop,

⁴⁸⁴ Dr. Abubakar Kargbo “Comparative Local Government Administration”-2014

it can be asserted that District Councils played a vital role in the political development of Sierra Leone before and after independence onto 1972.”⁴⁸⁵

In spite of the fact that the new republic was deeply in need of local government reforms after independence in 1961, the government of Sir Milton Margai suspended district councils in 1962 on the charges of maladministration and corruption. Immediately after the death of Sir Milton Margai in 1964, the new Prime Minister Sir Albert Margai decided to revive district councils in 1965, only for them to be suspended again by the National Reformation Council (N.R.C.) military regime in 1967, led by Brigadier Lansana.

Due to corruption and maladministration in the early 1970s, the APC-led government of Siaka Stevens abolished district councils in 1972 and replaced them with non-elective committee members. Moreover, political meddling, weak structure and lack of resources made the Local Government structure very ineffective.

The TRC stated that the over-centralized governance structure was one of the factors that contributed to the Civil War:

“The Provinces had been almost totally sidelined through the centralisation of political and economic power in Freetown. Local government was in demise across the country. Chiefs and traditional structures did little more than the bidding of the power base in Freetown. Regions and ethnic groups were polarised by the contrasting treatments they were afforded.”⁴⁸⁶

“The Commission found that prior to the conflict the Provinces had become totally excluded by the centralisation of political and economic power in Freetown. Local government was in demise across the country. The Commission emphasizes its recommendations to bring government and service delivery to people throughout Sierra Leone. The Government must be seen to be establishing infrastructure and delivering health, education, justice and security services in all Provinces.”⁴⁸⁷

Current context

Section 110(4) of the 1991 Constitution mentions the establishment of local government through subsidiary legislation. It reads as follows:

“Parliament may confer upon any authority established by law for the purpose of local government power to impose taxation within the area for which that authority is established and to alter taxation so imposed”.

The Local Government Act, 2004 (LGA 2004) aims to consolidate and streamline the law on local government to give effect to decentralisation and devolution of powers, functions and resources. It provides for local elections, the political and administrative set-up of local

⁴⁸⁵ Dr. Abubakar Kargbo “Comparative Local Government Administration “-2014

⁴⁸⁶ TRC Volume III, page 31 para 58

⁴⁸⁷ TRC Volume III, page 124 para 41

councils, local council financing and decentralised decision-making to ensure good governance, democratic participation and control of decision making by the people.

To give full effect to the provisions of the LGA 2004, statutory instruments were enacted, establishing 19 local councils in 19 localities, and, by the Local Government (Assumption of Functions) Regulations, 2004 (SI No 13 of 2004), providing for the devolution of functions. In 2006, city/municipal status were granted to five towns, in addition to Freetown which already had city status, namely Bo, Kenema, Makeni, and Kono.

The enactment of LGA 2004 was followed by the conduct of the first local government elections in 2004. The LGA 2004 specified the first four years as the transition period for implementing the new relationships between central and local government. During this time, authority and corresponding resources for a defined set of functions were to be transferred to local councils. Against this background, the revised Constitution will provide for devolution of power, functions and resources to the local councils.

In 2010, the National Decentralisation Policy was launched. The policy sets out an in-depth picture of the decentralization process and the local government architecture of Sierra Leone in the twenty-first century, and lays down the basis for the development and growth of the devolution process by outlining the main aims, objectives and general principles guiding the decentralization process.

The policy states that “local councils shall continue to exist as the highest development and service delivery authority”, but this is inconsistent with the LGA 2004, which defines local councils as the highest political authority at the local level. The policy also reintroduces the position of district officers.

Local councils need to be provided with greater administrative control over frontline staff associated with service delivery, and the National Decentralization Policy states that comprehensive devolution of staff to local councils should have taken place by 2016, with interim arrangements whereby authority is gradually handed over to local councils. This approach of transfer of responsibility to local councils has to be balanced with local council capacity to undertake this responsibility.

Local government and decentralisation has ensured that the local people and their communities are empowered and fully involved in political and socio-economic development processes and actually formulate and implement development plans, while government working in collaboration with the private sector and civil society, provide the enabling environment, oversight and effective management of national and local development.

Decentralization is now in progress in Sierra Leone: two local council elections have been held; all local councils have the core staff to carry out planning, budgeting, accounting, and procurement functions; a system of inter-governmental transfer is in place; and local governments are able to manage service delivery in the areas devolved to them.

11.3 Chapter on Local Government and Decentralisation

The CRC gave consideration to the TRC findings and recommendations pertaining to public participation in the democratic process at all levels. The TRC stated that “the Commission commends efforts made by the Government and certain international agencies to decentralise government. Such efforts will bring government closer to the people. They will also permit greater participation in the democratic process. Hopefully, these efforts will result in improved delivery of public services.”⁴⁸⁸

The TRC also made mention that “the Commission recognises that this exercise is an enormous undertaking and makes no particular recommendations as to how it should happen. That expertise rests with those involved in the programme. The Commission recommends that the Government consider certain core principles when building local government and reviving institutions such as District Councils.”⁴⁸⁹

The TRC further emphasized strengthening local government through participation, standard of services, and allocating sufficient resources: “local government must be democratic. The primary aim of local government must be to enable the progressive social and economic development of local communities and to ensure access to essential services that are affordable. New local government must be premised on the active engagement of communities in the affairs of the local structure, including planning, service delivery and performance assessment. Local councils must use their resources in the best interests of the local community. Services should be provided in a financially sustainable manner. Local government must give members of the local community full and accurate information about the level and standard of services they are entitled to receive.”⁴⁹⁰

The TRC also recommended that principles of local government should be enshrined in the Constitution.⁴⁹¹

The position paper of Oxfam in partnership with the 50/50 Group of Sierra Leone recommended that “there should be an effective, adequately resourced Local Government and Women’s Equal Right to participate and to be guaranteed by the Constitution and protected against suspension by the Executive or abolition by Parliament. Every contestant in local government elections must be subject to a requirement to have a residence and /or an office in the locality (s)/he is contesting.”⁴⁹²

During the CRC’s regional fact-finding tour in Kenya, Sierra Leoneans stated that “because leadership is critical to the effective governance of a nation and its ultimate development, it is important that our national Constitution sets the standard by which national leadership must be constituted. This cannot be done by only defining key elements of leadership, as important as that is, but the Constitution must also provide guidance and direction on how to enhance

⁴⁸⁸ TRC Volume II, page 159 para 252

⁴⁸⁹ TRC Volume II, page 159 para 251

⁴⁹⁰ TRC Volume II, page 159 para 254

⁴⁹¹ TRC Volume II, page 159 para 255

⁴⁹² Oxfam in partnership with the 50/50 Group of Sierra Leone position paper page 14

collective leadership and participatory governance, through a vibrant citizen participation in civic life and public affairs.”

They recommended that the CRC should address the leadership and governance deficits that have previously faced the country, and provide direction on promoting collective leadership, taking into account the fundamental right to public participation in decision making. In this regard, they proposed that the Constitution must “address issues such as decentralization, devolution of power, excessive executive authority, and come up with a formula for distribution and allocation of power and resources, that is truly a) representative of all groups in society, including the youth, women and the disabled; and b) regionally and ethnically balanced including ensuring that government appointments have a national character.”⁴⁹³

The Movement for Social Progress (MSP) in its position paper commented on the issue of local and city councils that were not decentralised enough. They observed that: “we believe that the new constitution should further reconstitute large councils especially Freetown into a Metropolitan Assembly - Greater Freetown Assembly, incorporating Western Rural districts. Separate and smaller local councils should be created in Freetown for example Waterloo Town Council, Lumley Aberdeen Council, Wellington, Calaba Town Councils etc. The role of the sub-local councils will be to provide services like sanitation and supervise primary schools to be deliberated further by citizens.”⁴⁹⁴

Having studied several position papers and public submissions, and taking account of discussions at many plenary sessions, the CRC endorses the recommendations that a system of local government and decentralisation should be established by the Constitution, and that its non-abolition by legislation or directive should be guaranteed. The CRC recommendation is in line with that of the TRC report and a provision in the Lomé Peace Accord that the Constitution should have a separate chapter on local government and decentralization.

11.4 Establishment of Local Government

Current Context

There is no provision for the establishment of local government in the 1991 Constitution. However, the phrases “local government”, “local authorities” and “local taxation” are mentioned in sections 13, 22, 23, 27, 29, 30, 33, 35, 75, 110 and 119 of the 1991 Constitution.

The establishment of localities and local councils is captured in Part II of the LGA 2004, which reads as follows:

“PART II—ESTABLISHMENT OF LOCALITIES AND LOCAL COUNCILS

⁴⁹³ Members of the Sierra Leone Community in Kenya position paper page 5

⁴⁹⁴ Movement for Social Progress position paper page 2

2. (1) Subject to subsection (2), the areas specified in Part I of the First Schedule shall be localities.

(2) The President may for the purpose of this Act and acting on the recommendation of the Ministry, the Ministry responsible for finance and the National Electoral Commission, by statutory instrument—

(a) declare any area within Sierra Leone as a locality;

(b) assign a name to the locality;

(c) establish a council for the locality;

(d) provide for the number of persons constituting the council;

(e) specify the place where the principal offices of the local council are to be situated; and

(f) provide for such other matters as are required by this Act to be included in the instrument or are consequential to it.

(3) The Minister, the Minister responsible for finance, and the National Electoral Commission shall, in making any recommendation, consider—

(a) the population and population density;

(b) the geographical contiguity;

(c) the topography;

(d) future growth or expansion, of the area.

3. (1) A local council, established under subsection (2) of section 2, shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its own name.

(2) A local council shall have power for the discharge of any of its functions, to acquire and hold movable or immoveable property, to dispose of such property and to enter into any contract or other transaction.”

Observation

The CRC discussed making provision in the revised Constitution for the establishment of a local government system. It also considered whether or not there should be a new chapter on local government, the provisions of which should be entrenched.

The PTC Report also recommended the addition of a new section 73 of the 1991 Constitution, as follows: “Local Government, through democratically elected Local Councils is hereby

recognized and established. Its composition, functions and administration shall be determined from time to time by Parliament.”

The Local Councils Association of Sierra Leone (LoCASL) in its position paper recommended that no two councils should co-exist in the same city or chiefdom. LoCASL also recommended that: “Local Councils Establishment and Decentralization should be enshrined in the National Constitution of Sierra Leone.”⁴⁹⁵

The Governance Stakeholders Coordination Forum (GSCF) in its position paper commented that the Constitution should make clear that one of the objectives of constitutional local government should be to strengthen citizens’ power to manage natural resources at local level: “with this in mind it is proposed that GSCF recommends to CRC that a separate new chapter should be introduced into the 1991 constitution instituted “LOCAL GOVERNMENT & DEVOLUTION” with provisions chosen from among the following:

Sierra Leone shall have a system of decentralized local government and administration established by this constitution and its non-abolition by legislation or directive is hereby guaranteed; Parliament shall have no power to enact any law suspending or abolishing the system of local government.”⁴⁹⁶

Entrenchment of Local Government

The National Democratic Alliance (NDA), all district councils, and LoCASL in their position papers emphasised that certain provisions in the revised Constitution relating to local government and decentralisation should be entrenched. They recommended that: “the tenets enshrined in the Local Government Act of 2004 be incorporated into the new constitution. This will help to make certain provisions entrenched in the new constitution”.⁴⁹⁷

The CRC Research sub-committee after further consultation with stakeholders considered that no government should alter the institution of local government without first of all amending the Constitution. The CRC recommends that the provisions of the new chapter on local government and decentralisation should therefore be entrenched.

The GSCF in its position paper emphasised that the principle and system of local government and decentralization re-introduced by the Local Government Act 2004 should be stated and entrenched in the revised Constitution.⁴⁹⁸

In their position papers, the NDA, Sierra Leone People’s party (SLPP), and People’s Democratic Party recommended that the Constitution should have an entrenched clause on local council elections. In addition, they suggested that nomination fees for local government elections should be determined by the political parties.

⁴⁹⁵ Local Council Association of Sierra Leone position paper

⁴⁹⁶ GSCF position paper page 21

⁴⁹⁷ NDA position paper page 5

⁴⁹⁸ GSCF position paper page 20

During the nationwide consultations, a majority of people recommended that there should be a separate chapter on local government in the reviewed Constitution.

11.5 Recommendations

The CRC recommends that there should be a new chapter in the revised Constitution entitled “Local Government and Decentralisation” that should cover critical issues related to local government in Sierra Leone with reference to the Local Government Act 2004.

Based on the recommendations, views and feedback from the public, political parties, Paramount Chiefs and stakeholders, the CRC endorses the recommendations made in the TRC report, the Lomé Peace Accord, and the PTC Report, and so recommends that following provision should be an entrenched clause in the revised Constitution:

“Establishment of Local Government

1. There shall be a system of decentralized local government and administration for Sierra Leone.”

11.6 Principles of Local Government

Current Context

There is no provision in the Local Government Act 2004 relating to principles of local government. However, the principle functions and responsibilities of local authorities are captured in the National Decentralization Policy.

Observation

For local government to play its role as an institution of service delivery for citizens, it must be governed by widely-accepted principles of good governance such as transparency, which eliminates corruption. The process of decentralisation seeks to bring the government closer to the people. Some functions may include:

- ensure, enhance and safeguard rapid sustainable development;
- transfer power to the lower level of government (chiefdom authorities);
- promote capacity building at the chiefdom authorities to plan, implement, monitor and manage delivery of services to the community.

The CRC endorsed the recommendation in the National Decentralization Policy that Sierra Leone should be governed through a decentralized system of governance, which therefore

requires central government to transfer governance and service delivery functions and accompanying resources to lower levels of government by devolution, subject to national legislation and in accordance with the principle of subsidiary.

Article 176(2) of the 1995 Ugandan Constitution sets out principles on which the local government system is based.⁴⁹⁹ Similarly, Article 175 of the Kenyan Constitution (principles of devolved government) reads: “County governments established under this Constitution shall reflect the following principles-

- a. county governments shall be based on democratic principles and the separation of powers;
- b. county governments shall have reliable sources of revenue to enable them to govern and deliver services effectively; and
- c. no more than two-thirds of the members of representative bodies in each county government shall be of the same gender.”

Further, section 179(1) of the Kenyan Constitution states that: “the executive authority of the county is vested in, and exercised by, a county executive committee”.

Both the LoCASL and the GSCF stated that the revised Constitution should outline the principles of local government and decentralisation. In its position paper, the GSCF recommended that “the Constitution should establish principles that provide guidance as to how local government structures operate; the principles should include-

- a) implementation of separation of powers,
- (b) generating sources of revenue that will be used to fund its operations, and
- (c) providing that not more than two-thirds of the members in each district or city council shall be of the same gender.”⁵⁰⁰

11.7 Recommendations

The CRC took into consideration the nationwide public consultations, expert opinions, and the constitutions of Kenya and Uganda, and concluded that the principles of local government and decentralization should be included in the revised Constitution.

The CRC endorses the recommendation of the National Decentralization Policy that “Sierra Leone shall be governed through a decentralized system of governance and shall require Central Government to transfer governance and service delivery functions and accompanying resources to the lower levels of government by devolution subject to national legislation and in accordance with the principle of subsidiary.”

⁴⁹⁹ Uganda Constitution Article 176 (2)

⁵⁰⁰ GSCF position paper page 22

The CRC recommends that section 2 of the new chapter of the revised Constitution on local government should read as follows:

“Principle of Local Government

2. The Local government system shall be based on the principles of Democratic Good Governance.”

11.8 Composition of Local Government System

Current Context

There is no provision in the 1991 Constitution on the composition of local councils. However, the Local Government Act 2004 provides for the composition of local government and defines their powers and functions.

Local government in Sierra Leone comprises 19 councils across the country - 6 municipalities (Freetown, Bo, Makeni, Kono, Bonthe and Kenema) and 13 district councils (Western Area Rural District Council, Bo, kenema, Moyamba, Bonthe, Pujehun, Kailahun, Kono, Portloko, Kambia, Koinadugu, Bombali, and Tonkolili). It is also divided into 149 Chiefdom Councils in local councils that are represented by Paramount Chiefs. Local councils have subsidiary bodies that enable decision-making to take place at the lowest levels of the community.

Section 4 of the Local Government Act 2004 states:

“4. (1) A local council shall consist of the number of persons prescribed under paragraph (d) of subsection (2) of section 2, made up of–

(a) the Chairperson;

(b) such number of elected councillors from the locality, elected by universal adult suffrage in accordance with the Electoral Laws Act, 2002; and

(c) the number of Paramount Chiefs in a locality as specified in Part II of the First Schedule selected by the Paramount Chiefs in the locality to represent their interests.

(2) Paragraph (c) of subsection (1) applies only to localities that have a system of paramount chieftaincy in terms of section 72 of the Constitution.

(3) Every local council shall consist of not less than twelve members.

(4) A person seeking to be a member of a local council as an elected councillor may present himself to the electorate as a candidate of a political party or as an independent candidate.”

Observation

Local government in Sierra Leone is established under the Local Government Act, 2004. Citizens elect councillors and Mayors, in the case of City Councils and municipalities, and Chairpersons in the case of district councils. After the election of Councillors, Mayors, Chairpersons and their deputies, the councils elect the Chairpersons and their deputies of the various committees. The number of committees as prescribed by the Local Government Act, 2004 will depend among other factors on the size of the particular Council.

11.9 Recommendations

The CRC recommends that in the new chapter of the revised Constitution, the composition of the local government system should be as follows:

“Composition of Local Government System

“3. The Local Government system shall establish the following councils-

- (a) City Municipal Councils;**
- (b) District Councils;**
- (c) Chiefdom Councils; and**
- (c) any other council as the system may deem necessary.”**

11.10 Responsibility of Local Council

Current Context

There is no provision in the 1991 Constitution on the responsibilities of the local government system. However, the Local Government Act 2004 provides for the responsibilities of local government and defines their powers and functions.

Section 20(1) of the Local Government Act of 2004 states:

“20. (1) A local council shall be the highest political authority in the locality and shall have legislative and executive powers to be exercised in accordance with this Act or any other enactment, and shall be responsible, generally for promoting the development of the locality and the welfare of the people in the locality with the resources at its disposal and with such resources and capacity as it can mobilise from the central government and its agencies, national and international organisations, and the private sector.”

The National Decentralization Policy states as follows:

- “a) The transfer of power, authority and resources from the centre to democratically elected local councils anchored within the national Constitution and articulated in law, promoting autonomy without prejudice to the sovereignty of the national Government;
- b) Bringing political, administrative and fiscal control and responsibility over services closer to the people where they are actually delivered, in line with the principle of subsidiarity;
- c) Engendering people’s ownership of their local development agenda;
- d) Ensuring that holders of public offices locally are held accountable for their actions to the public;
- e) Guaranteeing transparency and openness in the conduct of local council affairs;
- f) Creating an environment for participatory democracy that will enable greater involvement of the people and their representatives in planning, implementing, monitoring and evaluation of development projects and local economic development in their localities;
- g) Stimulating economic growth in local communities, including public-private partnerships; and
- h) Promoting inclusiveness and equality of all citizens within any locality regardless of gender, origin, religion or political persuasion.”

Observation

Relating to the responsibility of local government, the CRC took account of various position and policy papers on the issue of establishing local representative government institutions to carry out appropriate services and development activities responsive to the wishes and initiatives of the local community.

It is also the responsibility of local government to provide opportunities for local communities to exercise their democratic right to self-governance, and to encourage and develop initiatives and leadership potential. In addition, local government must mobilise human and material resources through the involvement of members of the public in their local development, and provide a two-way channel of communication between local communities and central government.

The Local Government Act 2004 gives councils powers and responsibilities, including those of imposing fees and charges, and the right to acquire and deal in land. It also empowers them to provide a wide range of services, including primary education, health, road maintenance, water and sanitation, public housing and land administration. At the same time, apart from the local authorities, there also exists another administrative structure consisting of the decentralized provincial administration regulating the chiefdom council system of central government.

These dual structures have sometimes caused governance problems. The situation is further complicated by the decentralised Constituency Development Fund which is outside the local government structure while serving the same constituents served by local councils. This situation distorts the hierarchy of leadership at local and district levels between the roles of district councils and Paramount Chiefs with those of the Mayor/Chairperson and the councillors.

As a result, it is unclear what matters should be referred to each of these bodies. The district level focus on rural development is a delegation of responsibility by central government to district level. This reduces the powers of local authorities to plan and implement all activities in their jurisdictions.

Another challenge has been the gradual weakening of local authorities by removing some of their powers and functions: the Minister of Local Government has power to strengthen or weaken the operations of a local authority. The current poor performance of local authorities can be linked to their mismanagement, political interference, over-control by the Ministry of Local Government, an inadequate financial base due to lack of revenue collection strategies, lack of adequate human resources due to poor remuneration and an overwhelmed Public Service Commission. There are various laws relating to local government that are not harmonised and so negatively impact on local authority operations.

In addition, citizens are not adequately informed or involved in planning, implementing and monitoring local authorities programmes.

During nationwide public consultations, people recommended that the Chief Administrator and all council staff should be subordinate to councillors to enable them to carry out their work and mandate effectively.

The current local government system is such that the Town Administrator and other senior officers of the councils are controlled by the Ministry of Local Government, and any mismanagement can be reported only to the Ministry of Local Government, which has the power to discipline council officers.

Citizens can either vote in or stand as candidates in local council elections. They can also lobby for efficient and effective service delivery by making sure that the political and administrative structures of the local council perform their duties.

In each local councils, there are two structures; the decision-making (political) structure, headed by the Mayor or Chairperson, and the administrative structure headed by chief administrator.

The National Democratic Alliance (NDA) commented on the responsibilities of local councils and recommended that certain taxes should be collected by local councils: “there are certain taxes that should be collected by Local Councils and others by Central Government. The new constitution should be able to clearly distinguish between these different taxes.”⁵⁰¹

⁵⁰¹ NDA position paper page 5

The Sierra Leone Women's position paper "Many Messages, One Voice" emphasised that the Constitution should oblige all local councillors and MPs to consult and report to their constituents at least once a year, preferably quarterly, and to require them to have a residence and/or office in the locality he/she is contesting.⁵⁰²

In its position paper, the Sierra Leone People's Party (SLPP) recommended that Parliamentarians and local councillors must be required to consult and obey their people and their party on major issues "because it is the people and the party who sent them to parliament and councils."⁵⁰³

Action Aid International Sierra Leone in its position paper recommended the repeal of all provisions in the 1991 Constitution and other laws used to discriminate against women, especially in relation to the right to land and property and to vying for traditional leadership positions such as paramount chieftaincy.⁵⁰⁴

The GSCF in its detailed position paper elaborated on the responsibility of local councils and recommended that the objects of devolved local government should be to:

"Promote self-governance and enhance the participation of people and communities in maintaining law and order and promoting democratic, transparent and accountable local government. Establish the local government institution as close as possible to the people;

Encourage the involvement of communities and community based organizations in the matters of local government, and promote dialogue among them on matters of local interest;

- Promote and facilitate civic education;
- Promote social and economic development;
- Promote self-reliance amongst the people through mobilization of local resource to ensure the provision of health and educational services to communities in a sustainable manner;
- Promote peace, reconciliation and peaceful co-existence among the various communities;
- Ensure gender mainstreaming in local government;
- Acknowledge and incorporate the role of Traditional Authorities and Customary Law in the Local Government system;
- Involve communities in decisions relating to the exploitation of natural resources in their areas and promote a safe and healthy environment;
- Promote and support the training of local cadres.

⁵⁰²Sierra Leone Women's position paper "Many Messages, One Voice" pages 14-15

⁵⁰³SLPP position paper page 2

⁵⁰⁴Action Aid International Sierra Leone position paper page 4

- To provide democratic and accountable government for local communities;
- To ensure the provision of services to communities in a sustainable manner;
- To promote a safe and healthy environment
- To encourage the involvement of communities and community organizations in the matters of local government.
- To foster national unity by recognizing diversity;
- To give power of self-governance to the people and enhance the participation of the people in the exercise of the powers of the state and in making decisions affecting them.”⁵⁰⁵

The LoCASL in its position paper stated that “local council shall exist as the highest political, developmental and service delivery authority in the locality.”⁵⁰⁶

The LoCASL further commented that local councils “shall control and service all existing Government of Sierra Leone structures including offices and dwellings in the locality except military, police, fire force, and correctional service centers.”⁵⁰⁷

The Krio Descendant Union (KDU) in its position paper recommended that in order to stand for election as a representative of a community, whether it be a village, ward, constituency, or municipality, all candidates should have a significant stake in that community, by way of ownership of property, or at least considerable continuous residence within the community. As things currently stood, with two dominant parties, a candidate could win election to represent a community by virtue merely of being a party candidate, even though that individual might have had very little real connection with that community.

The KDU further called for enhanced property or residence requirements for all nominees for election to the position of Mayor, Member of Parliament, Councilor, and Village Headman: “This is the practice in some other countries around the world. In addition, for all these categories, KDU calls for lineage requirements (ie the nominee should be an indigene of the area), as is the practice for some categories of political representation in provincial areas. This amendment should help to ensure that political representatives all over the country have the best interest of their community at heart. It should help to reduce the brain and skills drain away from the provinces to Freetown.”⁵⁰⁸

The CRC gave consideration to an individual submission by Michael Joseph Mbosa, who recommended that both literate and illiterate people should be eligible to contest for the position of councillor.

⁵⁰⁵ GSCF position paper page 22

⁵⁰⁶ LoCASL position paper page 1

⁵⁰⁷ LoCASL position paper page 1

⁵⁰⁸ KDU position paper page

He also went on to state that Sierra Leoneans by birth, whether black or white, should be eligible to contest for the position of councillor: “All persons who have lived in the ward for at least five (5) years should be qualify to contest for councilor.”⁵⁰⁹

The CRC recommends that there should be an executive and general assembly for all local councils (Mayor/Chairpersons and sub-committees to form the executives).

Kaffu Bullom Chiefdom, Constituency 054 Port Loko District recommended that nomination of candidates for the post of a councillor, mayor, district chairman/lady “should be done on the basis of merit and the will of the people, and hence councilors are being voted for, they ought to be put on a sound salary scale just the same way like members of parliament, honourable ministers, mayors and the head of state be signed by all councilors etc.”⁵¹⁰.

Kaffu Bullom Chiefdom also further recommended that:

- “the nomination of candidate for the position of paramount chief mayor may not come from a ruling house but based on merit or popularity of the makes within a given chiefdom.
- Every councilor, district chairman/lady, secretary general and treasurer should not only be put on salary scale but also entitled to a car and house loan hence they are agents of development at both district and chiefdom level.
- The sum of two thousand United States Dollars (\$2,000) as the monthly salary for each and every constituency councilor and other officers who are voted into their respective post by the masses.
- Each member of Parliament must be paid not less than Five Thousand United States Dollars (\$5,000) monthly based on condition of parliament seats reductions to (65) sixty five seats instead of the present existing numbers. This move is highly a way forward to minimize the level of mass corruption in the country. The recent salary increment is a good and laudable venture if, the prices of food items, clothing and building materials are reduced to affordable level.
- Councilors of each and every ward within a constituency must be provided with a well-equipped office where she/he would perform his/her official duties smoothly.

This new system is aimed at energizing the committees within Council to enhance the performance of department within the Council. However, we are suggesting that the Office of Chairperson of all committees shall be full time. Such person shall serve serving as the political head within the administration of the Council. Additionally the committees’ Chairmen or Chairperson would form part of the Executive and attend the management meeting of the Council.”⁵¹¹

⁵⁰⁹ Michael Mbosa position paper pages 1-2

⁵¹⁰ Kaffu Bullom Chiefdom, Constituency 054 Port Loko District page 5

⁵¹¹ Kaffu Bullom Chiefdom, Constituency 054 Port Loko District page 8

The CRC recommends that a local council should be the highest political authority in the locality and shall be responsible for the general administration of its locality including-

- The collection and utilisation of taxes; mobilization of the human and material resources necessary for the overall development and welfare of the people of the locality; as well as the promotion and support of productive activity and social development in the locality;
- Initiation and management of programmes for the development of basic infrastructure and provision of work and services in the locality; which will be responsible for the development, improvement and management of human settlements and the environment in the locality;
- Initiation and execution of development plans for the locality; and coordination and harmonization of the execution of programmes and projects promoted or carried out by public corporations, other statutory bodies and non-governmental organisations, in the locality;
- Cooperation with relevant agencies to ensure the security of the locality and the welfare of the people, and oversight of Chiefdom Councils in the performance of functions delegated to them by the local council; and to determine the rates of local tax; and also approve the annual budgets of Chiefdom Councils and oversee the implementation of such budgets.

11.11 Recommendations

As well as modern constitutions and international best practices, the CRC took into consideration the various position papers, expert recommendations, and public recommendations, and therefore recommends that the following provision should be included in the new chapter on local government and decentralization in the revised Constitution:

“Responsibility of Local Council

“4. A Local Council shall be the highest political authority in the locality and shall be responsible for the general administration of its locality.”

11.12 Composition of Local Council

Current Context

Section 4 of the Local Government Act 2004 states:

“4. (1) A local council shall consist of the number of persons prescribed under paragraph (d) of subsection (2) of section 2, made up of-

(a) the Chairperson;

(b) such number of elected councillors from the locality, elected by universal adult suffrage in accordance with the Electoral Laws Act, 2002; and

(c) the number of Paramount Chiefs in a locality as specified in Part II of the First Schedule selected by the Paramount Chiefs in the locality to represent their interests.

(2) Paragraph (c) of subsection (1) applies only to localities that have a system of paramount chieftaincy in terms of section 72 of the Constitution.

(3) Every local council shall consist of not less than twelve members.

(4) A person seeking to be a member of a local council as an elected councillor may present himself to the electorate as a candidate of a political party or as an independent candidate.”

Observation

The CRC considered the issues of the establishment of a General Assembly and Executive body and gender representation in local councils.

The National Commission for Social Action in its submission recommended that there should be an executive and general assembly for all local councils (Mayor/Chairpersons and sub committees to form the executives).

In Bonthe District it was recommended that the Constitution should stipulate that women should occupy 30% of all seats in each local council, and another 30% should be allocated to youth. It was further recommended that there should be an Executive General Assembly in all local councils.

Oxfam’s position paper commented that every contestant in local government elections must be required to have a residence and or an office in the locality (s)/he is contesting.⁵¹²

The CRC was mindful of the gender parity issues raised in position papers, and also paid particular attention to the fact that the 2015 census shows that the population of Sierra Leone has increased to just over seven million, with men at 49% and women 51%.

During district level consultations, the majority of the people recommended that local council administration should come under the control of councillors.

The GSCF recommended in its position paper that the Constitution should establish principles that provide guidance as to how Local government structures operate. The principles should include:

- a) Implementing of separation of powers,
- b) Generating sources of revenue that will be used to fund its operations, and

⁵¹² Oxfam’s position paper page 14

c) Providing that not more than two-thirds of the members in each district or city council shall be of the same gender.

Oxfam, Sierra Leone People's Party (SLPP), and Sierra Leone Women in their position papers recommended that women's right to participate in local government should be guaranteed by the Constitution, and protected against suspension by the Executive or abolition by Parliament. Sierra Leone Women and SLPP also suggested that local government should be guaranteed by the Constitution.^{513 514}

The SLPP went on to state that the Constitution should guarantee a 30% quota of women in leadership positions, including in customary and traditional structures, stating: "Let the constitution confirm that Affirmative Actions should also be used to address women's economic backwardness and poverty."⁵¹⁵

The GSCF in its position paper recommended that no more than two-thirds of the members in each district or city council should be of the same gender.⁵¹⁶

In Moyamba, Bonthe and Matru people recommended that there should be a quota system, 30% for women, 10% for people with disability and 10% for youths.

The position paper presented by the Kailahun District Council recommended "Women should be part of court chairperson and mammy queens should be elected and not appointed."

The LoCASL in its position paper commented that "a candidate for any Local Council Governor or Mayor shall have attained a Tertiary education and a post-secondary school education for councilors. The candidate fee for councilors and governors shall be determined by the government."⁵¹⁷

The National Commission for Social Action recommended that a candidate for any local government post should have attained post-secondary school certificate for councillor, and graduate for Mayor/Chairman, should be on the Register of Electors, and should be ordinarily resident in the locality.

In the review of the 1991 Constitution conducted by Campaign for Good Governance and Open Society Initiative for West Africa (CGG/OSIWA), citizens commented that many councillors did not have the minimum education standards to be effective and efficient in their work. They also commented that the revised Constitution should consider setting minimum educational standard criteria for eligibility to contest as a councillor.⁵¹⁸

⁵¹³ Sierra Leone Women position paper page 6

⁵¹⁴ Oxfam's position paper on women's right page 14

⁵¹⁵ SLPP position paper page 2

⁵¹⁶ GSCF position paper page 24

⁵¹⁷ LoCASL position paper page 1

⁵¹⁸ Citizen's recommendation on key provisions, conducted by CGG and OSIWA page

The LoCASL suggested that the CRC should adopt the provision contained in Article 180(3) of the Ugandan Constitution; Article 179(3)(a)(b) of the South African Constitution; and Article 193(1) of the Kenyan Constitution.

Concerning educational requirements, the CRC recommends that a candidate for any local council chairman or mayor election shall have attained tertiary level education, and that a councillor should have attained a post-secondary school certificate of education.

The CRC recommends that other details must be enshrined in the revised Local Government Act 2004 after further consultation.

11.13 Recommendations

The CRC recommends the following provision to be included in the new chapter on local government and decentralisation of the revised Constitution:

“Composition of Local Council

5. A local council shall consist of-

(a) a General Assembly ---

Comprising all councillors of the council which shall be headed by a Chairperson elected from amongst them; and

(b) an Executive body—comprising of all chairmen of committees, core staff, Mayor and deputy mayor, responsible for the execution of the policies of the council, which shall be headed by a mayor in the case of a City Council and a Chairperson in the case of a District Council;

c) a council elected under this section shall consist of not less than 12 members and not less than 30% of whom shall be of one gender.”

The CRC received feedback from the Ministry of Finance and Economic Development that rather than the term “General Assembly”, the term “General Council” is more appropriate in the proposed section 5(a).

11.14 Chief Administrator

Recommendation

The CRC recommends that the position of Chief Administrator should be defined in the new chapter on local government and decentralisation of the revised Constitution to ensure clarity as to his role and responsibilities. The provision should therefore be as follows:

“Chief Administrator

6. There shall be a Chief Administrator who shall be secretary to the Council and head of administration in the executive body.”

11.15 Tenure of Local Council Members

Current Context

Section 5 of the Local Government Act 2004 local council elections shall be conducted every four years.

Observation

The CRC deliberated on whether the term of local government should be increased from four years to five years. It also considered whether local government elections should be on a partisan or non-partisan basis.

In practice, Mayors/Chairmen run on four-year term, without any limitations on the term of representing a locality. The Local Government Act 2004 establishes elected local councils as the highest political authorities in their localities, but their term of office is at variance with other elected positions. The debate in recent times has been as to whether there should be a uniform term of office for all elected positions including Presidential, Parliamentary, Mayor/Chairman and councillors.

Giving local councils five-year terms would save time, resources, and expenditure on the electioneering process.

The CRC debated the issue of partisan and non-partisan local government elections. Those opposed to partisan elections raised several arguments in support of their view:

Electoral systems change the incentives of elected local leaders and voters during and between elections. An electoral system may favor big parties, undermine alternative voices and dissent, or encourage strict hierarchies within parties. More importantly, it can be structured in such a way as to systematically exclude certain groups or it may encourage political parties to simply “win” the votes of particular groups over others. In sum, the term of local councils has an impact on the quality of local representation and its responsiveness, and therefore the performance of decentralization.

The different terms of office for different electoral positions has an undue influence, allowing most of the big political parties to take advantage of a given situation.

During the nationwide public and stakeholder consultations, it was recommended that the lifespan of local councils should be increased from 4 years to 5 years, similar to the term of Parliament.

Local council elections have become a contentious issue with regard to the criteria and the electoral system. Even though most of the participants in both public and stakeholders consultations were in favour of conducting local councils on a non-partisan basis, it was felt that the mechanism for selecting candidates was not properly addressed.

It was noted that partisanship in local government politics affects the composition and representation of councillors. In the public and stakeholders consultations it was suggested that most people vote on the basis of party patronage, irrespective of the competence of the individuals. In most cases, the right candidate is not given the party symbol.

The LoCASL in its position paper stated that local council elections should be conducted on a partisan basis, as is in the case of Parliamentary and Presidential elections.⁵¹⁹

Participants in all districts complained that the leading parties often give nominations to loyalists who have no real interest in, or aptitude for, local council work. It was also claimed that some councillors lacked the education necessary for monitoring complex processes, and that they were in the habit of awarding contracts to family members with no concern for quality of service.

In the review of the 1991 constitution conducted by the Campaign for Good Governance and the Open Society Initiative for West Africa (CGG/OSIWA), many people held the view that local government did not sufficiently deliver on promises on account of a number of structural challenges. The opportunity of the constitutional review process could be used to address these issues.

Many people believe that the party-based local government system has been harmful to the country. The key objective of facilitating local community development is believed by many to have been sacrificed on the platform of partisanship.

There were alternative views that the current party-based local government system be retained. For some people, the issue that they want the revised Constitution to address is that of protecting local councils from interference by the executive branch of government, especially protection from any arbitrary dissolution as was done in 1972. They submitted that local government elections should be conducted on a non-party basis.⁵²⁰

During the public consultation exercise in Kaffu Bullom Chiefdom, Constituency 054 Port Loko District, a minority of people recommended that the general election should not be conducted at the same time as local government elections – the latter should have a separate timeframe.⁵²¹

During the 2015 nationwide consultations, there were calls to conduct local government elections on a non-partisan basis. However, during the 2016 validation process on the CRC draft report, the majority of participants favoured partisan elections. This was the result of a popular debate amongst political parties and stakeholders.

⁵¹⁹ LoCASL position paper page 2

⁵²⁰ Citizens recommendations on key constitutional provisions conducted by CGG and OSIWA page

⁵²¹ Kaffu Bullom Chiefdom, Constituency 054 Port Loko District position paper page 5

11.16 Recommendations

The CRC took into account representations made in various position papers, expert recommendations, and public consultations, and also the relevant provisions of the Ghanaian Constitution, and concluded that it was beneficial in terms of practicality that the term of office should be unified with that of Parliament and that elections should take place on a partisan basis.

The CRC recommends that the following provision to be included in the new chapter on local government and decentralisation of the revised Constitution provision:

“Tenure of Local Council Members

- “7. (1) Local council elections shall take place at the same time as national elections.**
- (2) Local council elections shall take place every five years and shall be on a partisan basis.**
- (3) And members shall be elected in accordance with the system of proportional representation, the threshold for which shall be 30% of popular votes;**

11.17 National Local Government Finance Commission

Current context

There is no provision in the 1991 Constitution for a Local Government Finance Commission. However, section 45 of the Local Government Act of 2004 states:

“45. (1) Local councils shall be financed from their own revenue collections, from central government grants for devolved functions and from transfers for services delegated from Government Ministries.

- (2) Local councils shall make adequate efforts to collect revenues from their own sources.**
- (3) Grants shall be provided to local councils in accordance with sections 46, 47 and 48.**
- (4) Local council revenue sources shall comprise-**
- (a) Receipts from local taxes;**
 - (b) Property rates;**
 - (c) Licenses;**
 - (d) Fees and charges;**
 - (e) Share of mining revenues;**
 - (f) Interests and dividends; and**

(g) Any other revenue due to the Government but assigned to local councils by the Minister responsible for finance by statutory instrument.”

The main function of local councils is to provide services. For them to provide these services adequately, they need corresponding human and financial resources. Additionally, for the citizens to evaluate the effectiveness and efficiency of local councils in the provision of services, they need to know the status of local councils’ revenue in terms of types, collection and expenditure.

Observation

The effective performance of the assigned functions of local government requires the availability of funds. The financial resources of most local governments in the country, when compared to their expenditure, is grossly insufficient, even though local governments have several sources of income, including statutory allocations from donors, allocations from the State, and revenue generated locally.

Generally, service providers, health workers and teachers claim that decentralization has brought better control over their resources. This is one important reason Sierra Leoneans are supportive of decentralization. On the other hand, service receivers do not feel that services have improved in recent years. In the nationwide public consultations, the majority of people believe that the creation and establishment of local councils in the revised Constitution, together with financial autonomy, will result in efficient and effective service delivery.

Service delivery requires a complex mix of relations between central government and local institutions. Central government is obliged to provide resources, or to enable local institutions to generate resources to provide the services required by central government.

Central government also sets standards for the quality and the extent of service delivery, a function that is often beyond the technical capacity of local government. Central government is obliged to provide basic infrastructure and to weigh trade-offs between technical standards for these services and the costs they imply.

In making such a decision, the high transaction costs of local involvement needs to be taken into account and weighed against whether participation is needed. Two areas of conflict emerge around what central government requires and expects of local governments: the first is financial, and the second is created by the differences between decentralization’s instrumental and democratic objectives.

The National Council of Paramount Chiefs in their position paper stated that: “local governments (chiefdom councils and local councils) shall be financed from government grants and transfers, and by own source revenue including fees and locally based taxes. Chiefdom councils shall continue to have power to raise revenue by taxation.”

The Paramount Chiefs further stated that “not all chiefdoms have revenue potential. Provision is needed for equalization and equitable distribution of funding in chiefdom financing such that will enable chiefdoms to fulfill their core functions.”⁵²²

Interference in local government financial autonomy accounts for their inability to initiate and execute development programs and projects. Local governments rely on the statutory allocation from the Consolidated Fund for between 60–80% of their expenditure every year.

The results of these inadequacies are that central government has discretion to determine the nature, content and direction of local government elections, finances and political activities. In the exercise of this discretion, central government decides when elections are held, who wins in elections, when to dissolve elected council, and the alternative framework to administer the affairs of the local governments. Sometimes, following the extreme control of the political process in the local government system, local government development policies are often dictated by central government.

The position papers of various interest groups, individuals, the public and stakeholders recommended that there should be a separate commission for local government finance to address issues relating to the finances of councils. In instances where some local councils were not successful in terms of development and other achievements the commission would come in. In these circumstances, the commission would give adequate resources to local councils that have failed administratively or otherwise. Creating an independent National Local Government Finance Commission would enhance accountability in relation to local government activities.

Legislation should be enacted that would deal with the financing of local authorities and coordinate devolved funds. A good example is the South African Municipal Financing Act 2003, which deals with matters such as revenue, budgets, debt, the responsibilities of mayors and officers, financial reporting, and resolution of financial problems.

Mayors/Chairpersons face a challenge in performing their duties: when the administrative structure headed by the Chief Administrator does not work in harmony with the political structure headed by the Mayor/Chairperson, there is no effective service delivery in that council.

The GSCF recommended that local government should have reliable source of revenue to enable them to govern and deliver services effectively.⁵²³

The National Democratic Alliance (NDA) recommended that “government should allocate revenues to Local Councils based on their development project, size of the district and the level of infrastructural development that have been achieved in the district so far”.⁵²⁴

In the past, decentralization often meant reducing service responsibilities in order to reduce costs to central government. But without the fiscal resources to execute these new responsibilities, local governments and other local institutions cannot deliver services

⁵²² Council of Paramount Chiefs position paper page 19 par a 58

⁵²³ GSCF position paper page 24

⁵²⁴ NDA position paper, page 5

effectively. The complaint that funds do not match new responsibilities is heard frequently in Sierra Leone

Another issue in decentralized service provision is the mismatch between what the State is willing to support and what local populations desire or need. Central government has viewed the investments of local governments as reflecting poor local capacity because they do not match central government expectations.

Having taken account of the various views, the CRC recommends that there should be a National Local Government Finance Commission which should ensure equitable distribution of national resources and have such other powers and functions as may be conferred on it by the Constitution or an Act of Parliament.

11.18 Recommendations

The CRC recommends that the following provision should be included in the new chapter on local government and decentralisation of the revised Constitution:

“National Local Government Finance Commission

8. (1) There shall be a National Local Government Finance Commission, which shall ensure equitable distribution of national resource and shall have such other powers and functions as may be conferred on it by this Constitution or an Act of Parliament.

(2) The National Local Government Finance Commission shall –

- (a) receive all estimates of revenue and all projected budgets of all local government authorities;**
- (b) supervise and audit accounts of local government authorities in accordance with any Act of Parliament or Council, subject to the recommendations of the Auditor-General;**
- (c) make recommendations relating to the distribution of funds allocated to local government authorities;**
- (d) vary the amount payable to an area periodically based on economic, geographic and demographic variables;**
- e) prepare a consolidated budget and estimates for all Local Government authorities and after consultation with the Ministry of Finance and Economic Development, which shall be presented to Parliament before the commencement of each financial year.”**

11.19 Policy Recommendations for Local Government

- In order to ensure effective service delivery for local government and decentralisation, it is important that checks and balances between the executive and legislative branches of central government are clearly established.

- Central government must empower local governments politically, administratively, and financially to address regional disparities.
- The National Decentralisation Policy must be fully implemented.
- The Local Government Act 2004 must be amended in line with the recommendations made in relation to the new chapter of the revised Constitution on local government and decentralisation.
- The Chieftaincy Act 2009 must be amended in line with the recommendations made in the revised Constitution.

12 CHAPTER TWELVE

INFORMATION, COMMUNICATION AND THE MEDIA

12.1 Introduction

The Constitutional Review Committee (CRC) proposes a new chapter in the revised Constitution to be titled “Information, Communication and the Media”. The justification for this proposal is to bring about an independent and pluralistic media and an environment where journalists and media practitioners can do their work free from political interference.

Views were expressed by the Sierra Leone Association of Journalists, print and electronic media practitioners, the Independent Media Commission (IMC), UNDP and UNESCO. These stakeholders advocated for the media to be strengthened and made completely independent in order to allow journalists and media houses to practice decent journalism in line with international best practices.

The Information, Communication and the Media (ICM) Committee dealt with issues such as freedom of the media, independence of the mass media, and the composition of the IMC. The CRC reviewed the Constitution of Sierra Leone 1991 (the 1991 Constitution) and gave due consideration to the recommendations made in the Peter Tucker Constitution Commission Report (the PTC Report), discussions held with 14 institutions during the period September – December 2014, meetings with experts, as well as consultations held nationwide. The CRC also took into account opinions expressed in the Truth and Reconciliation Commission (TRC) report and several expert opinions and positions papers.

Also given serious consideration was information obtained from a two-week fact-finding mission to Ghana and Kenya in October and November 2015.

The CRC also reviewed 75 constitutions from around the world, including African constitutions.

The 1992 Ghanaian Constitution guarantees the freedom and independence of the media - the media should not be censored by any means that would undermine the freedom of the press. The Constitution calls for fairness by state-owned media to promote divergent views.

The TRC report states: “Freedom of expression is the lifeblood of a democracy. A culture of public debate and tolerance for dissenting ideas is the sign of a vibrant and healthy democracy. Restrictions on the freedom of expression represent a fearful State; it reflects a State that has no confidence in its ability to promote and disseminate its doctrines in the marketplace of ideas.”⁵²⁵

The Sierra Leone Association of Journalist (SLAJ) in its position paper to the TRC stated that: “the Public Order Act was a single Act of Parliament, which could not be amended or repealed

⁵²⁵ TRC Volume 2 Chapter 3 page 131 para 75

directly by the constitution. However, since the argument was that there are provisions of that legislation, which are a violation of human rights, the matter should best be pursued in the Supreme Court.⁵²⁶

Dimensions of the issues

- There should be a stand-alone chapter on the media in the Constitution.
- Abolishing seditious criminal libel under section 33 of the Public Order Act 1965
- Updating the Right to Access Information Act 2013.

12.2 Historical background

Media in Sierra Leone began when the first modern printing press in Africa arrived at the start of the nineteenth Century. In the 1860s, the country became a journalistic hub for Africa, with professionals travelling to the country from across the continent. At the end of the nineteenth century, the industry went into decline, and radio became the primary communication media when it was introduced in the 1930s. Sierra Leone now has over 60 local radio stations nationwide and two international radio stations.

The Constitution of Sierra Leone 1961 did not guarantee press freedom, but there were sections under the recognition and protection of fundamental human rights that guaranteed free speech.⁵²⁷ The Constitution of Sierra Leone 1971 similarly guaranteed the right to freedom of speech, and also gave citizens the right to hold opinions, receive and impart ideas and information.⁵²⁸

The last decade of the twentieth century was the most difficult period for the press in Sierra Leone. This period was also characterized by deteriorating economic conditions, military coups d'état, violent political upheavals, and poverty - the Corporate Council on Africa study released in 2002 stated that 88% of the country's rural population and 74% of the urban population lived in poverty.

In 1991, the Civil War broke out and lasted for 10 years. By the time the war ended in January 2001, the country was in total ruin economically, with a gross national product per capita of US \$140 and nearly 1 million people classified either as refugees or internally displaced. By 2000, Sierra Leone was not only considered the poorest country in the world, it was also the most dangerous place for journalistic practice. Between 1999 and 2000, 10 journalists, including two foreign reporters, were killed, and the United States-based Committee for the Protection of Journalists named Corporal Foday Sankoh, the leader of the rebel group Revolutionary United Front, one of the 10 worst enemies of the press in the world.

⁵²⁶ TRC Volume 2

⁵²⁷ Section 21 of the Constitution of Sierra Leone 1961

⁵²⁸ Section 11 of the Constitution of Sierra Leone 1971

It was also during this same period that the press flourished dramatically: in 1990, for example, there were fewer than 10 regular newspapers in the country, and the government-operated Sierra Leone Broadcasting Service dominated the airwaves, and Sierra Leonean viewers now also have access to international programmes through satellite systems.

The Public Order Act 1965 allows for prison terms of up to three years for criminal libel, and up to one year for the separate crime of publishing false news. Criminal libel charges can be brought even if the defendant can prove that the published information was true, and defendants charged with publication of false news must prove they took reasonable measures to verify the information's accuracy. The constitutionality of the Act was challenged in 2009 by the Sierra Leone Association of Journalists (SLAJ), but the Supreme Court upheld it.

Between the late 1980s and early 2000, numerous measures designed to place strict controls on the press were formulated, especially when state governance was based on one-party dictatorial principles. These measures included prosecutions for libel or seditious libel, taxation, and bonding. The existing press regulations in Sierra Leone are either remnants of colonial policy or inspired by discarded British colonial libel laws of the early twentieth century, for example as the repealed Newspapers Ordinance 1924 and the Undesirable Publications Ordinance 1939.

Until recently, the broadcast media were state-owned. Private citizens were prohibited from owning or operating any form of the electronic media. State control of radio and television broadcasting remained until 2000 when the Independent Media Commission (IMC) was established and provision was made for the privatization of the broadcast media.

In 2013, Parliament passed the Right to Access Information Act. Media rights activists lauded the legislation—which includes penalties for government agencies that fail to comply with its provisions—as an essential instrument in ensuring greater government transparency and accountability.

12.3 Current Context

The 1991 Constitution guarantees freedom of speech and of the press. The issues relating to the obligations of the mass media, and the protection of freedom of expression and the press, are currently found in chapters II and III of the 1991 Constitution.

There have been several laws relating to the media in Sierra Leone: the Newspaper Ordinance 1924, Cap 111 of the Laws of Sierra Leone 1960; the Publications Act, Cap 112 of the Laws of Sierra Leone 1960; the Undesirable Publications Act, Cap 113 of the Laws of Sierra Leone 1960; the Undesirable Advertisements Act, Cap 114 of the Laws of Sierra Leone 1960; the Cinematograph Exhibition Rules, Cap 115 of the Laws of Sierra Leone 1960; the Defamation Act 1961; the Newspapers (Amendment) Act 1980; and the Independent Media Commission Act 2000, as amended in 2006 and 2007.

The media in Sierra Leone is regulated by the Independent Media Commission (IMC), whose members are appointed by the President “acting on the advice of SLAJ and subject to the approval of Parliament.”⁵²⁹

The IMC operates a system by which aggrieved parties can register complaints. If the IMC agrees that a complaint of defamation or falsehood is valid, it can request that the offending media outlet publish a retraction and an apology, or it can levy a fine. The IMC can also summon editors at its own discretion. The IMC has generally demonstrated independence from the government.⁵³⁰

The Sierra Leone Broadcasting Service and United Nations Radio were merged to create a public-service broadcaster, the Sierra Leone Broadcasting Corporation. The state-owned Sierra Leone Broadcasting Corporation operates a television service and a radio network. Television and radio programming is available in both English and local languages. The number of community radio stations has proliferated in recent years, but many are not sustainable due to their dependence on foreign grants and the difficulty of meeting high operational expenses, such as the cost of electricity; such problems are particularly pronounced in rural areas. International media operate freely, though foreign outlets are required to register with the government.⁵³¹

Sierra Leonean newspapers are published in English, yet only approximately 30% of the population is fluent in this language. Radio and television programmes are also mainly in English, although some stations have increased the number of hours of programming in local languages. The net effect of this is that media practitioners direct their messages to a national audience without regard for ethnicity.

Sierra Leone has more than 20 regularly published newspapers, approximately 40 radio stations—more than half of which are community stations—and two terrestrial television stations; satellite television is also available. Most newspapers are independent, though some are associated with political parties, and the print media routinely criticize both the government and opposition parties..

12.4 Observation

There has been an increased demand by citizens to access information, especially public information, and a call for open government through press freedom and accountability.

The relationship between the State and the press in Sierra Leone has seldom been amicable, as media practitioners and political power holders harbor mutual suspicion. Reports about rampant corruption and mismanagement in government are the staple content of the media in Sierra Leone.

⁵²⁹ Section 2 of the Independent Media Commission (Amendment) Act 2006

⁵³⁰ <https://freedomhouse.org/report/freedom-press/2015/sierra-leone>

⁵³¹ <https://freedomhouse.org/report/freedom-press/2015/sierra-leone>

Freedom of press is the emblem of a civilized and enlightened society. Only the government can ensure freedom of press, but there should be a monitoring body to ensure both the proper use of this freedom and also to see that this freedom is not misused.

In Sierra Leone, no special tax is levied on newspaper proprietors, but they are required to ensure that media workers pay taxes on their income. Although this applies to all business enterprises in the country, the tax requirement has been a bone of contention between government authorities and newspaper proprietors who interpret the regulation as a veiled attempt to stifle their activities.

Bonding required proprietors of newspapers to post large sums of money before they were permitted to publish their papers. Besides registration fees, newspapers were required to post a collateral of US \$4,000. With persistent public complaints against newspapers, government authorities claimed that the main aim of this stipulation was to ensure that if charges of libel were brought against a newspaper, the collateral would provide some relief for the plaintiff.

In spite of legislation that guarantees freedom of speech and of the press, journalists are subject to attacks and harassment; also, media outlets continue to face difficult economic conditions, and most Sierra Leonean journalists are poorly trained and ill-equipped.

It has been argued that the criminal libel law runs contrary to the spirit of the 1991 Constitution: section 25(1) of the 1991 Constitution provides for protection of freedom of expression and the press, and section 11 of the Constitution provides: “the press radio and television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in the Constitution and highlight the responsibility and accountability of the Government to the people.” Although non-justiciable, section 11 has placed a responsibility on the media that cannot be discharged under the spectre of the Public Order Act 1965.

The 1991 Constitution should reflect an open governance system and the promotion of media independence and pluralism. A separate chapter on media would address ambiguities and strengthen the media culture in Sierra Leone. The independence of the media in contemporary democracy is crucial to promote good governance, transparency and keep the citizenry informed. The unequivocal functions of the media should be established in the constitution to ensure thorough checks and balances of power.

The explosion of the mass media, internet, television, newspapers, and social media has increased citizens’ political participation. However, the abuse and misuse of the media have led to a call for stringent laws to protect the reputation of people. The regulation and ethical conduct of the media are critical to the sustainability of peace and stability in Sierra Leone.

The laws dealing with ICM are scattered in different pieces of legislation. Most modern constitutions have a separate and detailed chapter on ICM. The CRC therefore concluded that there is a need to have a chapter that comprehensively deals with ICM in the supreme law of the land. This was endorsed by various position papers, expert engagements, diaspora consultations, and nationwide consultations.

12.5 Theme - Obligations of the Mass Media

Current Context

Sections 11 and 25 of the 1991 Constitution state:

“11. The press, radio and television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Constitution and highlight the responsibility and accountability of the Government to the people.”

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

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

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

(a) which is reasonably required—

- (i) in the interests of defence, public safety, public order, public morality or public health; or
- (ii) for the purpose of protecting the reputations, rights and freedoms of other persons, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the telephony, telegraphy, telecommunications, posts, wireless broadcasting, television, public exhibitions or public entertainment; or

(b) which imposes restrictions on public officers or members of a defence force;

and except in so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.”

Observation

The PTC Report recommended that section 25 should be amended as follows:-

“Proposed amendment: by adding two new subsections to section 25 which shall now become subsections (2) and (3) and the existing provisos now become section 25 (4) (a) (i), 25 (4) (a) (ii) and Section 25 (4) (b)

2. Everyone has the right to access to

(a) any information held by the State

(b) any information that is held by another person and that is required for the exercise or protection of any rights;

3. National legislation must be enacted to give effect to his right, with the necessary safeguards and may provide for reasonable measures to alleviate the administrative and financial burden on the State.”:

The Governance Stakeholders Coordination Forum (GSCF) in their position paper supported the PTC Report’s view that “there is a need to strengthen the section of the constitution on media freedom.”⁵³²

The CRC reviewed several constitutions from various countries and recommended the adoption of the Ghanaian model on media freedom.

12.6 Recommendations

The CRC recommends that section 11 of the revised Constitution should be amended as follows:

“Obligation of the Mass Media

The mass media shall at all times be free to uphold the fundamental objectives contained in this Constitution. No person or body shall own establish, or operate a television or wireless broadcasting station for any purpose whatsoever unless that person or body holds a licence issued by the Independent Media Commission (IMC).”

12.7 Theme - Media Freedom and Independence

Observation

In its position paper, the Media Reform Coordinating Group (MRCG) noted that “Freedom of the press and freedom of information are recognized and guaranteed by this constitution,” but that “Freedom of speech and freedom of information shall not prejudice public order and good morals, the right of every citizen to honor, good reputation and the privacy of personal and family life.”

The paper called for media freedom and independence to be guaranteed by the constitution, but said that this does not extend to war propaganda; incitement to violence; hate speech; or

⁵³² GSCF position paper page 20

advocacy of hatred that constitutes ethnic incitement, vilification of other or incitement to cause harm; or is based on any ground of discrimination.⁵³³

The Governance Stakeholders' Coordination Forum (GSCF) in its position paper commented that there was a need to strengthen the section of the Constitution on media freedom. Recent developments point to a need to have stronger safeguards against arbitrary arrests of journalists practicing their professions and the oppressive use of criminal libel charges. A stand-alone chapter guaranteeing media and journalistic freedom as contained in the Ghanaian constitution would signal that Sierra Leone took this issue seriously and should be proposed to the CRC.

Section 162(4) of the Constitution of Ghana prohibits editors and publishers of newspapers and other institutions of the mass media from being subject to "control or interference by Government", or being "penalized or harassed for their editorial opinions and views, or the content of their publications".

The GSCF suggested that "the CRC should be encouraged to introduce similar provisions to Chapter XII of CRG [Constitution of Ghana] in the constitution with the clarification that the protection provided applies to all media practitioners, not just editors and publishers."

The GSCF further suggested that the Right to Access Information Act 2013 could be enhanced by inclusion in the Constitution of a right to access information provision in the same terms as section 35 of the Constitution of Kenya and section 32 of the Constitution of South Africa; this clause along with the media freedom provisions should be entrenched as a further safeguard.⁵³⁴

In an individual submission, Mohamed F. Fofanah commented that "the illegal crack down on journalists and media house personnel should be declared a state offence and a contradiction of the Freedom of Information Act - freedom of information or access to seek and spread information. A legal approach method should be applied weather the journalist has published a wrong or correct information."⁵³⁵

The National Democratic Alliance (NDA) in its position paper recommended that the Right to Access Information Act 2013 (otherwise known as the Freedom of Information Act) must be incorporated into the new Constitution so that it can become entrenched.⁵³⁶

Despite sections 11 and 25 of the 1991 Constitution, media practitioners have been constrained in eliciting information, especially from public authorities owing to the absence of legislation on access to information. The passage of the 2013 Act therefore presented a major opportunity for journalists.

However, the 2013 Act contains provisions that have elements of constraints on media practitioners. One such provision is found in section 6(1) of the 2013 Act, which borders on the payment of specified fees by an applicant for information, charged by a public authority. This

⁵³³ Media Reform Coordinating Group position paper page 1

⁵³⁴ GSCF position paper page20

⁵³⁵ Mohamed F. Fofanah position paper, page 2

⁵³⁶ NDA position paper page 6

provision does not exempt journalists who apply for information to a public authority, with the effect that the effort of the media in informing society is still thwarted by this law.

The right to freedom of the press and freedom of information should be exercised responsibly with regards to public order and good morals. The majority of submissions called for a stand-alone chapter in the revised Constitution guaranteeing press freedom and freedom of speech. Stakeholders also recommended that the Right to Access Information Act 2013 should be made an entrenched clause in the revised Constitution. While some stakeholders called for the repeal of the Public Order Act of 1965, other suggested that Part V of that Act should be strengthened.

12.8 Recommendations

Having considered the various position papers, expert opinions, public comments, and representations made by media organisations, the CRC recommends that the following provision be included in the new chapter on information, communication and the media of the revised Constitution:

“Media Freedom and Independence

1. Media freedom and independence are hereby guaranteed but does not extend to—

- (a) propaganda for war;**
- (b) incitement to violence;**
- (c) hate speech; or**
- (d) advocacy of hatred.”**

12.9 Theme - State Obligation

Observation

The CRC paid great attention to position papers submitted by institutions, stakeholders, and individuals that commented on the obligations of the State to the media.

The 1991 Constitution guarantees freedom of speech, and freedom of the press; however, the government at times restricts these rights. Under Independent Media Commission Act 2000, there is a requirement that all newspapers must be registered and pay considerable registration fees. In addition, the provisions of the Public Order Act 1965 on seditious libel have been used against media houses that incur the displeasure of the government.

There is a perception that the government frequently interferes with the work of journalists and media outlets in an attempt to censor content.

In their position paper, the National Commission for Democracy (NCD) commented on the need for support structures to access information, as this results in transparency and accountability. The NCD further commented that “in Sierra Leone, the culture of information management is seriously lacking, and this affects development processes. Data collection which supports national statistics is either unavailable or unreliable. In most parts of the country, record-keeping is largely manual. Records are generally kept in paper files, and archives are stacked in cartons and cabinets. There is no proper storage and security for documents as there are times when important documents are either stolen or damaged due to the inclement weather conditions in our country. Electricity supply is not readily available or unreliable in large parts of the city which will make room for digital storage of data.”⁵³⁷

In the nationwide public consultations, the majority of people made recommendations to ensure a total commitment from the State to promote and protect journalists, media houses and media practitioners.

The CRC also reviewed the provisions of the Ghanaian and Kenyan Constitutions relating to State obligations to the media.

12.10 Recommendations

The CRC recommends that the following provision should be included as section 2 in the new chapter on information, communication and the media of the revised Constitution:

“State Obligation

2. The State shall not—

- (a) exercise control or interfere with any person engaged in broadcasting (radio, television, internet), the production or circulation or dissemination of any publication (newspaper, magazine or any periodical) or the dissemination of information by any medium;
- (b) Broadcasting and other electronic media shall have freedom of establishment, subject only to licensing procedures that— are necessary to regulate the airwaves and other forms of signal distribution; and are independent of control by government, political interests or commercial interest.”

12.11 Theme – Responsibilities of the Media

Observation

The Sierra Leone Broadcasting Corporation Act 2009 established the Sierra Leone Broadcasting Corporation (SLBC) as the first independent national broadcaster in Sierra Leone, charged with

⁵³⁷ NCD position paper pages 6 and 9

responsibility for providing sound management of information, education, entertainment, and reflecting diverse opinion throughout Sierra Leone.

Section 12 of the Sierra Leone Broadcasting Corporation Act 2009 guarantees the independence of the State-owned SLBC in the performance of its functions.

The nature of the media landscape in Sierra Leone to an extent underlines the diversity and relevance of the media, particularly the print media. However, this relevance largely depends on the degree of professionalism, independence and resource capacity. The CRC recognised that there is a need for more training for journalists on technical and ethical matters.

The role of the media as the Fourth Estate has always been acknowledged by governments. However, the media should be responsible in what and how it reports, and should also clearly distinguish between disseminating information and analysis and opinions. This was reiterated by several stakeholders, experts, and the majority of people in their position papers. This would ensure that journalism is practised without fear, and devoid of government interference, in a responsible manner.

During the nationwide consultations, many participants argued that there was a lot of pressure on the operations of the public broadcaster, SLBC.⁵³⁸ The Sierra Leone Broadcasting Corporation Act 2009 provides for the independence of the State-owned media, but this does not happen in reality.

12.12 Recommendations

The CRC recommends that there should be a healthy atmosphere in which to practice journalism, devoid of censorship and government interference. Journalists should be professional in reporting and disseminating information in an appropriate manner.

The CRC therefore recommends the following provision should be included as section 3 in the new chapter on information, communication and the media of the revised Constitution:

“Responsibility of the Media

3. All State/public-owned media shall—

- (a) be free to determine independently the editorial content of their broadcast or other communications;**
- (b) be impartial; and**
- (c) afford fair opportunity for the presentation of divergent views and dissenting opinions.”**

⁵³⁸ CRC Public Consultations Report, page 10

12.13 Theme - Establishment of the Independent Media Commission

Observation

Section 2 of the Independent Media Commission Act 2000 established the Independent Media Commission (IMC).

The IMC is composed of a Chairman and Commissioners, appointed by the President on the advice of the Sierra Leone Association of Journalists (SLAJ).

Under the 2000 Act, the IMC is responsible for promoting a free and pluralistic media throughout Sierra Leone and ensuring that media institutions achieve the highest level of efficiency in providing media services.

The CRC reviewed Article 126 of Ghanaian Constitution. Under that provision, the composition of the National Media Commission (NMC) is entrenched in a chapter entitled “Freedom and Independence of the Media”. A joint position paper submitted by the Media Reform Coordinating Group and the Sierra Leone Association of Journalists (SLAJ) recommended that provisions relating to the IMC should be included in the new chapter on information, communication, and the media of the revised Constitution.

In addition, the IMC in its position paper stated that section 11 of the 1991 Constitution has not been reviewed since it came into force, and so it proposed that a reference to the IMC should be included in section 11.

The CRC recommended that the IMC should be included in the new chapter of the revised Constitution.

12.14 Recommendations

CRC recommends that there should be a body entitled the Independent Media Commission established under the revised Constitution to regulate the media, and therefore recommends that the following provision should be included as section 4 in the new chapter on information, communication and the media of the revised Constitution:

“Establishment of the Independent Media Commission

4. There shall be an Independent Media Commission in Sierra Leone. This should consist of 11 members.”

12.15 Theme - Composition of IMC

Observation

The CRC was informed about the composition of and appointments to the IMC by position papers, feedback, and expert opinion, and there was a suggestion that the composition of the IMC should be inclusive and transparent

Section 4 of the Independent Media Commission Act 2000, as amended by section 2 of the Independent Media Commission (Amendment) Act 2006, provides that “the Commission shall consist of the Chairman and 10 other members all of whom shall be appointed by the President acting on the advice of SLAJ and subject to the approval of Parliament.”⁵³⁹

During CRC deliberations, it was also argued that the composition of the IMC should be set out in the Independent Media Commission Act 2000 and not in the Constitution.

Several stakeholders in their position papers called for a review of the composition of IMC as it is dominated by members of SLAJ.

12.16 Recommendations

The CRC recommends that the composition of the IMC should be inclusive and transparent. The CRC therefore recommends that the following provision should be included as section 5 in the new chapter on information, communication and the media of the revised Constitution:

“Composition of the Independent Media Commission

5. (1) The Independent Media Commission shall consist of the following members:

- (a) One expert in the field of print journalism, nominated by the Sierra Leone Association of Journalists;**
- (b) One expert in the field of electronic journalism nominated by the Sierra Leone Association of Journalists;**
- (c) One expert in the field of Information Communication Technologies (ICTs), nominated by the National Telecommunication Commission (NATCOM)**
- (d) One expert in the field of telecommunications, nominated by the Sierra Leone Institution of Engineers;**
- (e) Two legal practitioners qualified to hold office as Judge of the High Court of Sierra Leone, nominated by the Sierra Leone Bar Association;**
- (f) One expert in Mass Communication nominated by a recognised tertiary institution offering communication/journalism studies;**
- (g) One person nominated by the Ministry of Information and Telecommunications;**

⁵³⁹ Section 4 of the Independent Media Commission Act 2000, as amended

- (h) Two persons nominated by the Inter-religious Council of Sierra Leone;**
 - (i) One representative from civil society;**
 - (j) One representative from the entertainment industry.**
- (2) The nominees shall be subject to the approval of Parliament.”**

12.17 Theme – Chairperson of the Independent Media Commission

Observation

The procedure for the appointment of the Chairperson of the IMC is set out in section 4 of the Independent Media Commission Act 2000, as amended by the Independent Media Commission (Amendment) Act 2006.

As regards the appointment of the Chairman of the IMC, the PTC Report stated that this should not be done by the President. The PTC Report therefore recommended that the reference in section 4, as amended, to the “President” should be deleted and replaced by the reference to “the Independent Media Commission or its successor-in-office, created by Act of Parliament.”

The responses from the nationwide public consultations identified that the majority of the population raised the issue of the interference of the President in appointing the Chairperson of the IMC.

The National Youth Commission recommended that the revised Constitution must guarantee the independence of the IMC and that the President must not appoint the Chairman and Commissioners of that institution: “standards must be set in the journalism profession to put the country on very high pedestal in the area of media development. Strict criteria must be set for those aspiring to be editors of newspapers in Sierra Leone to reduce the large number of untrained and unqualified personnel that now parade as editors.”⁵⁴⁰

The CRC discussed the procedure for appointing the Chairperson of the IMC and recommended that the Chairperson should be appointed by Commissioners from amongst themselves. All other Commissioners should be nominated by key institutions that relate to media development in Sierra Leone.

12.18 Recommendations

The CRC recommends that members of the IMC should elect a Chairperson who either has wide experience in the field of journalism or who is a legal practitioner qualified to hold office as a

⁵⁴⁰ National Youth Commission engagement with the CRC

judge of the High Court of Sierra Leone. The CRC therefore recommends that the following provision should be included as section 6 in the new chapter on information, communication and the media of the revised Constitution:

“Chairperson of the Independent Media Commission

6. Upon approval by Parliament, the Commissioners shall elect one among them to be Chairperson; provided that no person shall be eligible for election to the position of Chairperson unless that person has a wide experience as a media practitioner, or is a legal practitioner qualified to hold office as a judge of the High Court of Sierra Leone.”

12.19 Theme - Functions of the Independent Media Commission

Observation

The IMC’s functions are set out in section 8 of the Independent Media Commission Act 2000.

Members of SLAJ held discussions with the CRC on issues relating to freedom of the press. SLAJ recommended that there should be a separate section in the revised Constitution that deals with media practice. SLAJ argued that this is essential because, as the Fourth Estate, a separate and independent entity should be developed to handle media affairs: “the three arms of government: the Executive, the Legislature and the Judiciary have separate sections in the Constitution that determine their functions; we need our own”.

SLAJ further suggested that the IMC should be made a self-regulatory, independent body, and cited the example of Ghana, where the media omission is separate from government.

SLAJ pointed out that the inability of the IMC to independently handle its affairs has resulted in cases being unnecessarily delayed in court. SLAJ also suggested that a committee with interest groups should be formed to determine the appointment of IMC members, subject to Parliamentary approval, instead of the President doing so – SLAJ noted that the Constitution gives excessive powers to the President to appoint IMC Commissioners.

SLAJ also called for criminal libel laws to be reformed, and recommended that journalists should instead be required to pay a fine, failing which the journalists, or the media house, should be “declared bankrupt, in which case that person cannot practice a regulated profession.”⁵⁴¹

12.20 Recommendations

The CRC therefore recommends that the following provision should be included as section 7 in the new chapter on information, communication and the media of the revised Constitution:

⁵⁴¹ Interview with SLAJ, 28 November 2014

“Functions of the Independent Media Commission

- 6. An Act of Parliament shall define the functions and duties of the IMC that shall include promoting a free and pluralistic media in Sierra Leone.”**

13 CHAPTER THIRTEEN

NATIONAL SECURITY

13.1 Introduction

The Constitutional Review Committee (CRC) after review of the 1991 Constitution and, based on recommendations submitted by key stakeholders, proposes that there should be a new chapter on national security in the revised Constitution.

On the advice of the Presidency, the National Security Coordinator requesting that the CRC should consider including a chapter on national security in the revised Constitution. A consensus proposal was made by all relevant national security organs in this regard⁵⁴².

The chapter would include all the primary agencies within the sector, comprising the Office of National Security (ONS), the Republic of Sierra Leone Armed Forces (RSLAF), the National Fire Force (NFF), the Central Intelligence and Security Unit (CISU), the Sierra Leone Police (SLP), and the Sierra Leone Correctional Services (SLCS).

These national security organs are set out in different parts of the Constitution, and are covered under different chapters and sections. For example, the 1991 Constitution establishes the SLP (Chapter X, Part II, sections 155 – 158) and the RSLAF (Chapter XI, sections 165 – 169). However, national security institutions such as the ONS and the CISU are not captured in the 1991 Constitution.

The ONS was established by the National Security and Central Intelligence Act 2002 as a ‘clearing house’ for the security sector to ensure effective coordination of security and intelligence at national, provincial and district level. Its functions include collecting, collating and analyzing intelligence from state security agencies, providing support and secretarial services to the National Security Council, the highest forum for the consideration of all matters of national security.

The Truth and Reconciliation Commission (TRC) made an imperative recommendation that:

“The Commission found that successive political regimes abused their authority over the security forces and unleashed them against their political opponents in the name of national security.

Soldiers and police officers were reduced to playing roles as agents of destabilisation. The Commission accordingly highlights its recommendations that new principles of National

⁵⁴² Letter from the Office of the President, 9 May 2016

Security, which reflect the will of Sierra Leoneans to live in peace and harmony, be enshrined in the Constitution.”⁵⁴³

Therefore, the new chapter intends to merge national security institutions with democratic principles.

The chapter on national s will include the following:

- A. Guiding principles
- B. Establish national security organs
- C. Establishment of National Security Council
- D. Security Coordination
- E. Intelligence Service
- F. Defence Forces
- G. Police Services
- H. Correctional Services
- I. Fire Services

National security includes not only territorial integrity and regime protection but also the peace and welfare of the State and human security.

These dynamics were given sufficient prominence in the new security architecture designed as part of the post war recovery efforts to enhance a more organized and robust response to threats to national security.

A new chapter on national security will lay the foundation for the establishment of the aforementioned institutions, outline their functions, establish their Advisory Boards, and outline the composition and functions of these Boards.

13.2 Historical Background

The Republic of Sierra Leone Armed Forces (RSLAF) is the armed forces of Sierra Leone, responsible for the territorial security of Sierra Leone's border and defending the national interests of Sierra Leone. The armed forces were formed after independence in 1961, based on elements of the former British Royal West African Frontier Force then present in the country.

⁵⁴³ TRC Volume II page 122 para 40

The core of the army was based on the Sierra Leone Battalion of the Royal West African Frontier Force, which became the Royal Sierra Leone Regiment and later the Republic of Sierra Leone Regiment. The Sierra Leone Military Forces Act, 1961 created the military with all its powers and functions but the 1961 Independence Constitution did not contain any provisions on the military. The 1961 Act was further amended in 1974.

The Sierra Leone Police (SLP) is the national police force, and is primarily responsible for law enforcement and crime investigation throughout Sierra Leone. The paramilitary unit of the SLP is known as the Operational Support Division (OSD).

The SLP was established by the British colony in 1894 and is one of the oldest police forces in West Africa, following the founding of the Colony of Freetown in 1808 as a settlement for freed slaves. Police authority then was only restricted to the Colony of Freetown. By 1889, with the extension of colonial authority to the provinces, police authority was also extended to those areas, and the police performed largely paramilitary duties as opposed to the civil police in the Colony. The police force then became known as the West African Frontier Force. A Royal Gazette of October 1894 established the Sierra Leone Police Force.

Following independence in April 1961, Parliament passed the Police Act 1964, which consolidated and amended the law relating to the organization, discipline, powers and duties of the SLP.

13.3 Current Context

The 1991 Constitution establishes the Sierra Leone Police (SLP) (Chapter X, Part II, Sections 155 – 158) and the Republic of Sierra Leone Armed Forces (RSLAF) (Chapter XI, Sections 165 – 169).

The Office of National Security (ONS) and the Central Intelligence and Security Unit (CISU) were created by the National Security and Central Intelligence Act, 2002 to serve as the statutory coordinator of the security sector and the principal intelligence-collecting agency respectively. These institutions were charged with providing early warning signals to the Government of threats to national security and proffering advice on the best possible measures to address these threats.

Apart from the 1991 Constitution provisions, the following Acts form part of the security sector architecture:-

- a. National Security and Central Intelligence Act, 2002
- b. National Fire Force Act, 1980
- c. Sierra Leone Correctional Services Act, 2014

13.4 Theme - Principles of National Security

Observation

There are no principles relating to national security in the 1991 Constitution.

The TRC in its report made an imperative recommendation that the following principles on national security should be included in the 1991 Constitution:

“Those in power must never again use national security as an excuse to deploy security forces for political ends.

These principles are as follows:

- National security must reflect the commitment of Sierra Leoneans, as individuals and as a nation, to live in peace and harmony and to be free from fear.
- The Sierra Leone Army must be the only lawful military force in Sierra Leone. There should be no other military or paramilitary force, under the guise of any institution, including the police.
- No member of any security service should be permitted to obey a manifestly illegal order. Obedience to a manifestly unlawful order should never be a defence to a crime.
- Neither the security services as a whole, nor any of their members, may, in the performance of their duties, act against a political party’s legitimate interest or promote the interest of any political party.
- No Sierra Leonean should participate in armed conflict internationally, except as provided for in terms of the Constitution or national legislation.
- The use of armed force in Sierra Leone must be deployed in strict accordance with the Constitution.”⁵⁴⁴

In its position paper, the Centre for Accountability and Rule of Law (CARL) supported this recommendation: “Article 198 of South Africa’s Constitution similarly articulates principles to govern the country’s national security. Both the South African Constitution and the TRC recommendations contain provisions committing that armed force would be used only in accordance with the Constitution or national legislation, and both state that national security must reflect national resolve “to live in peace and harmony” and “to be free from fear.” While the principles articulated by the TRC Report and those enshrined in South Africa’s Constitution are not identical, both would serve similar constitutional functions by stating principles designed to respond to and prevent recurrences of tragedies. Thus, the South African Constitution states that national security must reflect South Africans’ resolve “to live as equals,” most likely a response to the role of police and armed forces in the tragedies of apartheid.

⁵⁴⁴ TRC report Volume II page 152

In contrast, the TRC recommended provisions stating that there should be no military force other than the Sierra Leone Army, that no member of a security service may obey a manifestly illegal order and that armed forces may not work for or against political parties, apparently in response to the tragedies of the civil war and the abuses that led to it. This is the ideal opportunity to insert such provisions.⁵⁴⁵

Members of the Sierra Leonean Community in Kenya submitted a position paper during diaspora consultations in Kenya in which they stated that there is a need to have a national security chapter in the revised Constitution: “Sierra Leone, like most fragile and conflict states (FCS) is faced with increased non-traditional security threats e.g. Global Health crisis such as Ebola, transnational organized crime, economic corruption, money-laundering, economic insecurity, drug and human trafficking, and international terrorism. The 1991 Constitution is extensively focused on traditional defense and security institutions, the armed forces, police, and prisons, which are not well placed to tackle new human security threats. For example, Chapter XIV, sections 165(2), 168, and 169(2) are the only sections that make provision for the security sector institutions. The sections provide for excessive power to the armed forces, for instance, “Section 165 (2) of the 1991 Constitution reads:

“The principal function of the Armed Forces shall be to guard and secure the Republic of Sierra Leone and preserve the safety and territorial integrity of the State, to participate in its development, to safeguard the people’s achievements and to protect this Constitution.

Over the years, we have witnessed the RSLAF engaged in military coup d’état because of the ambiguity enshrined and often made reference to in this provision. In addition, inherent in the sections are the absence of the civilian democratic control and oversight structures and mechanisms over the Republic of the Sierra Leone Armed Forces (RSLAF), the Police, the intelligence services and other related national security institutions. Hence, level of transparency and accountability by these institutions has been extremely weak over the years.”

They went on to recommend that Sierra Leone’s national security architecture should include provisions that go beyond traditional security institutions, the military and the police: “In particular, consideration should be given to the importance of civilian democratic governance and oversight structures, institutions and mechanisms, such as the Office of National Security, the Central Intelligence and Security Unit (CISU), the role of civic society organizations (CSOs), academic think tanks, and local government structures in the provision of safety and improved security as public goods. With the legislation the National Security and Intelligence Act, 2002, these institutions were already proving useful in terms of strategic coordination, policy formulation and decision making processes. As earlier indicated, with the emergence of new threats to our human survival and citizen’s security, there is urgent need to include sections in the constitution that can take into consideration the need for enhanced civil-military approach to our national security.”⁵⁴⁶

⁵⁴⁵ CARL position paper page 16

⁵⁴⁶ Members of the Sierra Leone Community in Kenya position paper page 8

In their position paper, the Governance Stakeholders Coordination Forum (GSCF) recommended that a new principle of national security should be adopted and enshrined in Constitution:

“It is now more than two (2) decades since the 1991 Constitution was promulgated. Since then, crucial changes have occurred in Sierra Leone’s security landscape. Since the Constitution predates these developments, recourse is not necessarily had to them. Save for the SLP and RSLAF, security had previously been addressed through an array of legislations aforesaid. This is not in tandem with internationally accepted standards, hence the need for consolidation of sorts of the various instruments dealing with national security. It is prudent to have everything to do with national security initially flowing from the Constitution. This makes for tidiness and creates the basis from which other instruments would subsequently draw their authority.

The proposed national security principles enjoin the Government to ensure that no paramilitary force exists outside of the Sierra Leone Army. The existence of such a force within the police is contrary to the proposed National Security Principles.”⁵⁴⁷

13.5 Recommendation

The CRC took into consideration the various position papers, the recommendations made by the security sector, and expert opinion. The CRC recommends that the following provision should be included in the new chapter on national security in the revised Constitution:

“PART ONE

Principles of National Security

1. National security is the protection against internal and external threats to Sierra Leone’s territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability, prosperity, wellbeing; and other national interests.

The national security of Sierra Leone shall be promoted and guaranteed in accordance with the following principles –

- a. national security shall be subject to the authority of this Constitution and Parliament;**
- b. national security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms;**
- c. In performing their functions and exercising their powers, the national security organs shall respect the diverse culture of the communities within Sierra Leone; and**

⁵⁴⁷ GSCF position paper page 41

- d. **Recruitment by the national security organs shall reflect the diversity of the Sierra Leonean people equitably.”**

13.6 Theme - Organs of National Security

The CRC took into consideration several constitutional models on national security, as well as international best practices, to ensure that all organs, especially the ONS, the RSLAF, the SLP, Correctional Services, the National Fire Force, and the CISU form the organs of national security.

13.7 Recommendation

The CRC recommends that the following provision should be included in the new chapter on national security in the revised Constitution:

“PART TWO

Organs of National Security

2. (1) The national security organs shall be –

- a. **the Office of National Security**
- b. **the Republic of Sierra Leone Armed Forces**
- c. **the Sierra Leone Police**
- d. **the Central Intelligence and Security Agency**
- e. **the Sierra Leone Correctional Services**
- f. **the National Fire Force**

(2) The primary object of the national security organs and security system is to promote and guarantee national security in accordance with the principles mentioned in section 1(1).

(3) In performing their functions and exercising their powers, the national security organs and every member of the national security organs shall not –

- (a) **act in a partisan manner;**

- (b) further any interest of a political party or cause; or
- (c) prejudice a political interest or political cause that is legitimate under this Constitution.
- (4) A person shall not establish a military, paramilitary or similar organization that purports to promote and guarantee national security, except as provided for by this Constitution or an Act of Parliament.
- (5) The national security organs shall be answerable to civilian authority.
- (6) Parliament shall enact legislation to provide for the functions, organization and administration of the national security organs.

13.8 Theme - Establishment of National Security Council

Current Context

The National Security Council (NSC) was established as the highest forum for consideration of all matters relating to the security of Sierra Leone. The NSC is chaired by the President and includes all relevant stakeholders across the various Government Ministries, Departments and Agencies. Established also were several sub-committees including the National Security Council Coordinating Group (NSCCG), the Joint Intelligence Committee (JIC), Provincial Security Committees (PROSECs), District Security Committees (DISECs); and the Joint Maritime Committee (JMC).

13.9 Recommendation

The CRC recommends that the following provision should be included in the new chapter on national security in the revised Constitution:

“PART THREE

Establishment of National Security Council

3. (1) There is hereby established a National Security Council.

(2) The Council shall consist of –

- | | | |
|-----------------------|---|--------------------|
| a. The President | - | Chairperson |
| b. The Vice President | - | Deputy Chairperson |

- c. Minister responsible for Finance**
- d. Minister responsible for Internal Affairs**
- e. Minister responsible for Foreign Affairs**
- f. Minister of Information & Communication**
- g. Minister or Deputy Minister of Defence**
- h. Attorney General**
- i. Minister of Mineral Resources**
- j. Minister of Agriculture, Forestry & Food Security**
- k. Minister of Social Welfare, Gender & Children's Affairs**
- l. Minister of Health & Sanitation**
- m. Secretary to the Cabinet**
- n. The National Security Coordinator**
- o. The Inspector General of Police**
- p. The Chief of Defence Staff**
- q. The Director General, Central Intelligence and Security Agency; and**
- r. Secretary to the President - Secretary**

(3) The Council shall perform the following functions –

- a. provide the highest forum for the consideration and determination of matters relating to the security of Sierra Leone;**
- b. consider and take appropriate measures to safeguard the internal and external security of Sierra Leone through the integration of domestic and foreign security policies in order to enable Security Services, Departments and Agencies of Government to cooperate more effectively in matters relating to national security;**
- c. direct the operations of:**
 - i. the Joint Intelligence Committee**
 - ii. the Provincial Security Committees**
 - iii. the District Security Committees**

- iv. **the Chiefdom Security Committees**
- v. **the Joint Maritime Committee**
- vi. **the Transnational Organised Crime Unit**
- vii. **the Central Intelligence and Security Agency**
- viii. **the National Security Council Coordinating Group**
- d. **approve major plans and recommendations by the Ministry of Defence;**
- e. **serve as war cabinet in times of war; and**
- f. **monitor all external military support to Sierra Leone.”**

13.10 Theme - Security Coordination

Current Context

The Office of National Security (ONS) and the Central Intelligence and Security Unit (CISU) were created by the National Security and Central Intelligence Act, 2002 to serve as the statutory coordinator of the security sector and the principal intelligence-collecting agency respectively. These institutions were charged with providing early warning signals to the Government of threats to national security and proffering advice on the best possible measures to address these threats.

13.11 Recommendation

The CRC recommends that the following provision should be included in the new chapter on national security in the revised Constitution:

“PART FOUR

Security Coordination

4. (1) There is hereby established the Office of National Security as the Secretariat to the National Security Council and Coordinator of the national security organs.

(2) The functions of the Office of National Security shall be to –

- a. **provide support and secretarial services to the National Security Council;**

- b. serve as the primary institution for the coordination of the management of national emergencies such as natural and artificial disasters;**
- c. coordinate intelligence;**
- d. maintain a cordial and cooperative relationship among security services and civil society;**
- e. prepare and maintain the National Security Policy;**
- f. supervise security vetting and investigations for the security clearance of persons who hold or may hold vettable post in Government Ministries, Departments and Agencies, who may have access to any sensitive or classified information; and**
- g. implement protective security procedures in Government Ministries, Departments and Agencies.”**

13.12 Theme - Intelligence Service

Recommendation

The CRC recommends that the following provision should be included in the new chapter on national security in the revised Constitution:

“PART FIVE

Intelligence Service

5. (1) There is hereby established a Central Intelligence and Security Agency to serve as Sierra Leone’s professional civilian intelligence service responsible for domestic and foreign intelligence collection.

(2) The functions of the Central Intelligence and Security Agency shall be to –

- a. collect and assess intelligence in respect of internal or external activities that may constitute threats against the security of Sierra Leone;**
- b. protect Sierra Leone against threats of espionage, sabotage, terrorism, hijacking, piracy, drug trafficking, money laundering or other serious crimes;**
- c. protect Sierra Leone against the activities of persons intending to overthrow the democratically elected Government of Sierra Leone or undermine the constitutional order by illegal political, military, industrial or other means or through any other unconstitutional method;**

- d. **protect Sierra Leone against any threat to her economic interest, whether internal or external; and**
- e. **perform such other functions as the National Security Council or the President shall assign.”**

13.13 Theme - Defence Forces

Observation

The TRC in its report stated that: “the Army, which prior to the civil war and during the conflict sunk to the depths of disobedience and degeneracy, is now expected to rise to unprecedented levels of professionalism. Much has to be done to restore the faith and confidence of the people of Sierra Leone in the Army.

This responsibility of restoring faith in the Army rests not only with the leadership of the military, but also with each and every soldier. This responsibility must be reflected in the day-to-day conduct of all SLA soldiers.

Serving in the Army should be regarded as a privilege. Those soldiers who are unable to conduct themselves professionally and to respect the Constitution at all times are not fit to serve their country.

Section 166 of the Constitution prohibits the raising of any private armed force. This principle would naturally not apply to United Nations and other internationally sanctioned Peacekeeping Forces.

This principle would not preclude Sierra Leoneans who become citizens or residents of other countries from serving in the lawfully constituted armies of such countries.”⁵⁴⁸

13.14 Recommendation

The CRC recommends that the following provision should be included in the new chapter on national security in the revised Constitution:

“PART SIX

Defence Forces

6. (1) There is hereby established the Sierra Leone Defence Forces.

⁵⁴⁸ TRC Vol II Chapter III page 151

(2) The Defence Forces shall comprise –

- a. the Republic of Sierra Leone Armed Force (RSLAF)**
- b. the Republic of Sierra Leone Maritime Services (RSLMS), and**
- c. the Republic of Sierra Leone Air Force (RSAF)**

(3) The Defence Forces shall –

- a. be responsible for the defence and protection of the sovereignty and territorial integrity of Sierra Leone;**
- b. assist and cooperate with other authorities in situations of emergency or disaster and report to the National Security Council whenever deployed in such circumstances; and**
- c. deploy to restore peace in any part of Sierra Leone affected by unrest or instability with the approval of the National Security Council.**

(4) There is hereby established a Defence Council.

(5) The Defence Council shall consist of –

- a. Minister of Defence - Chairperson**
- b. Deputy Minister of Defence**
- c. Cabinet Secretary**
- d. National Security Coordinator, Office of National Security**
- e. The Chief of Defence Staff**
- f. Deputy Chief of Defence Staff**
- g. The Service Chiefs of the Defence Force**
- h. The Director General, Ministry of Defence - Secretary**

(6) The Defence Council shall –

- a. oversee policy, control and supervise the Republic of Sierra Leone Defence Forces; and**
- b. perform any other functions prescribed by national or secondary legislations.**

(7) The composition of the Command of the Defence Council shall reflect the regions and ethnic diversity of the people of the Republic of Sierra Leone.”

13.15 Theme - Police Services**Recommendation**

The CRC recommends that the following provision should be included in the new chapter on national security in the revised Constitution:

“PART SEVEN**Police Services**

7. (1) There is hereby established the Sierra Leone Police.

(2) The Sierra Leone Police shall –

- a. protect life and property;**
- b. maintain law and order;**
- c. preserve public peace and tranquility;**
- d. prevent and detect crime;**
- e. apprehend and prosecute offenders;**
- f. enforce laws and regulations in accordance with this Constitution; and**
- g. uphold human rights.**

(3) There is hereby established a Police Council.

(4) The Police Council shall consist of –

- a. The Vice-President - Chairperson**
- b. The Minister of Internal Affairs**
- c. The Inspector-General of Police**
- d. The National Security Coordinator**
- e. The Deputy Inspector-General of Police**
- f. The Chairperson, Public Service Commission**

- g. A member of the Sierra Leone Bar Association who shall be a legal practitioner of not less than ten (10) years standing as a practicing Barrister. He shall be nominated by the Sierra Leone Bar Association and appointed by the President.
- h. Two (2) other members appointed by the President, subject to the approval of Parliament.

(5) The Police Council shall –

- a. advise the President on all major matters of policy relating to internal security, including the role of the Police force, Police budgeting and finance, administration and any other matter as the President shall require;
- b. with the prior approval of the President, make regulations for the performance of its functions under this Constitution or any other law, and for the effective and efficient administration of the Police Force.

(6) Regulations made pursuant to the provisions of subsection (5)(b) shall include regulations in respect of:

- a. the control and administration of the Police Force of Sierra Leone;
- b. the ranks of officers and men of each unit of the Police Force;
- c. the members in each such rank and the use of uniforms by such members;
- d. the conditions of service, including those relating to enrolment, salaries, pensions, gratuities and other allowances of officers and men of each unit and deductions thereof;
- e. the authority and powers of command of officers and men of the Police Force; and
- f. the delegation to other persons of powers or commanding officers to discipline personnel and the conditions subject to which such delegation may be made.”

13.16 Theme - Correctional Services

Recommendation

The CRC recommends that the following provision should be included in the new chapter on national security in the revised Constitution:

“PART EIGHT

Correctional Services

- 8. (1) There is hereby established the Sierra Leone Correctional Services.**

(2) The Sierra Leone Correctional Services shall –

- a. keep inmates in a secure, safe and humane condition and shall produce them on demand based upon a judicial or executive warrant; and**
- b. Assist inmates in their reformation, rehabilitation and reintegration in order that they may become useful and productive citizens upon their release.**

(3) There is hereby established the Sierra Leone Correctional Service Council.**(4) The Council shall consist of –**

- a. The Vice-President - The Chairperson**
- b. Minister responsible for Correctional Services**
- c. The National Security Coordinator**
- d. The Chairperson, Public Service Commission**
- e. A representative from civil society whose work is related to correctional services**
- f. A representative from the Sierra Leone Youth Commission**
- g. A representative from the Ministry responsible for Social Welfare**
- h. The Director-General, Sierra Leone Correctional Services**
- i. The President of the Sierra Leone Bar Association or his representative; and**
- j. Two retired Senior Correction Officers appointed by the President, one of whom shall be a woman**
- k. The Permanent Secretary of Correctional Services - Secretary.”**

13.17 Theme - Fire Services**Recommendation**

The CRC recommends that the following provision should be included in the new chapter on national security in the revised Constitution:

“PART NINE**Fire Services**

9. (1) There is hereby established a National Fire Force.

(2) The National Fire Force shall –

- a. protect lives and properties against fire disasters; and**
- b. carry out search and rescue in fire disasters and render humanitarian services.**

(3) No Fire Service shall exist except by or under the authority of an Act of Parliament and such Fire Service shall be supervised by the National Fire Force.

(4) No member of the National Fire Force shall hold office as President, Vice-President, Minister or Deputy Minister, or be qualified for election as a Member of Parliament while he remains a member of the National Fire Force.

(5) There is hereby established a National Fire Force Advisory Council.

(6) The National Fire Force Advisory Council shall consist of –

- a. The Vice-President - Chairperson**
- b. The Minister of Internal Affairs**
- c. The Chief Inspector of Fire Service**
- d. The Deputy Chief Inspector of Fire Service**
- e. The Chairperson, Public Service Commission**
- f. The Director, Environmental Protection Agency**
- g. The National Security Coordinator, Office of National Security**
- h. Two other members appointed by the President, subject to the approval of Parliament**
- i. The Permanent Secretary, Ministry of Internal Affairs or the Ministry responsible for the National Fire Force - Secretary**

(7) The National Fire Force Advisory Council shall –

- a. Advise the Vice-President on all major matters of policy relating to fire safety measures, including the role of the National Fire Force, fire budgeting, finance, administration and any other matter as the Vice President shall require;**
- b. With the prior approval of the Vice-President, make regulations for the performance of its functions under this Constitution or any other law, and for the effective and efficient administration of the National Fire Force;**

(8) Regulations made pursuant to the provisions of subsection (7)(b) shall include regulations in respect of:

- a. the control and administration of the National Fire Force;**
- b. the ranks of officers and men of the Force and the use of uniforms by members of the Force;**
- c. the conditions of service, including those relating to enrolment, salaries, pensions, gratuities and other allowances of officers and men and deductions therefore; and**
- d. the delegation to other persons of powers or commanding officers to discipline personnel and the conditions subject to which such delegation may be made.”**

14 CHAPTER FOURTEEN

THE PUBLIC SERVICE

14.1 Current Context

Section 151 of the 1991 Constitution states:

“**151.** (1) There shall be a Public Service Commission which shall consist of a Chairman, not less than two and not more than four other members.

(2) The members of the Public Service Commission shall be appointed by the President, subject to the approval of Parliament.

(3) A person shall not be qualified to hold the office of a member of the Public Service Commission if he is a Member of Parliament, a Minister or a Deputy Minister, or if he holds or is acting in any public office.

(4) A person who has held office or who has acted as a member of the Public Service Commission shall not within a period of three years commencing with the date on which he last so held office or acted, be eligible for appointment to any office, power to make appointments to which is vested by this Constitution in the Public Service Commission.

(5) The office of a member of the Public Service Commission, unless he sooner resigns or dies, shall become vacant—

- (a) at the expiration of a period of five years from the date of his appointment or such shorter period not being less than three years as may be specified at the time of his appointment;
- (b) if any circumstances arise that if he were not a member of the Commission would cause him to be disqualified for appointment as such:

Provided that a member of the Public Service Commission shall retire at that age of sixty-five years.

(6) A member of the Public Service Commission may be removed by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or from any other cause) or for misconduct.

(7) Whenever the office of a member of the Public Service Commission is vacant or a member is for any reason unable to perform the functions of his office, the President may appoint a person who is qualified for appointment as a member of the Commission, and any person so appointed shall, subject to the provisions of paragraph (b) of subsection (5), continue to act until his appointment is revoked by the President.

(8) A member of the Public Service Commission shall, before assuming the functions of his office, take and subscribe before the President the oath as set out in Third Schedule to this Constitution.”

Section 152 of the 1991 Constitution states:

“**152.** (1) Subject to the provisions of this Constitution, the power to appoint persons to hold or act in offices in the public service (including power to make appointments on promotion and to confirm appointments) and to dismiss and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Public Service Commission.

(2) The President may, subject to such conditions as he may think fit, delegate any of his functions relating to the making of appointments, including power to make appointments on promotion and to confirm appointments, by directions in writing to the Public Service Commission or to a committee thereof or to any member of the Commission or to any public officer.

(3) Before the Public Service Commission appoints to any public office any person holding or acting in any office, the power to make appointments to which is not vested in the Public Service Commission, it shall consult the person or authority in whom that power is vested.

(4) The Public Service Commission shall, upon request made to it by any person or authority having power to make an appointment to an office under this Constitution or in any other public institution, make recommendations to that person or authority for the appointment of any public officer or any other person to any office, the power to make appointment to which is vested by the Constitution or any other law in that person, authority or public institution.

(5) the power to transfer persons holding or acting in offices in the public service from one department of Government to another shall, where such transfer does not involve promotion, vest in the Public Service Commission.

(6) The provisions of this section shall not apply in relation to any of the following offices—

- (a) the office of any Justice of the Supreme Court or of the Court of Appeal or a Judge of the High Court;
- (b) the office of the Director of Public Prosecutions;
- (c) the office of Auditor-General;
- (d) any office to which section 141 (which relates to offices within the jurisdiction of the Judicial and Legal Service Commission) applies;
- (e) any office to which section 153 (which relates to the offices of Ambassadors and certain offices) applies;
- (f) any office to which section 154 (which relates to the offices of the Permanent Secretaries and certain other offices) applies; and
- (g) any office the remuneration of which is calculated on a daily rate:

Provided that the power of transfer vested in the Public Service Commission under subsection (5) may be exercised in the case of persons holding any of the offices specified in this subsection where such persons express their consent in writing to such transfer.

(7) No appointment shall be made under this section to any office on the personal staff of the President or the Vice-President, unless he signifies his personal approval of the appointment.

(8) The Public Service Commission shall not dismiss or inflict any other punishment on a public officer on grounds of any act done or omitted to be done by that officer in the exercise of a judicial function conferred upon him, unless the Judicial and Legal Service Commission concurs therein.

(9) No member of the Public Service shall be—

- (a) victimised or discriminated against directly or indirectly for having discharged his duties faithfully in accordance with this Constitution, or
- (b) dismissed or removed from office or reduced in rank or otherwise punished without just cause.

(10) The Public Service Commission may, with the prior approval of the President, make regulations by constitutional instrument for the effective and efficient performance of its functions under this Constitution or any other law, and may, with such prior approval and subject to such conditions as it may think fit, delegate any of its powers under this section by directions in writing to any of its members or to any public officer.

(11) Save as is otherwise provided in this Constitution, the Public Service Commission shall not be subject to the control or direction of any other person or authority in the performance of its functions under this Constitution or any other law.”

Section 153 of the 1991 Constitution states:

“**153.** (1) The power to appoint persons to hold or act in the office to which this section applies (including the power to transfer from one office to another and to confirm appointments) and to remove persons so appointed from any such office shall vest in the President.

(2) The offices to which this section applies are the offices of Ambassadors, High Commissioners or other principal representatives of Sierra Leone abroad, the Commanders of the Armed Forces, and the Inspector-General of Police;

Provided that the appointment to these offices shall be subject to the approval of Parliament.”

Section 154 of the 1991 Constitution states:

“**154.** (1) The power to appoint persons to hold or act in any of the offices to which this section applies (including the power to make appointments on promotion and transfer from one office to another and to confirm appointments) and to remove persons so appointed from any such office shall vest in the President acting in consultation with the Public Service Commission.

(2) The offices to which this section applies are the offices of Secretary to the Cabinet, Secretary to the Vice-President, Financial Secretary, Director-General of the Ministry of Foreign Affairs, Establishment Secretary, Development Secretary, Provincial Secretary and Permanent Secretary.

(3) Where any person holding an office mentioned in subsection (2) accepts another such office carrying higher remuneration, he shall, unless a contrary intention appears from the terms of his appointment, be deemed to have relinquished the office he was originally holding; where the second office does not carry higher remuneration, the question whether or not he shall be deemed to have relinquished the original office shall depend on the terms of his second appointment.

(4) Subject to the provisions of section 152 of this Constitution, where any person has been removed under subsection (1) from any office specified in subsection (2) he may notwithstanding such removal—

- (a) remain in the Public Service;
- (b) continue to receive a salary not less than the salary he received before such removal; and
- (c) continue to be eligible for any benefit granted to him in respect of his service as a public officer, including benefits payable under any law providing for the grant of pensions, gratuities or both;

unless by such removal he ceases to be a member of the Public Service.”

Section 67(2)(a) of the 1991 Constitution states:

“(2) The functions of the Secretary to the President shall include—

- (a) acting as the principal adviser to the President on Public Service matters;”.

In addition, under section 68(1) and (3)(c), the Secretary to the Cabinet serves as Head of the Civil Service and is in charge of “coordinating and supervising the work of all administrative heads of ministries and departments in the Public Service”.

Section 171(1) of the 1991 Constitution defines several terms used throughout the Constitution, including “public service”, as follows:

"public service" means, subject to the provisions of subsections (3) and (4), service of the Government of Sierra Leone in a civil capacity and includes such service in respect of the Government existing in Sierra Leone prior to the twenty-seventh day of April, 1961;”

Section 171(3) and (4) further define “public service”, as follows:

“(3) In this Constitution unless otherwise expressly provided "the public service" includes service in the office of Chief Justice, a Justice of the Supreme Court, Justice of Appeal, Judge of the High Court or of the former Supreme Court or in the office of Judge of any other court established by Parliament being an office the emoluments attaching to which are paid out of the

Consolidated Fund or any other public fund of Sierra Leone, and service in the office of a member of the Sierra Leone Police Force.”

"(4) “the public service” does not include service in the office of President, Vice-President, Speaker, Minister, Deputy Minister, Attorney-General and Minister of Justice, Deputy Speaker, Member of Parliament, or of any member of any Commission established by this Constitution, or any member of any council, board, panel, committee or other similar body (whether incorporated or not) established by or under any law, or in the office of any Paramount Chief, Chieftom Councillor or member of a Local Court.”

14.2 Observations

The CRC deliberated on the issue of the public service, and reviewed the PTC Report proposal that section 67(2)(a) should be deleted so that the Secretary to the President is not involved in public service matters. The PTC Report further recommends that the Secretary to the Cabinet should be in charge of all public service matters.

Section 68(3) of the 1991 Constitution reads:

“(3) The functions of the Secretary to the Cabinet shall include-

- (a) having charge of the Cabinet Secretariat;
- (b) responsibility for arranging the business for, and keeping the minutes of, the Cabinet, and for conveying the decisions of the Cabinet to the appropriate person or authority, in accordance with such instructions as may be given to him by the President;
- (c) co-ordinating and supervising the work of all administrative heads of ministries and departments in the Public Service;
- (d) such other functions as the President may from time to time determine.”

The PTC Report proposed the following amendment to section 68(3):

“(3) The functions of the Secretary to the Cabinet shall include-

- (a) acting as the Principal Adviser to the President on Public Service matters;
- (b) having charge of the Cabinet Secretariat;
- (c) responsibility for arranging the business for, and keeping the minutes of, the Cabinet, and for conveying the decisions of the Cabinet to the appropriate person or authority, in accordance with such instructions as may be given to him by the President;
- (d) co-ordinating and supervising the work of all administrative head of ministries and departments in the Public Service;
- (e) such other functions as the President may from time to time determine.”

The PTC Report also recommended amending section 151(5)(a), (b) of the 1991 Constitution as follows:

“151 (5) The office of a member of the Civil Service Commission, unless he sooner resigns or dies, shall become vacant –

- (a) at the expiration of four years, renewable only once, and
- (b) the Chairman, at the expiration of five years, renewable only once.”

The Truth and Reconciliation Report commented on the issue of ensuring the independence of the public service and also ensuring that civil servants maintain the highest standards of integrity:

“Government effectiveness is a measure of the quality of the delivery of public services, the competence of civil servants, and the independence of the civil service from political pressures. Poor governance is the mismanagement of public assets and resources. It results in the denial of the delivery of effective public services to the people. Bad governance is the breeding ground for corruption.

Apart from initiatives to introduce transparent government as described above, the government can do much to limit the corrupt activities of many of its employees. There are certain areas in the public service, where corruption is rife because of the opportunities they present for enrichment. These areas include procurement, the privatisation process and transportation. The Commission calls on the government to pay particular attention to these areas. Much can be done to close down the opportunities for corruption. Making these processes scrupulously open and transparent is the starting point.”⁵⁴⁹

The CRC was also informed by a detailed position paper submitted by the Public Service Commission (PSC) position paper. In it, the PSC discussed the current fragmented structure and management of the public service, analysed the crisis of leadership that currently afflicts the sector, gave an overview of the reform process at the PSC, and made recommendations for consideration by the CRC. The recommendations focus principally on the mandate and jurisdiction of the PSC and its relationship with the new institutions implementing aspects of that mandate:

“It is generally agreed that for an unacceptable length of time the PSC, which has been in existence since 1948, failed to execute its Constitutional mandate effectively. Consequently, that mandate suffered considerable erosion, resulting in the loss of its overall control of the Public Service. This formally commenced in 1991 with the exclusion of Public Corporations and the Police Force from PSC jurisdiction. Further erosion of its jurisdiction subsequently occurred with the enactment of the Local Government Act 2004, the Parliamentary Service Act 2007, the transformation in 2008 of the Establishment Secretary’s Office into the Human Resource Management Office (HRMO) and the subsequent delegation to it by the PSC of its mandate for

⁵⁴⁹ TRC Volume II, page 165 para 300

Grades 1-5, the Health Service Commission Act 2011 and the Teaching Service Commission Act 2011.

It is the emergence in recent years of human resource management agencies in the Public sector in the aftermath of these developments that has resulted in the greatest shrinkage of the operational sphere of influence of the PSC. From a Human Resource Management perspective, therefore, these developments have had the cumulative effect of institutionalising the balkanisation of the Public Service. With the focus of its work now largely limited to regulation of the Civil Service, the PSC has essentially and unfortunately been reduced to a Civil Service Commission.

However, it is ironic that as the PSC mandate in Sierra Leone is being balkanised, the Public Service Commissions in other Commonwealth and peer African nations have consolidated similar institutions to establish synergy and efficiency in Public Service delivery. In Ghana, for instance, the Constitution grants a consolidation of Public Services as follows: 190 (1) The Public Services of Ghana shall include - (a) the Civil Service, the Judicial Service, the Audit Service, the Education Service, the Prisons Service, the Parliamentary Service, the Health Service, the Statistical Service, the National Fire Service, the Customs, Excise and Preventive Service, the Internal Revenue Service, the Police Service, the Immigration Service, and the Legal Service; (b) public corporations other than those set up as commercial ventures; (c) public services established by this Constitution; and (d) such other public services as Parliament may by law prescribe.⁵⁵⁰

The Ghana model incorporates the Civil Service in the Public Service as it divorces the Secretary to the Cabinet from the Civil Service. This is a necessary and proper frame of organizing the Public Service where consolidation of kindred institutions forms a public concourse for efficiency.

What is more, it is now a moot question whether the PSC or the Civil Service is subordinate to one another in the Constitutions of most Commonwealth countries. This is because it is legend that the Civil Service no longer exists anywhere in the Commonwealth in the fashion it does in Sierra Leone. It is properly lodged in the concourse of Public Service Commissions as the Ghana and other models indicate.

The establishment of the new human resource management institutions in Sierra Leone may well be in place. It is consistent with modern Human Resource Management thinking that the most effective Human Resource Management is that carried out closest to the business and the workforce. Moreover, their establishment may be justified on the grounds that the PSC went into an unacceptable state of inertia for a deleteriously prolonged period of time.

What is missing in the current setting, however, is the explicit recognition of the need to exist of a central coordinating and supervisory agency such as the PSC. The absence of an overarching regulatory mechanism has resulted in the lines of authority, reporting and accountability,

⁵⁵⁰ See Constitution of the Republic of Ghana, Chapter IV, Section 190.

coordination and collaboration, and of directionality becoming complex, blurred and confused. It is no longer clear who provides oversight on a large number of Public Service personnel issues, and what should be done to enforce compliance when an institution reneges on its responsibility. The PSC still retains the Constitutional mandate but its central directing role is either non-existent or weak. It has no authority to enforce policy guidance or performance management standards on the new players in the human resource management arena of the public service save for HRMO. It is this that lies at the heart of the current leadership crisis in the public sector. The Ministry of Finance & Economic Development has become, by default and in this vacuum, the ultimate guide.

That central coordinating agency is fashioned in Section 190 of the Ghana Constitution as mentioned above. The CRC, now contemplating an alteration of the 1991 Constitution, can similarly grant a concurrence for Public Services in Sierra Leone, with the aim of optimizing Public Service delivery equal to creating a well-ordered society inspired by the Middle-Income status envisaged in the Agenda for Prosperity.

The spirit of the 1991 Constitution suggests the existence of a leadership hierarchy at the helm of the Public Service. In Sections 68(2) and 69(2), the Secretary to the Cabinet, who is also Head of the Civil (not Public) Service, and the Secretary to the Vice President are both respectively appointed by the President in consultation with the Public Service Commission.

That is, however, not the case with the appointment of the Secretary to the President who, according to Section 67(1), “shall be appointed by the President at his sole discretion”. The pre-eminent position of the Secretary to the President is reinforced by the provision in Section 67(2)(a) that he shall act “as the principal adviser to the President on public service matters”. This effectively makes the Secretary to the President the de facto head of the Public Service. It also explains why even the Chairman of the Public Service Commission, who is consulted by the President in the appointments of the Secretary to the Cabinet and the Secretary to the Vice President, reports to the President through the Secretary to the President.

However, in outlining the functions of the Secretary to the Cabinet & Head of the Civil Service in Section 68(3)(c), the Constitution apparently creates room for considerable confusion by providing that his functions shall include “coordinating and supervising the work of all administrative heads of ministries and departments in the public service”. This is at variance with the provision in Section 68(1), which makes the Secretary to the Cabinet also the Head of the Civil Service, not the public service which is much broader. This is a simple but seriously mistaken interchange in the use of the words “public” and “civil” in that section. The confusion and leadership rivalries that this has engendered at the top since 1991 are not inconsiderable.

On close analysis, however, and when the context of the Sections is considered, the confusion dissipates, as the use of the word “public” in Section 68(3)(c) really is a typographical error where the Framers of the Constitution actually meant to say “Civil” instead of “Public” Service. Otherwise it leads to a contextual absurdity.

In essence, there is now a compelling, rational purpose to reform the Public Service to meet the challenges of the 21st century. In doing so, Sierra Leone must consider taking the road travelled by other countries to build a PSC on the blueprint described severally in this Paper. The place

to start is the CRC, where these reasons should be canvassed and weighed in favour of reform that consolidates all kindred organizations of Government that come under the necessary and proper rubric called the Public Service. This consolidation will yield synergy, cooperation, coordination and collaboration in service delivery and accountable Human Resources management.”⁵⁵¹

The Kenya Constitution is recognised as an example of best practice in making provision for the strategic oversight mandate of a Public Service Commission.

The CRC and experts identified several issues and ambiguities, and was also informed by the position paper of the Public Service Commission.

14.3 Recommendation

The CRC endorses the PTC Report recommendations, and has already suggested amendments that should be made to relevant sections in the chapter on the Executive.

The CRC recommends that sections 67 and 68 should be amended to transfer the civil service, the Human Resource Management Office, and the Public Service to a new body set up to deal with all civil and public service operations in order to ensure efficient execution of the machinery of Government and good governance.

The CRC therefore recommends that a new chapter entitled “The Public Service” should be included in the revised Constitution as follows:

“The Public Service

1. (1) The Public Services of Sierra Leone shall include –

- (a) the Civil Service,
- (b) the Judicial Service,
- (c) the Audit Service,
- (d) the Education Service,
- (e) the Correctional Service,
- (f) the Parliamentary Service,
- (g) the Health Service,
- (h) the Statistical Service,

⁵⁵¹ Public Service Commission position paper

- (i) the National Fire Service,
- (j) National Revenue Authority,
- (k) the Police Service,
- (l) the Immigration Service;
- (m) and the Legal Service;
- (n) public corporations other than those set up as commercial ventures;
- (o) public services established by this Constitution; and
- (p) such other public services as Parliament may by law prescribe

(2) The Civil Service shall, until provision is otherwise made by Parliament, comprise service in both central and local government.

(3) Subject to the provisions of this constitution, an Act of Parliament enacted by virtue of clause (1) of this article shall provide for -

- (a) the governing council for the public service to which it relates;
- (b) the functions of that service; and
- (c) the membership of that service.

(4) For the purposes of this article "public corporation" means a public corporation established in accordance with article 192 of this Constitution other than one set up as a commercial venture."

14.4 Policy Recommendation

The CRC endorses the policy recommendations made by the Public Service Commission (PSC) in its position paper, and encourages the government to review the remit of the public service in line with the recommendations in the section of the new chapter referred to above.

The CRC recommends that a Public Service Act should be introduced to address issues and challenges highlighted in the PSC's position paper.

The CRC recognises the need to streamline the institutional and functional relationships between the PSC and the various agencies/commissions now in existence to complement and reinforce each other for increased efficiency in service delivery.

In its position paper, the PSC stated: "in line with the Public Sector Reform framework, the recommendations of the Management and Functional Review of the PSC in 2010, and to ensure that the PSC has jurisdiction over a broadened scope of the Public Service, the "new" PSC

should, in addition to its current mandate, be given the regulatory and supervisory powers of a central policy body that:

- (a) provides leadership, oversight and guidance in the development of the human resources of the Public Service in order to ensure effective and efficient service delivery to the people of Sierra Leone;
- (b) undertakes the development and application of policy frameworks as well as the monitoring and evaluation of the implementation of policies in the public sector relating to recruitment and selection, training and staff development, public sector pay, performance appraisal; and
- (c) sets standards, harmonises and monitors performance relating to Human Resource Management across the Public Service.”

The PSC emphasised the need for a Public Service Act, and stated:

“Clarifying the institutional relationships between the PSC and the new Agencies and Commissions would require proper consultation and fairly elaborate definitions of roles and responsibilities, which cannot possibly be encompassed in a national Constitution. These would have to be addressed in an Act of Parliament. This issue has already been addressed at the level of the Executive, with the issuance of an Executive Directive by His Excellency the President for the enactment of a Public Service Act (copy of letter attached as an Annexure). Therefore, the new Constitution should simply provide that there shall be a Public Service Act.

The Act would address in detail issues relating to reporting, coordination, collaboration, monitoring & evaluation, compliance, sanctions for failure to comply, etc. for all implementing Agencies and Commissions of public sector Human Resource Management. This will mirror developments in peer African nations, such as Ghana 1994, Lesotho 2005, Botswana 2010, and Kenya 2012, all of whom have Public Service Acts.

Significantly, the Public Service Act will also address a raft of issues in relation to the performance of public servants. The Act could make provision for an explicit role for the PSC in setting and regulating performance standards. Such provision will enable the PSC introduce robust competency-based assessments with a view to tackling the problem of low performance in the Public Service. This will be in sync with and reinforce current reforms initiated by the PSC, where entrance exams into the Civil Service are now mandatory for sub-graduates and graduates. Provision could be made for the introduction of exams for progression across the Public Service. In Kenya, for example, promotion is not possible without first completing certain courses which demonstrate specific competencies required at each level. The Kenya School of Government provides objective standards required before anyone can be recommended for promotion. In Sierra Leone, the recently resuscitated Civil Service Training College and the Public Service Academy (under consideration for construction) could collaborate with the PSC to implement such provisions.

In Section 68(1), the 1991 Constitution is clear about the Head of the Civil Service. No such clarity exists about the Head of the Public Service, a lacuna that has given rise to unhelpful rivalries and jockeying for leadership of the sector. The new Constitution would need to settle that matter once and for all by categorically identifying the Head of the Public Service.

The PSC hopes that other issues relating to the public service, such as ethical standards, professional integrity, pay and pensions, criteria for holding public office, etc will be dealt with in the submissions of other stakeholders, and eventually by a Public Service Act. More importantly, the PSC hopes that the CRC will refer to the national Constitutions of peer African nations referenced in this Paper in making recommendations on the management and structure of the Public Service.”⁵⁵²

⁵⁵² Public Service Commission position paper

15 CHAPTER FIFTEEN

LAND, NATURAL RESOURCES AND THE ENVIRONMENT

15.1 Introduction

Sierra Leone's landscape is a vast mosaic of resources: its primary ecosystems can be categorized as ocean, freshwater, brackish water, coastal beaches (rocky, sandy and muddy), nutrient-rich wetlands (mangrove swamps, inland valley swamps, Boli-lands,), savannah woodlands, and tropical rain forests. The country is also rich in non-renewable resources such as minerals and petroleum. All this holds opportunities for development and improving well-being if managed sustainably.

Natural resources play an important role in economic growth. The economy of Sierra Leone is dominated by subsistence-oriented agriculture and the extraction of mineral resources such as diamonds, rutile, bauxite, ilmenite, gold, chromite, platinum, lignite and clays. Additionally, various exploration firms have discovered offshore oil deposits along the Sierra Leonean coast in recent years.

In the light of the foregoing, the Natural Resource Governance and Economic Justice Network (NaRGEJ) was of the view that the provisions on natural resource governance in the Constitution of Sierra Leone 1991 had no significant impact on the socio-economic development of Sierra Leone. There is therefore a need for a specific chapter in the Constitution on natural resource governance. The rationale is that when natural resource governance conforms with the principles of, for example, separation of powers, judicial independence, rule of law, sovereignty of the people, and accountability, citizens can enjoy the benefit of their natural resources.

Enacting specific constitutional provisions on management and administration of land, natural resources and the environment for the first time in the Constitution would revolutionize the nation's traditional view of the environment and encourage citizens to adopt a more cautionary approach to their relationship with nature and to the exploitation of its resources. Furthermore, introducing a new chapter would create a body of law consistent with global best practice.⁵⁵³

Despite progressing urbanization, the majority of the population live in rural areas and depend on natural resources for their livelihood. If managed well Sierra Leone's natural resources could also contribute a significant portion of GDP and comprise a large percentage of the countries' exports.

Since the end of the Civil War in 2002, Sierra Leone has re-established security and democratic governance, implemented a decentralization programme, and launched its third poverty

⁵⁵³ NaRGEJ position paper page 3

reduction strategy (the Agenda for Prosperity). The country had impressive real GDP growth rates during 2007-11: an average of 5.3 per cent. The economy's growth rate of 15.2 per cent in 2012 was faster than that of any other country in sub-Saharan Africa for that year.⁵⁵⁴

Section 7(1)(a) of the 1991 Constitution asserts that to meet its economic objectives, the State shall "harness all the natural resources of the nation to promote national prosperity and an efficient, dynamic and self-reliant economy."

In a bid to remedy this situation, the CRC has concluded that a new chapter of the Constitution should set out sustainable principles and enhance the necessary legal framework in order to mainstream lands, natural resource governance, and the environment.

In the new chapter, the following definitions will apply:

- a) **Lands:** include all lands, whether covered with water or otherwise, together with all buildings and erections, if any, thereon, and, where such meaning may be inferred, any right to the same
- b) **Natural Resources:** include minerals, gas and petroleum, fishery, forest products and services and energy
- c) **Environment:** includes land, air, water and all plants, animals and human beings living therein and the inter-relationship, which exist among these or any of them.

⁵⁵⁴World Bank, 'Taking Advantage of a Fast-Growing Economy to End Extreme Poverty, Boost Shared Prosperity', 27 August 2013

PART I

LAND

15.2 LANDS

Introduction

Sierra Leone's legal framework on lands, natural resources and the environment is contained in different legislation. There are no provisions in the 1991 Constitution relating to natural resources.

The 1991 Constitution is meant to provide the general framework of laws governing every facet of Sierra Leone's society. It is supposed to reflect and reinforce the nation's deepest and most cherished values. However, since the dawn of independence, drafters of the nation's four Constitutions have never included provisions related to the nation's lands, environment, and natural resource governance.

It is therefore recommended that the revised Constitution must contain a chapter on lands, natural resources, and the environment which outlines the fundamental obligations of the State, and defines the overarching relationship between the issues pertaining to lands, environment and natural issues.

The Constitution Review Committee (CRC) reviewed the Constitution of Sierra Leone 1991 (the 1991 Constitution) and The Peter Tucker Constitution Commission Report 2008 (the PTC Report). The CRC was also informed by expert opinions and position papers, and reports from special engagement sessions with different interest groups and stakeholders. Additionally, the CRC analyzed and took account of the feedback from nationwide consultation exercises.

The CRC's research sub-committee analysed different thematic reports, which proved helpful to CRC in its considerations and deliberations. The CRC also reviewed constitutional best practices, including modern African Constitutions. The CRC was also facilitated by UNDP Sierra Leone to visit Ghana and Kenya to share ideas with their land experts.

According to the Truth and Reconciliation Commission (TRC) "many of Sierra Leone's laws were adopted from England. Some laws on the statute books date back as far as the 17th century. While the British have long amended or repealed these laws, they remain in force in Sierra Leone."⁵⁵⁵

Previously, the United Nations and the World Bank in their reports highlighted that the land tenure system in Sierra Leone restricts agricultural investment and development.⁵⁵⁶

15.3 Historical Background

Prior to independence in April 1961, Sierra Leone consisted of two separate political entities, a Colony and a Protectorate. What is now the Western Area had been a British Crown Colony since 1808, with its entire territory considered as a British possession; the lands were Crown

⁵⁵⁵ TRC Report Volume Two Chapter III page 192 para 149

⁵⁵⁶ United Nations Development Programme 2009 "Key Land Issues and reform process for Sierra Leone" report

lands (now State lands). The British treated the lands adjacent to the Crown Colony as foreign territories until 1896, when the proclamation of a Protectorate over them allowed the British Crown to exercise limited sovereignty without ever claiming dominium over them. There have never been any Crown lands in the Protectorate.⁵⁵⁷

As far as land tenure was concerned, though the British Colonies asserted the rights of the British Crown to all minerals, metals and precious stones in the Protectorate, there was no claim by the colonial administration of any specific rights of supervision or ownership over native lands in the Protectorate, nor was any attempt made by local legislation or otherwise to alter the status of Protectorate land. The only statutes relating to land enacted throughout the colonial era were the Protectorate Lands Ordinance 1927 (now the Provinces Land Act, Cap 122) and the Concessions Ordinance 1931 (now the Concessions Act, Cap 121).

The preamble to the Provinces Land Act declared for the first time that all lands in the Protectorate were vested in the Tribal Authorities (now Chieftdom Councils) who held such lands for and on behalf of the native communities concerned.

The Provinces Land Act also limited the quantum of interest which could be granted by the Tribal Authorities to “non-natives” (who for the purposes of the Act were persons who were not entitled by birth to rights in land in the Protectorate) to a leasehold term of fifty years, renewable for a further term of twenty-one years. Even the Government was considered a non-native until the definition was amended in 1961.

After English law was introduced into the Crown Colony, there was no attempt to keep pace with the developments of the law in England. The local legislature enacted what became known as a reception clause which prescribed that only the English common law, equity and statutes of general application at a cut-off date (the first being 1st January 1857) were to be in force in the Colony.

The current reception clause enacted in 1965 fixes the cut-off date at 1st January 1880. In 1932, the local legislature enacted the Imperial Statute (Law of Property) Act, Cap 18, by which certain post-1880 English property legislations such as the Law of Property Act 1881, the Settled Land Act 1882, and the Trustee Act 1888 were adopted. Though Cap 18 was enacted long after the series of 1925 English property statutes, which significantly reformed and modernized English land law, the opportunity was not taken by the local legislature to modernize Sierra Leone land law by adopting these post-1925 English property statutes.

Since Independence in 1961, few property statutes have been enacted by the local legislature and most of the statutes governing land tenure in Sierra Leone were enacted during the colonial era, such as the Public Lands Act, Cap 116, the Town and Country Planning Act, Cap 81, and the Unoccupied Lands (Ascertainment of Title) Act, Cap 117.

Until the enactment of the Devolution of Estates Act in 2007, the only land statute of significance enacted after independence was the Non-Citizens (Interests in Land) Act 1966, which limited the interest in land in the Western Area that a non-citizen could hold to leasehold of not more than

⁵⁵⁷ The National Land Policy

twenty-one years.

As a result of the inactivity of the local legislature in enacting reforming statutes in the field of land law, Sierra Leone is still lumbered with the bulk of pre-1925 English statutes originally enacted to suit the peculiar socio-political and economic conditions of pre-twentieth century English society.

Current context

Sierra Leone has a dual land tenure system. The legal framework that regulates land in the Provinces is the Provinces Land Act, Cap. 122. There are several administrative issues pertaining to the occupation and use of provincial land by a non-native. For example, section 3 of the Act sets out the conditions under which non-natives may occupy land in the Provinces. The first condition is that a non-native must obtain the consent of the Chiefdom Council, headed by the Paramount Chief. The second condition is that the District Commissioner must approve the occupation of provincial land by a non-native. Where a non-native satisfies the first condition, but not the second, his interest in the land will be no more than a tenancy at will.

There is very little in the Provinces Land Act, Cap 122 in respect of management and administration in the Provinces.

The 2016 Population and Housing Census shows that Sierra Leone's population has increased from 6,092,000 million in 2013 (according to the World Bank figures) to 6,525,821 million. Sierra Leone occupies 71,600 square kilometers of land, of which 40% is agricultural, 39% is forested, and 4% is protected.

The 1991–2002 Civil War severely disrupted the agricultural sector, causing both lower production and greater poverty. As much as one-third of the population was displaced by the war, and significant post-conflict efforts have focused on enabling people to return to their agricultural lands. Imports of rice, the staple food of Sierra Leone, increased dramatically throughout the war years, but in the last few years, local production has restored the country to self-sufficiency in this crop. Most rice is grown in rainfed upland areas.

There are vast acres of arable land in the provinces which are largely underutilized. There is therefore a need to unlock the commercial potential land in the Provinces. Two-thirds of the population in Sierra Leone earns their livelihood from agriculture. About 1% of Sierra Leone's land is under cultivation, and roughly 5% of cropland is irrigated. No recent data on its extent is available, but about 155,000 hectares are believed to be subject to some form of water management, with fewer than 30,000 hectares believed to be irrigated. Irrigable potential, however, is estimated to be more than 800,000 hectares. With the benefit of national peace, the agricultural sector has contributed to a 7.4% increase in GDP since 2004 through an expansion in land under cultivation.⁵⁵⁸

⁵⁵⁸ FAO 2005b; World Bank and African Development Bank 2010

15.4 Theme - Definition of Lands

Current Context

The 1991 Constitution makes no provision regarding the definition, classification, and management of lands.

Observation

The CRC deliberated on the definition, classification and sovereign title to land in the Constitution.

The CRC reviewed several position papers submitted by a wide range of stakeholders. In addition, nationwide public consultations were held, and ideas were drawn from other constitutions and national and international documents, including academic papers and expert opinions, to formulate the new chapter of the revised Constitution on lands, natural resources and the environment.

The National Land Policy deals with sovereign title to land as follows:

“A first vital issue to be addressed by this Policy is to clarify the question of the vesting of the sovereign title to land in Sierra Leone by making appropriate provision in the Constitution and in the new comprehensive land statute to be enacted after this Policy is adopted. The formulation in section 5(2) of the Constitution could be amended to read: “Sovereignty and sovereign title to land belong to the people of Sierra Leone from whom Government through this constitution derives all its powers, authority and legitimacy”.

The National Land Policy therefore makes policy statements on sovereign title to land to the effect that sovereign title to State lands and public lands should vest in the National Lands Commission in trust for all citizens of Sierra Leone, and that sovereign title to private land should vest in either the individuals that own the land (in the Western Area) or in the proposed new Chiefdom Lands Committee (in the Provinces).

The National Land Policy’s strategies to implement these policies include: amending the Constitution and the State Lands Act by inserting appropriate provision to vest sovereign title to Government/State lands and public lands in the National Lands Commission; amending or repealing the Provinces Land Act, Cap 122, and making new provision to vest communal lands in the Chiefdom Lands Committee, the Village Area Lands Committee, and family lands in the family as a unit.

Paramount Chiefs in Sierra Leone’s chiefdoms are considered the traditional custodians of the land in their chiefdoms. Sub-chiefs at lower administrative levels assist the Paramount Chiefs. In post-war years, the government’s efforts to decentralize various functions to local and district

council have recognized the need to work with the chieftaincy in land matters⁵⁵⁹.

The Natural Resources Governance And Economic Justice Network (NARGEJ) - Sierra Leone in their position paper recommended that land use should be an important consideration for any project as there were many competing uses for it: “in the final analysis, sustainable development must be key to making certain decisions on exploitation. Sustainable development can be defined as the pursuit of all activities that will lead to sustainment of the wealth-generating potential of the community that depends on the exploitation of the resources.”⁵⁶⁰

The Food and Agricultural Organisation of the UN (FAO) developed the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT). In their comments on the draft abridged report of the CRC, VGGT stated as follows:

“Section 1: Definition of Land

‘Sovereignty and sovereign title to land belong to the people of Sierra Leone from whom Government through this constitution derives all its powers, authority and legitimacy’.

This statement is very good. It properly situates ultimate ownership of land and the source of governmental power. However, it would be necessary to clearly define what land is (its relationship with other natural resources that are found on and under land) in the definition section that needs to be embedded within the Constitution, rather than just stating the source of sovereignty over land. For example, in practice, the recognition of chiefdom councils/paramount chiefs as custodians of provincial land and the government’s rights to give concessions for mineral exploitation have entailed tensions between government and chiefs on the one hand and local communities and chiefs on the other - Paramount Chiefs are sometimes caught in between collaborating with government on development projects and defending community rights to land.”

15.5 Recommendations

CRC recommends that the following provision should be included in the new chapter on lands, natural resources, and the environment in the revised Constitution:

“Definition of Land

1. Sovereignty and sovereign title to land belong to the people of Sierra Leone from whom Government through this constitution derives all its powers, authority and legitimacy--

(a) sovereignty and sovereign title to land meaning the hard surface as a natural resource belongs to the people of Sierra Leone without discrimination through the various local

⁵⁵⁹ Dale 2008; Unruh and Turay 2006; Maconachie 2008

⁵⁶⁰ NARGEJ position paper, page 5

governance authorities, Paramount Chiefs, and the tenure regime operational in their localities or the National Lands Commission as trustee of the people only;

(b) whereas all non-renewal natural resources underneath the ground belong to the national government from whom through this Constitution derives all its powers, authority, and legitimacy.”

15.6 Theme - Classification of Lands

Current Context

The National Land Policy 2015 deals in detail with the classification of lands as follows:

“The first classification to be recognized is in terms of the legal regime governing each tenure. In this regard, land in Sierra Leone can be held under either the general law (consisting of the rules of common law, equity and enactments in force in Sierra Leone) or customary law.

The general law recognizes two main types of tenure:

- a) Freehold
- b) Leasehold”⁵⁶¹

The CRC was informed by the National Land Policy and experts on the status of freehold and leasehold land:

Freehold

The term ‘freehold’ inherited by any heirs without restriction, the fee tail (seldom encountered in Sierra Leone) which restricts inheritance to particular heirs and the life estate which lasts only for the life of the grantee or the life of some other named person and the incidents of feudal tenure and is currently, for all intents and purposes, equivalent to absolute ownership. As a result, a freehold under the general law has some unique incidents that confer security of tenure and freedom of user and disposal subject only to the State’s power of compulsory acquisition.

However, though the freehold does exist and it is generally recognized in Sierra Leone, it remains a very complex concept governed by very complex common law rules, particularly relating to its creation. A violation of some of these rules may render the grant null and void.

Leasehold

In practice, leaseholds are probably of greater importance in Sierra Leone than freehold estates, the fee tail or the life estate. The main characteristic of typical leasehold is the certainty of its duration. For this reason, only fixed term tenancies and periodic tenancies are recognized and

⁵⁶¹ National Land Policy 2015, page 45

classified as leaseholds whereas a tenancy at will and a tenancy at sufferance because they only last for an indefinite period are not classified as leaseholds.

Tenures under Customary Law

The following are the main tenures that currently exist in respect of land held under customary law in Sierra Leone:-

a) Communal Tenure

The main feature of communal tenure is that title to lands in chiefdom or parts of chiefdom are claimed by or on behalf of the community as a whole. Membership of such a community as well as member's right to claim interests in communal lands are based on descent from some kinship group within the community traced patrilineally. At a broader level the community is co-extensive with the chiefdom.

The community is not monolithic but invariably consists of several sub-communities, sections, towns, families and even individual members holding varying degrees of interests in specific portions of communal lands.

Another feature of communal tenure is that the rights of ownership of the community are exercised on behalf of the community by the traditional socio-political heads extending from the town/section chiefs right up to the paramount chief in consultation with the other elders. They are vested with powers of management, control and supervision, which they exercise together with officials of the local government administration such as the District Officer. The same is also true in respect of the right of disposal to non-members of the community.

b) Family Tenure

For the purposes of classifying land in the Provinces of Sierra Leone as being family land, the term "family" refers to a group of persons standing in close blood relationship with each other invariably on the patrilineal side who constitute a descent group for the purposes of inheritance of land and other forms of collective property. Family tenure can be defined as the system of customary tenure in which various descent groups claim title to certain lands within chiefdom, each with a common ancestor. The title is vested in the family as a unit. Such family lands should be distinguished from lands held by family groupings (Clans) as members of a community under communal tenure. Under family tenure, the family's title is paramount and not dependent on or derived from that of any superior entity.

c) Statutory Leases

A lease granted under the provisions of the Provinces Land Act, Cap 122, is a creature of both the general law and customary law. Though the Act makes no provision for the actual landowner to be a party to the lease the right of disposal of the owner at customary law is recognized. A lease under Cap 122 is defined as a grant of possession of land by the Chiefdom Council, as lessor to a non-native as lessee, for a term of years or other fixed period with the

reservation of a rent. Though the consent of the Chiefdom is a prerequisite for the grant, failure to obtain the approval of the District Officer will only create a tenancy at will in favor of the grantee;

d) Customary Tenancies

Under the broad heading of customary tenancies fall various forms of grants made under customary law where the intention of the grantor is to convey to the grantee an interest much less than the absolute title to the land in question. Such tenancies (or customary leasehold arrangements) may be classified according to their duration. They may range from a seasonal grant, valid for only one farming season and conferring no proprietary interest in the grantee, to a grant for an indefinite duration under which the grantee acquires an interest which is even transmissible to his heirs.⁵⁶²

Observations

The CRC deliberated on the classification of lands.

The Sierra Leone Women's position paper "Many Messages, One Voice" recommended that a reformed non-discriminatory gender-sensitive communal land tenure system should be adopted across the whole of Sierra Leone, with title to all non-State land to be vested in land-owning families in perpetuity, and that the right of individual permanent alienation should be abolished.⁵⁶³

The FAO's Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) commented on the draft abridged report of the CRC and recommended as follows:

"Section 2: Classification of Land

The broad classification of land as government and private makes good sense. These terms should be used consistently throughout the Chapter. Note however that this line in the said section is incomplete: "Definitions of classification are based on the following general law:- Freehold, Leasehold." The classification of land is based on both general and customary law not just general law concepts of freehold and leasehold.

Section 2(a):

The latter part of this section which defines government land viz: "...and includes all shores, beaches, lagoons, creeks, rivers, estuaries and other places and waters whatsoever belong [adding] to, acquired by, or which may be lawfully disposed of by or on behalf of the state" could be improved to include reference to use rights of communities of these resources [add after state: "without prejudice to the use rights of communities"]:

⁵⁶² National Land Policy Sierra Leone 2015, pages 46 to 49

⁵⁶³ Sierra Leone Women's position paper "Many Messages, One Voice" page 16

“...and includes all shores, beaches, lagoons, creeks, rivers, estuaries and other places and waters whatsoever belonging to, acquired by, or which may be lawfully disposed of by or on behalf of the state without prejudice to the use rights of communities”.

We have seen how mining and agriculture corporations have severely limited or completely extinguished communities’ access to rivers, creeks and other common resources in the course of their operations. These corporations claim to have obtained license from government and therefore pay scant attention to community uses of these common resources. This recognition would enable communities enforce their rights directly against these corporations when they are violated.

Section 2(b):

There is an omission of the word “include” in the first line. Also, the last sentence is unnecessary, and incorrect and should be removed or modified: “[Remove: “All”] private land[remove: “s”] [remove “are held on terms”] [add: “may be”] subject to the power of compulsory acquisition [add: “in accordance with law”]; subject to the right [add: “of the state”] to take as bona vacantia [remove: “in case”] where the owner dies without any heirs or, if held under customary law [remove: “s”], subject to the community or family’s residual right of reversion if the owner dies without heirs or abandons the land.”

Recommendation: “Private land may be subject to the power of compulsory acquisition in accordance with law; subject to the right of the state to take as bona vacantia where the owner dies without any heirs or, if held under customary law, subject to the community or family’s residual right of reversion if the owner dies without heirs or abandons the land.” It would be of great value to insert a clause that confirms the equal legal value of land held under general law and customary law.”⁵⁶⁴

The CRC observed that some positions papers called for comprehensive and integrated laws, and systems and conditions, together with non-discriminatory principles for managing land in the entire country.

The CRC also considered the observations made in positions papers submitted by the Citizens Conference on Land, Paramount Chiefs, and the Human Rights Commission on the question of communal land tenure in the Provinces. They argued that “the communal system provides some form of security and does not necessarily constrain development”.⁵⁶⁵

It was also argued that abolishing the customary law system and having only a statutory system would effectively undermine the historic role of traditional institutions in maintaining peace and security in rural communities. Paramount Chiefs therefore proposed that the Constitution should

⁵⁶⁴VGGT comments on the draft abridged report of the CRC page 6

⁵⁶⁵ A declaration of Citizens Assembled at the Atlantic Conference Hall, National Stadium Hostel . Freetown: Citizens of Sierra Leone.

continue to recognise indigenous systems and traditions relating to land management and administration.

Dr AbuBakarr Kargbo recommended that there should be a cap on the amount of land that an individual can own. This position was supported by the National Commission for Democracy (NCD) in their position paper, which stated that “lack of ample regulation in the land market” as one of the problems “plaguing land tenure”.

A Paramount Chief in Bo District stated that “our concern as custodians of land for our people, is that once land is sold (without a cap on quantity) for any amount of money, developers and speculators will take advantage of lax enforcement provisions and legal loopholes to obtained huge amounts of land, and resell at a later date for profit’ and “that we will not accept”.

15.7 Recommendations

The CRC recommends that lands should be classified according to the ownership and/or the manner in which the lands are used. The CRC therefore recommends that the following section, including provisos on the classification of lands, should be included in the new chapter on lands, natural resources, and the environment in the revised Constitution:

“2. (1) Lands in Sierra Leone shall be classified as--

- (a) Government lands (inclusive of State and public lands);**
- (b) Private lands (inclusive of lands under customary law); and**
- (c) Freehold and leasehold lands.**

(2) All lands in Sierra Leone share equal value regardless of the tenure system.

Provided that government, State, public land are all land which belong to the state by virtue of any treaty, concession, convention or agreement, and all lands which have been or may hereafter be acquired by or on behalf of the state, for any public purpose or otherwise howsoever and land acquired under the provision of the public land act and includes all shores, beaches, lagoons, creeks, rivers, estuaries and other places and waters whatsoever belong to, acquired by, or which may be lawfully disposed of by or on behalf of the state

Provided that private land is land held under customary tenure. Private land refers to land in respect of which sovereign title is held on behalf of a community, by family or an individual, groups of individuals or other entity under any one of the tenure regimes in force in Sierra Leone. All private lands are held on terms subject to the power of compulsory acquisition; subject to the right to take as bona vacantia in cases where the owner dies without any heirs or, if held under customary laws, subject to the community or family’s residual rights reversion if the owner dies without heirs or abandons the land.”

15.8 Theme - Ownership of Land by Citizens

Current Context

On the issue of types of land ownership, the National Land Policy states:

“the following categories of land shall henceforth be recognized:

- a) Government (inclusive of State) land
- b) Public land
- c) Private land (inclusive of land held under customary tenure).”

As to private land, the National Land Policy states: “Private land refers to land in respect of which the sovereign title is held by a community, by a family, an individual, group of individuals or other entity under any one of the tenure regimes in force in Sierra Leone. All private lands are held on terms subject to the power of compulsory acquisition and the police power of the State; and in cases where it is held under the general law, subject to the State’s right to take as bona vacantia (escheat) in case where the owner dies without any heirs or, if held under customary law, subject to the community or family’s residual right of reversion if the owner dies without heirs or abandons the land.”

Observations

The CRC deliberated as to whether every citizen should have the right to acquire, inherit, transfer or receive as a gift any interest in land in Sierra Leone. In addition, it considered whether to harmonize and update inconsistent provisions in the Constitution to make them consistent with National Land Policy recommendations.

The CRC also deliberated on whether to have a non-discriminatory gender sensitive communal land tenure system, and the right to lease land for extended periods.

The CRC found that the issue of ownership and access to and control over land was a major concern. In particular, the CRC identified that there was a need for constitutional and legal reforms to eliminate discriminatory provisions relating to ownership of lands.

The Sierra Leone Women’s position paper “Many Messages, One Voice” commented that women’s right to be consulted within land-owning families should be guaranteed.

The 50-50 Group in partnership with Oxfam in their position paper recommended that women and men should have right to own land anywhere in the country. They further recommended that land committees should be representative of the community, and should comprise both men and women.

They further commented that every property in the Western Area and Bonthe Island should, upon the death of its owner(s), become the property of the family of the owner(s): “by this process all private land shall eventually be owned by a land owning family. Land Owning

Families Rights to lease land for extended periods shall be recognized by the Constitution. Paramount Chiefs and their principal men to lose legal and administrative control/custody of land anywhere in the country.”⁵⁶⁶

The Movement for Social Progress (MSP) in its position paper recommended that the new chapter on land should enshrine equal access to land and fair distribution of land to those who need land either as farmers or for domestic or commercial purposes. The policy should prevent the unprecedented attempt by few people especially politicians and their families from acquiring very large tracts of land at the expense of the rest of the citizenry. No one person should be allowed to own more than an acre of land and every citizen should be allocated land if they need it.”⁵⁶⁷

In the context of national food security, the Voluntary Guidelines for the Responsible Governance of Tenure (VGGT) commented that land tenure in Sierra Leone was characterized by a dual ownership structure. Land in the Western Area was held under the English freehold concept, while land in the rest of the country (i.e. the Provinces) was held in communal ownership under customary tenure and was controlled by traditional rulers who administer it on behalf of their communities in accordance with customary principles and usage. The latter system governed at least 95 percent of the land in the country. The legal framework governing land delivery in both systems was complex, as there were no fewer than twenty different statutes and regulations and most of them had conflicting provisions, which presented implications for land use and management.

VGGT further commented that “women generally cannot inherit land, and their land use options are dictated by their fathers, brothers or husbands and the strength of their lineage family within the community. The land use system makes it difficult for the vulnerable – especially women, youths and outsiders to access land and/or invest in its improvement. This means that for the majority of citizens, the unwritten traditional rules and practices of tribes or communities determine who is able to hold, use or transfer land. In many ways, the application of rules of customary law in ordinary life has tended to affect women more adversely than men. On important issues, women are often treated as minors - needing the agency of a man to act. Since limits of family owned lands and lands administered by local authorities are not clearly defined, there are frequent land disputes. Also, due to unclear property rights, conflicts frequently arise between herdsmen, landowners, and farmers.”⁵⁶⁸

VGGT also noted that “presently ownership and land administration are not adequately addressed in the Constitution. The provincial communal land tenure system which is intended to protect access to lands across family members and the generations over time should have constitutional protection. De facto abuse of the land tenure system to deny provincial women access to productive family land should be prevented while the current legalized discrimination in access to land against some citizens based on ethnic origin (colony/protectorate distinction) should be abolished.”⁵⁶⁹

⁵⁶⁶ 50-50 Group in partnership with Oxfam position paper page 15

⁵⁶⁷ MSP position paper page 3

⁵⁶⁸ VGGT position paper page 6

⁵⁶⁹ VGGT position paper page 12

In light of these comments, VGGT made the following comment and recommendation as regards that Section 3: Ownership of Land by Citizens in the CRC abridged draft report:

“Every Citizen has the right to acquire, inherit, transfer or receive as gift any [add: “right or”] interest in land in Sierra Leone.” The current wording does not fully capture the intention of the title “ownership of land by citizens” as the word “interest” legally has a limited meaning and does not cover the full range of rights under ownership.

Recommendation: “Every Citizen has the right to acquire, inherit, transfer or receive as gift any right or interest in land in Sierra Leone.”

As the draft devotes a section for citizenship and defines the parameters of land rights of non-citizens (see Section 4 below), it would be of great importance to address the status of what are referred to as “non-natives”, which include Sierra Leoneans that do not belong to certain communities occupying an area, and the related issue of access to provincial land by non-natives. It would be important for the constitution to guarantee the equal citizenship and rights of Sierra Leoneans whether they are natives or non-natives with regard to a certain community. The suggested provision under this section provides a good basis, but it may be wise to address the issue of non-natives’ access to land more directly at least by an explanatory note.”⁵⁷⁰

The Human Rights Commission of Sierra Leone (HRCSL) in their position paper stated that “within the current context in Sierra Leone, ownership and Land administration are not adequately addressed in the Constitution. The provincial communal land tenure system, which is intended to protect access to, lands across family members and the generations over time should have constitutional protection. De facto abuse of the land tenure system to deny provincial women access to productive family land should be prevented while the current legalized discrimination in access to land against some citizens based on ethnic origin (colony/protectorate distinction) should be abolished.”⁵⁷¹

In the 1991 Report of The National Review Commission to Review the 1978 Constitution of Sierra Leone, Dr Peter Tucker wrote:

“We decided to report this matter extensively in order to bring to the notice of government the considerable tension that exists over this question and leave it to its best judgement to do or not to do anything about it at present”. Despite this, the PTC Report of 2008 did not deal with the issue of the land tenure system.

An Oxfam and Green Scenery consultation report submitted to the CRC stated that there has been a rise in foreign direct investors leasing large tracts of arable and forest land for agricultural and mining purposes over the last 10 years. They also noted that foreign investors have gradually dispossessed ancestral land without adequate and meaningful compensation or

⁵⁷⁰ VGGT comments on the draft abridged report of the CRC page 7

⁵⁷¹ HRCSL position paper page 6

⁵⁷¹ HRCSL position paper page 12

the offer of sustainable employment alternatives to rural or community folks. They saw this as a lack of State commitment to the ‘duty of care’ to ‘secure adequate means of livelihood’ for such people, which therefore amounted to an infringement of their right to life.

In their position paper, the Commission for Social Action (NACSA) pointed out that section 3(1)(a) of the 1991 Constitution “does not give due attention to those citizens who are not endowed with the capacity or who for some reasons loss such capacity during their life time and therefore, are not able to secure such adequate means of livelihood.”

There was overwhelming consensus that laws should be non-discriminatory, particularly towards women.

In their position paper, the HRCSL commented on the Registration of Customary Marriage and Divorce Act 2007, stating that “the law permits any woman to purchase landed property in the Western Area. However, in rural areas women are excluded in land management, ownership and inheritance. This is because Constitutional basis from which customary law operates are unjust particularly on rural women.”

The Ministry of Social Welfare, Gender and Children Affairs suggested the removal of Section 27 (4) (d) from the Constitution.

The National Democratic Alliance (NDA) commented that “land should be guaranteed as a fundamental right and every citizen both male and female must enjoy these rights without discrimination despite your sex, age, color, creed religion or political orientation”.⁵⁷²

At a regional consultative conference in Bo District organized by Campaign for Good Governance (CGG) and their partners, over 50 women’s leaders met and called for the repeal of section 27(4)(d) and (e) of the 1991 Constitution. During the conference, women discussed how those provisions undermined the socio-economic, geo-political and cultural empowerment of women. They expressed their dissatisfaction by stating that “the Constitution give right with one hand and takes it away with another hand”.

At a two-day training of trainers workshop organized by the 50/50 Group and the Mano River Women’s Peace Network, participants recommended that the Constitution should be translated into local languages and produced in audio and pictorial forms for easy access and comprehension by all. They also recommended that greater recognition should be given to citizens, especially women, to access land and other natural resources.

As a result, the CRC concluded that, contrary to section 3(1)(a) of the 1991 Constitution, which obliges the State to “secure adequate means of livelihood” for all citizens, section 27(4) could easily be used to deny most rural folks, particularly women, access to or control over land and hence deny them a source of livelihood and a means of survival.

⁵⁷² NDA position paper page 6

15.9 Recommendations

The CRC recommends that the following section should be included in the new chapter on lands, natural resources, and the environment in the revised Constitution:

“Ownership of Land by Citizens

3. **Every Citizen has the right to acquire, inherit, transfer or receive as gift any right or interest in land in Sierra Leone.”**

15.10 Theme - Non-Citizens’ Interest in Lands

Current Context

The National Land Policy comments that section 4 of the Non-Citizens (Interest in Land) Act 1966 “prohibits any non-citizen or entity, (that is one in which non-citizens own more than fifty per cent of the equity) from holding of a freehold interest in land in the Western Area. The Act goes further to limit the duration of any leasehold interest to a term of not more than twenty-one years unless a Board established under the Act extends the term.”

Observations

The CRC deliberated on the issue of non-citizens’ interest in lands, which has been part of the national discourse for many years, and more particularly during the constitutional review process.

The current context in which non-citizens acquire lands has not been favorable to land owners, due to a lack of harmonization of laws and policies.

The CRC therefore proposes that there should be a transparent manner in which non-citizens’ rights and interests can be limited.

During the nationwide consultations, the majority of people recommended that there should be a limitation on the size and timeframe for which non-citizens can hold an interest in land in Sierra Leone.

The Voluntary Guidelines for the Responsible Governance of Tenure (VGGT) comments on the draft abridged report of the CRC and recommended as follows:

“Section 4: Non-citizens’ interest in Land

“Non-citizens interest in Land is only limited to Leasehold.” This formulation has two potential problems:

- First, the definition of non-citizen in relation to companies incorporated in Sierra Leone is not clarified.

- Second, the length and size of the leasehold estate has not been stipulated. The National Land Policy stipulates a maximum of 5000 acres and 50 years duration. We recommend, that this section stipulates that laws, regulations or policies shall set out the details of this section.

The National Land policy proposes wholesale review of the country's land laws – some of which have generated controversy nationally. In particular it targets the Provinces Land Act Cap 122, which has been criticised for fostering discrimination against “non-native” citizens in accessing land in rural areas. The law provides that a non-native cannot acquire more than a 50-year leasehold interest in land in the provinces. A non-native is defined as “any person who is not entitled by customary law to rights in land in the provinces” and covers citizens of Sierra Leone who do not belong to any of the indigenous tribes. This legal provision has long been criticised as discriminatory against Creoles and other non-ethnic citizens of the country. There is no legal limitation on the interest “native” citizens can hold in land outside the provinces. The policy therefore directs that Cap 122 be amended to remove this “discriminatory distinction”.

While this looks great on paper, it nonetheless throws up complications which the policy has not addressed and which may affect implementation.

First, it should be noted that the policy does not create a single tenure system. Both customary and English tenures would continue side by side with some overlap.

Second, rules governing acquisition and disposal of land are markedly different for both systems. The policy does not lay out what new or greater interest in provincial land non-native citizens may expect to hold. This omission is likely to lead to uncertainties and incorrect assumptions during land transactions. Even with the present limitation, there have been many misguided provincial land deals which purported to transfer “freehold ownership” of customary land from natives to non-natives through conveyances. This erroneous practice occurs mostly in the big towns and cities in the provinces. By clarifying the interest non-native citizens would now be able to acquire in rural lands, the policy would have addressed a major area of tension between customary and English land rules.”⁵⁷³

During nationwide consultations, citizens also that land used by investors must be preserved so as to protect the environment and local communities/population.

A common view expressed in several position papers and reports was that: “Non-citizen should **not** be allowed to purchase or receive as a gift or inherit any freehold land in the in Sierra Leone.”

In light of the above, the CRC agreed on the need to convert all such land arrangements into leasehold thereby granting rights to non-citizens for an initial period not exceeding twenty-five years and recurrent renewal periods of twenty-five years.

⁵⁷³VGGT comments on the draft abridged report of the Constitutional Review Committee page 7

15.11 Recommendations

The CRC recommends that the following section should be included in the new chapter on lands, natural resources, and the environment in the revised Constitution:

“Non-citizens’ Interest in Lands

4. (1) Non-citizens’ interest in lands in Sierra Leone is limited to leasehold--

(a) for a period of not more than 25 years at which expiration thereof, may be open to extension of such leases of not more than 10 years at any one period;

(b) in respect of interests for corporate person(s), leases shall not exceed 5,000 hectares for the same period.”

15.12 Theme - Tenure System

Current Context

The National Land Policy identifies the land tenure system in Sierra Leone as follows:

“1. Statutory tenures under the law in the Western area

- a) Freehold
- b) Leasehold

Communal tenures under the law in the Provincial area

- a) Family Tenure
- b) Statutory Leases
- c) Customary Tenancies.”

This classification reflects the fact that there is a dual land tenure system in Sierra Leone, based on customary law and practice, and the general law.

The system under customary law tenure is based largely on memory and folklore, which lacks an institutional framework for recording; the general law land tenure system dates back to colonial times and there is therefore a need to revisit the classification of lands.

Observations

The CRC considered the issue of harmonization of the dual land tenure system.

The Sierra Leone Women in their position paper “Many Messages, One Voice” stated that the Constitution should include provisions on Land Tenure system in Sierra Leone:

In the Western Area and Bonthe Island, an individual can acquire, own, inherit or be given land and can dispose of it without reference to others. In our view this is a system that favors the rich and powerful, can be very disadvantageous to the vulnerable and illiterate (among which women and children predominate) and encourages youth emigration from Sierra Leone. In the regions outside Freetown, the Communal Land tenure system, as it is now practiced also prevents women and ‘strangers’ access to land; effective control of productive land in the provinces is in the hands of a few (mainly Paramount Chiefs, Local Councilors and civil servants (usually men) and there is no security of tenure or access for most users or would be users of land. At present, neither the Western Area nor the provincial land tenure systems are completely satisfactory and both are causing hardship and suffering particularly for women and girls. Moreover the existence of competing land tenure systems in the country is discriminatory, creates uncertainty and undermines national cohesion⁵⁷⁴.

The major issue raised by several experts and different stakeholders, and in meetings during the nationwide public consultations, was that the land tenure system must be harmonized.

The Voluntary Guidelines for the Responsible Governance of Tenure (VGGT) comments on the draft abridged report of the CRC and recommended as follows:

“Section 6: Tenure System

This section on “tenure system” is blank, save for an explanation that the issue poses serious divisions and requires further deliberation by the people. However, it is unclear how the CRC intends to pursue “further deliberations”.

In our view, there is no reason why this section should pose serious divisions. The current chapter on land clearly envisages two tenure systems: customary and general. The land policy which the CRC references will pursue a system of harmonization rather than amalgamation. According to pre-policy formulation surveys across the 149 chiefdoms and the western area, respondents indicated a preference for the two systems to co-exist but with important reforms across both. The policy has set out the necessary reforms and how they will play out, including for instance registration of title for all land whether under customary or general law. It is important that section 6 captures and supports this level of policy progress on land tenure reform, which are consistent with the VGGT provisions on “Legal recognition and allocation of tenure rights and duties.”

Furthermore the options of “harmonization” and “status quo” of the “two tenure systems”, which are given in this section, do not provide meaningful guidance. The classification of land into state land and private land and their respective definitions in a preceding suggested provision provide part of the answer in terms of recognition of tenure rights – whether customary tenure rights are recognized as legal rights. In addition to clarifying the issue of tenure rights recognition and allocation; the public opinion could be sought on whether the system of land administration and dispute resolution should combine the statutory/formal and the customary (both formal and informal) mechanisms. Therefore the exact issues and contours

⁵⁷⁴ The Sierra Leone women in their position paper “Many Messages, One Voice”, page 16

for public consultation need to be clarified in order to ensure an informed public consultation process in line with the VGGT implementation principle of “Consultation and participation.”⁵⁷⁵

In their position paper, VGGT commented that the institutional arrangements governing tenure have emerged as a key factor for sustainable growth and poverty reduction, which was supported by continental and global policy initiatives. Examples were cited, such as the 2009 African Union Framework and Guidelines on Land Policy and the 2014 African Union Principles for Large Scale Land based Investment, and the endorsement in 2012 by the Committee for World Food Security (CFS) of the Voluntary Guidelines for Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT):

“The Technical Working Group supporting the VGGT-implementation trusts the Government of Sierra Leone to further improve the tenure situation that vulnerable communities find themselves in by protecting and fulfilling the obligations of the listed international agreements. This includes applying the principles of responsible tenure governance outlined in the VGGT in order to bolster tenure security and create new opportunities especially for vulnerable people.”⁵⁷⁶

VGGT also commented on the legal framework on lands:

“The draft National Land Policy aspires to move towards a clearer, more effective and just land tenure system that caters to social and public priorities but that also stimulates investment and development. Importantly, the policy aims at harmonizing the currently separate land tenure systems (freehold tenure in the Western Area and customary tenure in the Provinces) and will for the first time provide for the mapping, titling and registration of customary tenure.

Positively, the draft National Land Policy recognizes the challenge of equal access to land under customary tenure particularly for women. It stipulates that all land tenure systems should eliminate discrimination in access, ownership and transmission.¹¹ A general criticism of the draft NLP has been that it creates many new institutions without providing for a proper transitional process and that the mandate of some of the new entities is not clearly set out. Once the NLP has been approved and adopted by Cabinet, it will need to be translated into either a basic land law or several laws before it can have legal effect. It is not clear when this will happen and given the complexity of the issues it deals with it might take some time before new laws emanate from the NLP.”⁵⁷⁷

VGGT noted that another development was the start of the VGGT process in Sierra Leone, as part of a G7 Land Partnership Agreement signed by the Government of Sierra Leone, the Government of Germany and the Food And Agriculture Organization of the United Nations (FAO), in order to harmonize existing policy and legal frameworks governing tenure, increase

⁵⁷⁵ VGGT comments on the draft abridged report of the CRC pages 7-8

⁵⁷⁶ VGGT position paper page 8

⁵⁷⁷ VGGT position paper page 9

coordination and collaboration between relevant stakeholders in the land, fisheries and forestry sectors, and analyze existing non-judicial grievance redress mechanisms⁵⁷⁸.

The Natural Resource Governance and Economic Justice Network (NARGEJ) Sierra Leone observed that in the Western Area, most of the land was held by government or by individuals in freehold through title deed. However, outside the Western Area, land tenure was often ambiguous with multiple layers of rights and claimants. For example, the Paramount Chiefs had jurisdiction over the land in their chiefdoms, but recognized and acknowledge community claims and individual claims to land within the chiefdom.

NARGEJ also noted that “the regulatory framework for the negotiation of land investments is extremely weak. A recent analysis by the Oakland Institute concluded that: there is a great lack of transparency and disclosure of land deals, to the extent that local communities cannot make informed decisions regarding lease negotiations, the weak legal framework and lack of inter-agency coordination within the GoSL leads to weak oversight of land deals and lack of enforcement of protections and safeguards, the manner in which land deals are negotiated takes advantage of local vulnerabilities and social structures, land deals are being negotiated in a manner that alienates local landowners and creates social conflict.”⁵⁷⁹.

The Truth and Reconciliation Commission (TRC) observed that women lacked adequate access to productive assets including land, credit, training and technology.⁵⁸⁰

The CRC noted that the common perception that land belonged to all citizens did not correspond with reality - it was not uncommon to encounter landless persons nationwide.

The HRCSL in their position paper stated: “the de facto abuse of land tenure system to deny provincial women access to productive family land should be prevented.

During a three-day conference on development and transformation in 2012, Prof. Paul Collier stated that modernizing the land tenure system was critical - legal titles and the process of foreclosure had to be improved by adopting bold measures.

The Sierra Leone People’s Party (SLPP) Women’s Wing submitted a position paper that stated that the abuse of the powers of administrative management over land given to Paramount Chiefs and chiefdom elders by the provincial land laws should be eliminated.⁵⁸¹

Based on the recommendations, views, and public feedback, the CRC agreed that the dual land tenure system needs to be modernised to eliminate discrimination.

⁵⁷⁸ VGGT position paper pages 9-10

⁵⁷⁹ NARGEJ position paper page 13

⁵⁸⁰ TRC Vol 2 Page 100 para 499

⁵⁸¹ SLPP Women’s Wing position paper page 1

15.13 Recommendations

The issue of land tenure continues to pose challenges with regard to harmonization of land tenure in the country. The CRC recommends that the government should continue to engage stakeholders in both the Western Area and the Provinces in order to reach a consensus on the nature of the land tenure system that should operate in Sierra Leone.

The CRC endorses the implementing strategies proposed in the National Land Policy to deal with the issue of the land tenure system, as follows:

“Legislative and other measures shall be put in place to remove all structural and normative impediments, internal to the operation of each tenure system, particularly those under customary law;

Mechanisms shall also be put in place to:

Guarantee that access to land under any tenure system, by way of transfer or transmission, does not deny any person of rights in land on the basis of gender, ethnicity, or social and economic status;

Ensure equity, transparency and accountability in the allocation and management of land rights and preserve and conserve land resources for future generations;

Ensure the full protection of use rights and right to commons for all without discrimination.”

15.14 Theme - Compulsory Acquisition

Current context

The National Land Policy comments on the issue of compulsory acquisition as follows:

“Compulsory acquisition is the power of the State to acquire or extinguish any title or other interest in land for a public purpose. This power is expressly provided for in the Constitution of most African countries to be exercised subject to the payment of fair compensation and other conditions, such as right of access to justice in the event of dispute over non-payment or inadequacy of the compensation. Thus, section 237 of the Constitution of Uganda expressly provides that-

“The Government or a local government may, subject to Article 26 of this Constitution, acquire land in the public interest; and the conditions governing such acquisition shall be prescribed by Parliament”

There is no such direct or express provision in the Sierra Leone Constitution. The power is to be implied from section 21(1) the main objective of which is to ensure protection against deprivation of property as a fundamental right. The power of compulsory acquisition is provided

for as an exception to the prohibition against such deprivation to be exercised subject to three conditions.

First, the acquisition must be necessary in the interest of:

- a) National Defence
- b) Public safety
- c) Public order
- d) Public morality
- e) Public health
- f) Town and Country Planning

The development and utilization of the property to promote the public benefit.

Secondly, there must be reasonable justification for any hardship suffered; and a law must exist, such as Cap 116, that enables the person deprived to have recourse to the courts for relief if need be.

Ironically, the Public Lands Act, Cap 116, enacted as far back as 1896, and still in force in Sierra Leone, made express provision for the exercise of this power on behalf of the Crown in respect of land needed for “public works” in the Colony. It provided for the payment of compensation for any expropriation and gave a right of an action before the High Court with final right of appeal to the Privy Council in case of dispute as to the quantum of compensation payable.

Not only has the post-independent legislature failed to extend the application of Cap 116 applicable throughout Sierra Leone, it has over the years made the situation more confusing by the enactment of certain pieces of legislation which, whilst providing expressly for exercise of the power of compulsory acquisition of land by certain State organs and agencies, have at the same time tended to perpetuate the dichotomy between land rights in the Western Area and those in the Provinces by relying on Cap 116 where the land is situated in the Western Area and Cap 122 where the land is located in the Province.

Other statutes have plainly failed to comply with the provisions of some of these statutes and have also failed to comply both with the letter and spirit of section 21(1) of the Constitution. Thus, section 10 (2) of the Forestry Act 1988 provides that;

“whenever the Minister intends to constitute a national forest over any land not owned or leased by the state, he shall first acquire the land by purchase or lease on such terms as to him seem just”

Another example is the Mines and Minerals Act 2009 Section 36 (1) of which simply provides that:

“The Minister may, by order published in the Gazette compulsorily acquire private lands or

rights over or under private land for use by the holder of a large-scale mining license.

Under section 35 the Act provides that the question of compensation is for the Minister to determine on the advice of the Minerals Advisory Board and that if the claim is not made within a period of two years from the date when the compensation became due, it ceases to be enforceable.

For now, this issue may be of academic interest only as the provisions of the relevant statutes dealing with compulsory acquisition are seldom invoked. This is because most of the Chiefdom Council(s), family(ies) or even individual(s) involved voluntarily allow their lands to be used to fulfill the government's development obligations and as their own contribution to national development.

For all the above reasons, under this Policy the relevant provisions of the Constitution and other statutes dealing with the power of compulsory acquisition of land by the State and/or its agencies shall be reviewed and streamlined.”

Observations

In their position paper, the 50-50 Group in partnership with Oxfam, and also the Sierra Leone Women in their position paper “Many Messages, One Voice”, recommended that the right of land-owning families’ to reject extractive contracts from investors and government should be recognized and protected in the Constitution.⁵⁸²

The Movement for Social Progress (MSP) in their position paper commented that rural farmers should be protected under the law: “the current dual land tenure system should be abolished and every citizen should have the rights to own land and reside wherever they wish in Sierra Leone. To call a citizen “stranger” in other parts of the country a mockery of our collective sense of nationhood and unity. We are Africans and Sierra Leoneans period.”⁵⁸³

The Voluntary Guidelines for the Responsible Governance of Tenure (VGGT) comments on the draft abridged report of the CRC and recommended as follows:

“Section 7: Compulsory Acquisition

Compulsory land acquisition- this section and the right to property generally, could be further strengthened by inserting a definition of “public interest.” This would ensure that the power of compulsory acquisition is not abused or deployed for commercial or business purposes. Further, a provision for the prompt payment of fair compensation is currently missing.

Section 7(d):

⁵⁸² The 50-50 Group in partnership with Oxfam in their position paper page 15

⁵⁸³ Movement for Social Progress position paper page 3

Compensation for properties to owners shall not be to the disadvantage of the owner” is too generic and susceptible to subjective interpretations. In many countries, compensation is based on the fair market value of the property at or around the time of acquisition. In addition, the section should clarify that compensation will not be limited only to “owners” Persons with use rights or other forms of interest in the acquired property should benefit from compensation for the loss of those use rights or interest.

Recommendation: Compensation for properties compulsorily acquired shall be on the basis of the fair market value and shall not be disadvantageous to the owner or persons directly affected.

Section 7(e):

“Property owners reserve the option of seeking legal redress were discontent exist as to the fairness of such compensation and the decision of such actions will be final” could be redrafted.

Recommendation: “anyone dissatisfied with the process of acquisition including the amount of compensation may seek redress in court. The decision of the court shall be final and binding on the parties.”⁵⁸⁴

The Ministry of Local Government and Community Development (formerly the Ministry of Internal Affairs, Local Government and Rural Affairs) identified that section 21(2)(h)(i) and (ii) of the 1991 Constitution conflict with other human rights in the Constitution.

In its position paper, the Human Rights Commission Sierra Leone (HRCSL) stated that the protection of human fundamental rights should “include the protection of Sierra Leoneans’ rights in land as against Non-Citizen Investors and against compulsory acquisition by government to hand over to Investors should be a Principle of State Policy against which the new Lands Policy and others can be evaluated.”⁵⁸⁵

In its position paper, NARGEJ commented that regulations should include “a framework for compensation and resettlement that is centered on the long-term livelihoods of the affected families. It should include as a requirement tripartite negotiations between companies, local communities, and governments. Land users should be included in allocation decisions for leases and licenses for major operations.”

The CRC also deliberated on the policy statement of the National Land Policy, which states:

“The sovereign power of the State to acquire or take possession of land throughout Sierra Leone compulsorily for public purposes, but subject to payment of compensation, shall be expressly provided for in the Constitution of Sierra Leone and any statute vesting similar power in any organ or agency of Government shall provide that such power be exercised subject to the Constitution.

Provisions will be made in the Constitution and/or accompanying legislation and policies to:

⁵⁸⁴ VGGT comments on the draft abridged report of the CRC page 8

⁵⁸⁵ HRCSL position paper page 7 para 10

Clearly define the concept of public purpose in law, in order to allow for judicial review;

Ensure that all actions are consistent with national laws as well as their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments;

Respect all legitimate tenure right holders, especially vulnerable and marginalized groups, by acquiring the minimum resources necessary and promptly providing just compensation in accordance with national law;

Ensure that the planning and process for expropriation are transparent and participatory, and should provide information regarding possible alternative approaches to achieve the public purpose;

Be sensitive where proposed expropriations involve areas of particular cultural, religious or environmental significance, or where the land, in question is particularly important to the livelihoods of the poor or vulnerable;

Ensure a fair valuation and prompt compensation and provide options for compensation. To prevent corruption, particularly through use of objectively assessed values, transparent and decentralized processes and services, and a right to appeal;

Government shall ensure that implementing agencies have the human, physical, financial and other forms of capacity;

Where the land expropriated are not needed due to changes of plans, give the original right holders the first opportunity to re-acquire these resources. In such a case, the re-acquisition shall take into consideration the original amount of compensation received in return for the expropriation;

Where evictions are considered to be justified for a public purpose as a result of expropriation of land and land-based resources, conduct such evictions in a manner consistent with the obligations to respect, protect, and fulfill human rights.”

15.15 Recommendations

The CRC endorses the policy statement in the National Land Policy and therefore recommends that the following section should be included in the new chapter on lands, natural resources, and the environment in the revised Constitution:

“Compulsory Acquisition

- 5. (1) (a) The Government or a local government may, subject to this Constitution, acquire land in the public interest; and the conditions governing such acquisition shall be prescribed by Parliament or the local government authority.**

(b) For the purposes of subsection (a) public interest is limited to all development undertaken by either national or local/municipality government for the purposes of providing enhancement of public utility and should be used only for the intended purpose.

(2) In pursuance therefore this Constitution guarantees the following:

- a. In the use and enjoyment of land or interest in land, a person shall not be deprived thereof except in accordance with law and/or the principles of fundamental justice. Land in the public interest (enforcement of law and order) or securing against land the payment of taxes or duties or other levies or penalties**
- b. In the exercise of this power of the individual rights over property shall be respected and sustained**
- c. Compensation for properties compulsorily acquired shall be on the basis of the fair market value and shall not be disadvantageous to the owner, persons or communities directly affected**
- d. Property owners reserve the option of seeking legal redress where discontent exist as to the fairness of such compensation and the decision of such actions will be final.”**

15.16 Theme - National Land Commission

Current Context

Currently, there is no National Land Commission to deal with land administration matters.

Observations

The CRC deliberated on the proposal from stakeholders to establish a National Land Commission, and was also informed during a visit to Kenya and Ghana about the importance of having such a Commission.

The CRC considered the new institutional framework for land rights administration proposed in the National Land Policy. The National Land Policy states:

“In order to deal with the diverse issues raised by the present complex institutional framework, Government shall set up a single, autonomous, decentralized land administration and land management institution to be known as the National Land Commission (NLC). The existence and mandate of the Commission shall be founded in the Constitution and shall be detailed in a statute enacted for that purpose. The Commission shall function at district, chiefdom and village levels with membership drawn primarily from tenure right holders and with a great degree of autonomy.

The National Land Commission shall:

Hold title to and administer all State/Government lands in Sierra Leone and shall perform all those functions currently performed by the MLCPE under the States Lands Act 1960;

Compile an inventory and keep records of public lands which are vested in the State or Government and manage or superintend the management and administration of all such public lands;

Be responsible for the introduction of a system of registration of title to land in accordance with the relevant legislation to be enacted;

Be responsible for the setting up a modern cadastral registration system and operation of electronic title registries at national, district, and where possible, at chiefdom levels;

As part of the process of the introduction of a system of registration of title, assist in the setting up of Land Adjudication Tribunals as and when necessary, to undertake adjudication as a prelude to systematic title registration;

Levy and facilitate collection of, and manage all land tax revenues except rates levied by local authorities.”

The National Land Policy further proposes a decentralized structure for the National Land Commission, whereby it will have a district land commission (DLC), chiefdom land committee, and village area land committee. The DLC will perform the functions of the National Land Commission at the district level and its activities will be coordinated and supervised by the National Land Commission.

The CRC therefore recommends the establishment of a National Land Commission; its functions would be based on those set out in the National Land Policy and article 67 of Kenya’s Constitution, including: managing public lands; advising the government on a system of registration of title to land throughout Sierra Leone; encouraging alternative dispute resolution processes to resolve land disputes; assessing land taxes; and monitoring land use planning throughout the country.

15.17 Recommendations

The CRC recommends that a National Land Commission should be established in the new chapter of the revised Constitution on lands, natural resources, and the environment, and that a new section should be included, as follows:

“National Land Commission

6. (1) There is established the National Land Commission.

(2) The functions of the National Land Commission are-

- (a) to manage public land on behalf of the national government;
- (b) to recommend a national land policy to the national government;
- (c) to advise the national government on a comprehensive programme for the registration of title in land throughout Sierra Leone;
- (d) to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
- (e) to encourage the application of alternative dispute resolution mechanisms in land conflicts;
- (f) to assess tax on land and premiums on immovable property in any area designated by law; and
- (g) to monitor and have oversight responsibilities over land use planning throughout the country.”

15.18 Theme – Updating Land Laws

The CRC was informed by various position papers, relevant Ministries, Departments and Agencies about the laws that need to be updated and that are not inconsistent with the CRC’s recommendations on the new chapter on lands, natural resources, and the environment.

The following statutes have been identified for repeal, updating, or amendment:

- 1 Crown Lands Ordinance No. 19 of 1960
- 2 Transfer of Defence Lands Ordinance No. 8 of 1961
- 3 Crown Lands Ordinance (Amended) No. 37 of 1961
- 4 Crown Lands (Amendment) Act No. 18 of 1963.
- 5 Public Lands Ordinance, Cap 116
- 6 Unoccupied Lands Ordinance, Cap 117
- 7 Protectorate Lands Ordinance, Cap 122
- 8 An Ordinance to Amend the Protectorate Land Ordinance No. 15 of 1961
- 9 Control And Protection of Land Development of Non-Citizens (Amendment) Act No. 61 of 1962
- 10 Provinces Land (Amendment) Act No. 11 of 1965

- 11 Provinces Land (Amendment) Act No. 18 of 1976
- 12 Laws Adaptation Act No. 29 of 1972.
- 13 Airfields and Defence Lands (Acquisition Of Clearance Rights) (Amendment) Act No. 48 of 1962
- 14 Freetown Improvement Ordinance, Cap 66
- 15 Freetown Improvement Ordinance (Amendment) No. 56 of 1961
- 16 Freetown Improvement (Extension) Act No. 10 of 1964
- 17 Freetown Improvement (Extension) Act, Public Notice No. 75 of 1964
- 18 Freetown Improvement (Extension) Act, Public Notice No. 76 of 1964
- 19 War Department Lands, Cap 124
- 20 Town and Country Planning Ordinance No. 19 of 1946
- 21 The Town And Country Planning (Amendment) Act No. 3 of 2001.
- 22 The Non-Citizens (Interest in Land) Act No. 30 of 1966
- 23 The Non-Citizens (Interest in Land) Act (Amendment) Decree No. 7 of 1968
- 24 Ordinance to Provide For and Regulate the Survey of Lands and the Licensing Of Surveyors, Cap 12
- 25 The Survey Ordinance No. 11 of 1950
- 26 The Survey Rules, 1953
- 27 General Registration Act, Cap 255
- 28 Registration of Instrument Act, Cap 256
- 29 Forestry Act 1988
- 30 Foreshores Act, Cap 14.

PART II

NATURAL RESOURCES

15.19 NATURAL RESOURCES

Introduction

Section 7 of Chapter II of the 1991 Constitution which is non-justiciable deals with management and use of natural resources.

The CRC deliberated on the issue of natural resources, focusing on mineral resources, accessed by the poor to natural resources, and access to natural resources by foreign investors.

Mineral Resources in Sierra Leone

The African Mining Vision (AMV) adopted by African Heads of State and Government in February 2009 was a response by African Ministers to the paradox of living in a continent with huge natural resources that exist alongside pervasive poverty and disparities. It goes beyond making improvements to mining regimes, to establishing how mining can better contribute to local, national and regional development. Locally, it considers how workers and communities can derive sustainable benefits from mining, while also protecting their environment. At national level, it considers how countries can better negotiate contracts with companies to generate a fair source of revenues from resource extraction, and support local procurement. Finally, it considers how mining can be better integrated into industrial and trade policy at regional level.

The goal of the African Mining Vision is to promote “transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development.”

The objectives of the African Mining Vision are to help member States domesticate the African Mining Vision at national level through a multi-stakeholder consultative process with a view to formulating a shared vision on how mineral resources exploitation can promote broad-based development and structural transformation of their respective countries.⁵⁸⁶

Access to Natural Resources by Foreign Direct Investors

Oxfam has commented that within the last 10 years, there has been a rise in foreign direct investment, resulting in the acquisition of large tracts of arable and forest land for agricultural and mining purposes. This increase in foreign investment amounted to US\$446m in 2010 and US\$1.2bn in 2011, the bulk of which came from mining companies.⁵⁸⁷

However, extractive industry development has had significant an environmental and social impact, particularly as regards accessing land for non-renewable natural resources in rural areas or fragile ecosystems. In particular, there has been tension between rural local communities and mining companies with regard to the expected direct benefits to local communities, security of

⁵⁸⁶ Natural Resource Governance and Economic Justice Network position paper page 1

⁵⁸⁷ IMF, Fourth review under the Three Year Arrangement under the Extended Credit Facility and Financing Assurances Review, October 2012, page 23

land rights, livelihoods and compensation, resettlement packages, pollution, and environmental degradation.

During consultative meetings in Bonthe and Moyamba districts, participants complained that economic and physical displacement has disturbed local people's livelihoods and ways of life. Participants in the Imperi Chiefdom complained that the compensation received for their lands is far less than what it is actually worth.

Similar complaints were made in Port Loko and Bombali Districts, where participants claimed that the construction of ports and railways and the biofuel industry has taken away their means of livelihood without adequate compensation.

The CRC carried out research to identify best practices to regulate how land can be accessed and used for extractive activities, and concluded that Sierra Leone could benefit from regulating land access and use for extractive projects to avoid the social conflicts and environmental destruction that unregulated competition over resources had produced over the years. Even corporate self-regulation must be structured within a general State regulatory framework.

The CRC therefore recommends that Sierra Leone should implement principles that have been applied globally, including:

1. Adoption of environmental provisions such as Environmental Impact Assessments, Environmental Quality Standards, and Maximum Permission Limits by both public and private sectors has enhanced environmental regulations.⁵⁸⁸
2. State creation of reserved areas, where extraction cannot take place.

The exploitation and management of natural resources should also be based on the African Charter on Human and People's Rights, with particular reference to Article 21, which states that people have the right to dispose of their wealth and natural resources, and that States should eliminate foreign economic exploitation so that citizens can benefit fully from the natural resources of their country.

Access by the Poor to Natural Resources

With respect to access by the poor to natural resources (land, forests, water, fisheries, pastures), the CRC reviewed an expert opinion that "the livelihoods of rural people without access, or with very limited access to natural resources are vulnerable because they have difficulty in obtaining food, accumulating other assets, and recuperating after natural or market shocks or misfortunes."⁵⁸⁹

⁵⁸⁸ Environmental Quality Standards and Maximum Permissible Limits use measures of the concentration of contaminants in the air, water or soil to set standards and limits to ensure those contaminants do not reach a level that poses a risk to the health of local people or the environment

⁵⁸⁹ Unruh and Turay, 2006

It is also the case that the Constitution does not give citizens the right to freely access and enjoy natural resources, in spite of the fact that they are common assets for all Sierra Leoneans.

The CRC therefore suggests that the Constitution should contain a provision giving indigenous people the right to equitable access and sustainable use of environmental resources, goods and services, and to equitable distribution of the benefits accruing from the utilization of such resources, services and goods.

In its position paper, the Human Rights Commission of Sierra Leone (HRCSL) stated that “a rights-based approach to exploitation contracts must be the starting point for good natural resources governance.”⁵⁹⁰

The HRCSL further stated that “all land owners and communities must be given the right to be freely, effectively consulted and informed consent obtained, before governments can sign land deals for agricultural purposes or exploitation contract(s) for mining with foreign investors”.

The CRC also noted many references by members of the public to article 71(1)(a) of the Kenyan Constitution, which states that “a transaction is subject to ratification by Parliament if it involves the grant of a right or concession by or on behalf of any person, including the national government, to another person for the exploitation of any natural resource of Kenya.”

The CRC realized that minerals are strategic natural resources whose ownership and control is critical to the country’s development prospects. Adopting and adapting Constitutional provisions from other countries must therefore be carefully done.

The CRC took note of a proposal to align institutions that manage natural resources with those that manage the financial resources of the State. The only opposition to this proposal was from Petroleum Directorate, who said that “the current Negotiating Committee which includes Minister of Finance, technical experts and financial experts, is successfully satisfactory”.

The CRC is of the view that the proposal serves not only as a check and balance but also a means of accounting for natural resources. The CRC therefore recommends that foreign direct investment matters relating to agriculture, mining, or any other development contracts or programs must involve all institutions that manage natural resources and the State’s economy.

15.20 Recommendations

Based on the recommendations, views and feedback from the public, the CRC recommends that the aspirations of Sierra Leoneans and stakeholders should be captured in the new chapter of the revised Constitution on lands, natural resources and the environment.

The CRC realises that raising and sharing of revenue from natural resources must be addressed in both political terms and with regard to economic stability. The constitutional enshrinement of

⁵⁹⁰ HRCSL position paper page 10

revenue collection and distribution principles and implementation mechanisms may be critical in finding an overall consensus on the sharing of power and resources.

Minerals are strategic natural resource whose ownership and control is critical to the country's development prospects. Adopting and adapting constitutional provisions from other countries must therefore be done carefully.

Foreign direct investment matters relating to agriculture, mining, or any other development contracts or programs must involve all institutions that manage natural resources and the State's economy.

15.21 Theme - Definition of Natural Resources and Trusteeship

Observation

The 1991 Constitution makes no provision with regard to the definition of natural resources.

In their position paper, the Natural Resource Governance and Economic Justice Network (NARGEJ) recommended that women, youths and vulnerable groups should be included in any consultative processes dealing with natural resources. They also recommended that the Constitution should vest the natural resources in the people and that government should act as trustees of the people in that respect: "the exercise of co-ownership of natural resources (local community people and government) will lead to better management and beneficiation to the people."⁵⁹¹

The CRC deliberated on the issue of the definition of natural resources, reviewed position papers and several Constitutions, and also took account of expert opinions. As a result, the CRC decided that there should be a clear definition of "natural resources" in the revised Constitution.

The CRC deliberated on two options and presented them to the people of Sierra Leone in the first abridged draft report. The first option was to vest all natural resources in the President on behalf of all Sierra Leoneans; the second option was to vest all natural resources in a National Resources Commission on behalf of all Sierra Leoneans.

The two options were as follows:

Option 1:

"all natural resources in their natural state in, under or upon any land in Sierra Leone, rivers, streams, water courses throughout Sierra Leone, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the people of Sierra Leone and shall be vested in the President on behalf of, and in trust for the people of Sierra Leone"

⁵⁹¹ NARGEJ position paper pages 4 and 5

Option 2:

“all natural resources in their natural state in, under or upon any land in Sierra Leone, rivers, streams, water courses throughout Sierra Leone, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the people of Sierra Leone and shall be vested in a Natural Resources Commission on behalf of, and in trust for the people of Sierra Leone.”

During the validation process in May 2016, the majority of Sierra Leoneans opted for natural resources to be vested in a National Resources Commission.

15.22 Recommendation

In light of the consensus in favour of vesting natural resources in a Natural Resources Commission, the CRC recommends that the following definition should be included in the new chapter of the revised Constitution on lands, natural resources and the environment:

“National Resources and Trusteeship

1. All natural resources in their natural state in, under or upon any land in Sierra Leone, rivers, streams, water courses throughout Sierra Leone, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the republic of Sierra Leone and shall be vested in the Natural Resources Commission on behalf of, and in trust for the people of Sierra Leone.”

15.23 Theme - Protection of Natural Resources**15.24 Recommendation**

The CRC recommends that the following section should be included in the new chapter on lands, natural resources, and the environment in the revised Constitution:

“Protection of Natural Resources

8. (1) The State shall provide for the protection and responsible use of natural resources within its territories.

(1) The State shall harness all natural resources of Sierra Leone to promote a sustainable and equitable distribution for national prosperity, efficient, dynamic and self-reliant economy.

(2) All transactions, contracts or undertaking be it for reconnaissance, exploration or large scale involving the grant of a right or concession by or on behalf of any person including the Government of Sierra Leone, to any other person or body of persons as described in

this section, for the exploitation of any mineral, water or other natural resources of Sierra Leone shall be subject to the approval of Parliament.

(3) The award of small scale and artisanal mining/fishing contracts for any natural resource is reserved for the local government general assembly to members of local communities residing under that local council government.

(4) Parliament may, by a resolution supported by the votes of not less than two-thirds of all the members of Parliament, exempt from the provisions of subsection (2) of this section any particular class of transactions, contracts or undertakings.

(5) All mining concessions approved by Parliament or a Local Authority shall be binding only upon agreed terms between communities and that person or body of persons for the use of their land and shall form part of the concession.

(6) No mining concession shall be made without a strategic land rehabilitation plan and fees charged should be commensurate to fund the necessary land reclamation to its original status; and shall be paid and withheld in the account of the government organ dealing with environmental protection before such a concession is deemed effected.

Whereas the concession holder is charged with the land reclamation as is provided in subsection (6) and are permitted to utilise same fees for that purpose, in case that concession holder defaults and or refuses to undertake the required land reclamation, the body withholding such funds in subsection 6 will take necessary activities to reclaim the land to its original status utilising such fees.

Parliament to enact the legislation every 3 years specifying the quantum of money according to a) land mass b) types of mining and, c) minerals mined.”

15.25 Theme - Distribution/Allocation of Proceeds from Natural Resources

Observation

The Natural Resource Governance and Economic Justice Network (NARGEJ) recommended developing new revenue models for the natural resource sector: “this would initially involve developing country-level transparency programmes, with the possibility that international standards might be developed later. A key immediate focus would be on the need to develop transparency mechanisms to cover the flow of associated revenues.”

NARGEJ further commented that consideration should be given to allocating government resources commensurate with the contribution to the national economy from the areas exploited. This could especially apply to areas most affected by environmental and social problems

resulting from by such economic activities.⁵⁹² They also went on to state that there should be a fair distribution of profit from natural resource between men and women.

15.26 Recommendation

The CRC recommends that to ensure fair and equitable distribution of proceeds from natural resources throughout the country, Parliament should enact laws every five years. The CRC therefore recommends that the following section should be included in the new chapter on lands, natural resources, and the environment in the revised Constitution:

“Allocation of proceeds from natural resources

- 9. Parliament shall enact laws every five years for the equitable distribution of proceeds from natural resources to Districts Councils, Municipalities and Chiefdoms in Sierra Leone.”**

15.27 Theme – Citizens’ Access to Natural Resources

Observation

The Natural Resource Governance and Economic Justice Network (NARGEJ) stated that the government has taken some measures to address the natural resource governance sector, and that sound and prudent management of natural resources could lead to prosperity for all: “we note that this aspiration remains topical and illusionary even though it is an undeniable fact that Sierra Leone is abundantly endowed with natural resources but that this is in sharp contradiction with the pervasive poverty and of its people.”⁵⁹³

15.28 Recommendation

The CRC recommends that the following section should be included in the new chapter on lands, natural resources, and the environment in the revised Constitution:

“Citizens’ Access to Natural Resources

- 10. The State shall protect the rights of citizens engaged in farming, fishing, and artisanal mining as a means of livelihood to the preferential use of Land and Marine both inland and offshore.”**

⁵⁹² NARGEJ position paper page 5

⁵⁹³ NARGEJ position paper page 1

15.29 Policy Recommendation:**Establishment of Natural Resources Commission**

The CRC deliberated on the issue of establishing a new Natural Resources Commission, and merging existing institutions into one empowered institution. In addition, the CRC was informed through various position papers, expert opinions, and public feedback that a Scandinavian model of development fund should be established, such as a Transformation and Development Fund from the proceeds of natural resources. This fund would also support youth and women.

- a) The CRC recommends the creation of a Natural Resources Commission.
- b) All Ministries dealing with natural resources be merged into one Ministry to be referred to as the Ministry of Lands, Fisheries, Natural and Marine Resources.
- c) A Commission should be established to coordinate all Ministries, Departments and Agencies that deal with lands, natural resources, and the environment.

PART III

THE ENVIRONMENT

15.30 THE ENVIRONMENT

Introduction

Recognition of Environmental Rights in the Constitution; The CRC deliberated on environmental rights in the Constitution in the context of global climate change challenges. As climate change and environmental protection have attracted much attention since the 1991 Constitution was enacted, the CRC recognises that there is a need to reflect these developments in the national legal framework.

In deliberating on Chapter II of the 1991 Constitution (State Policy), the CRC recommended amendments to relevant sections in order to factor the environment and its relationship to the State and its citizens.

The CRC was of the view that the natural environment is the foundation on which poverty reduction efforts and sustainable development can be built. The majority of people in Sierra Leone depend wholly on environmental assets such as agriculture, forestry, fisheries, minerals, water⁵⁹⁴ and energy resources for their livelihood and well-being⁵⁹⁵.

The CRC was informed by the Environment Protection Agency of Sierra Leone (EPA) that constitutional provision would ensure that Sierra Leone is not left behind in the global trend of according the highest priority to environment protection. Inclusion of environment protection in the Constitution would also coincide with the Government's commitment to attaining a sustainable developmental goal and ensuring generational equity.

The PTC Report recommended including environmental rights in Chapter III of the revised Constitution that would protect citizens' access to environmental resources in their localities in priority to Government's right to extract minerals. This recommendation was supported by the by the Human Rights Commission- Sierra Leone⁵⁹⁶.

The PTC Report also recommends that there should be a declaration of environment rights, obligations, duties and responsibilities for citizens and state as well as the creation of institutions of management and administration.⁵⁹⁷

Observation

The Climate Change, Environment and Forest Conservation Consortium-Sierra Leone (CEFCON-SL) in their position paper stated that land was the most important resource in sustaining human livelihoods world over: "it provides a whole range of ecosystem services and functions which serves as drivers to the social and economic well-being of people everywhere. Increasingly, land degradation at an alarming rate has significantly reduced land productivity

⁵⁹⁴ CEFCON-SL position paper page 2

⁵⁹⁵ EPA position paper page 5

⁵⁹⁶ HRCSL position paper page 7 para 12

⁵⁹⁷ PTC Report page 31 para 53 and 54

impacting socio-economic development, food security and human settlements. It is no gain saying that the new constitution should highlights to give resonance to the conservation of this resource being the harbinger of the well-being of the people of this country.”⁵⁹⁸

Boyd, a leading Constitution/environmental authority writing in the context of Canada, wrote that “nations whose Constitutions mandate environmental protection enjoy stronger environmental laws, better enforcement of those laws, enhanced government and corporate accountability, improved access to environmental information, and higher levels of participation in decision-making”. This view was also argued in the Freetown Declaration 2014 and by the National Democratic Alliance.

In spite of the above advantages identified by Boyd and stakeholders in Sierra Leone, the CRC was aware that any provision made for environmental rights can be implemented only when infrastructural mechanisms required for maintaining the environment are provided in the Constitution.

The CRC was therefore of the view that the opportunity for all-round development of the present and future generations could be guaranteed if one or more of the following provisions were to be incorporated in a new chapter in the revised Constitution on lands, natural resources, and the environment:

1. Every person has a right to an environment that is conducive to health and to the natural environment whose productivity and diversity are maintained. Natural resources should be managed on the basis of comprehensive long term considerations whereby this right will be safeguarded for future generations as well.
2. Each person has the right to clean air, pure water and productive soils and to the construction of the natural, scenic, historic, recreational, aesthetic, and economic values of Sierra Leone natural resources.
3. The right to equitable access and sustainable use of environmental resources, goods and services and to equitable distribution of the benefits accruing from the utilization of such resources, services and goods to indigenous peoples who have lost their identity or are on the verge of losing it like the underprivileged communities, the disabled and women or minorities of any class of people in the society.
4. The right to adaptation for protecting oneself from the adverse impact of climate change.
5. An inalienable right (fundamental and self-executing) to an ecologically healthy environment for present and future generations including the enjoyment of clean air, pure water, and scenic lands; freedom from unwarranted exposure to toxic chemicals and other contaminants; and a secure climate.

⁵⁹⁸ CEFCON-SL position paper page 2 para 5

6. There shall be no entitlement, public or private, competent to impair these rights.
7. It is the responsibility of the State as public trustees and citizens as beneficiaries to safeguard them for the present and for the benefit of posterity.

With a vision for a sustainable Sierra Leone for present and future generations, the CRC agreed that the revised Constitution must bequeath environmental rights to citizens, and also decided to expand on the scope of these rights with additional rights to complement any of the above rights, as indicated in the subsequent sections:

15.31 Environmental Rights in the Revised Constitution

The CRC discussed where in the proposed Constitution environmental rights should be found, and whether environmental rights should be justiciable or non-justiciable.

In dealing with these issues, the CRC considered the views expressed during nationwide public consultations.

In the end, it was resolved, firstly, that all environmental rights should be regarded as fundamental rights and as a result self-executing i.e. made justiciable without the need for legislation.

Secondly, such rights should be set out in Chapter III of the 1991 Constitution (“The Recognition and Protection of Fundamental Human Rights and Freedom of the Individual”).

The CRC was aware that a decision had already been made to consolidate all matters relating to the environment in a new chapter, and therefore the Preamble to the revised Constitution should contain the following provision:

“All economic activities carried out by or on behalf of the State or by corporate entities or individuals must take cognisance of the cautionary principle; inter and intra generation equity; protection of bio-diversity and prevention of environmental degradation.”

In reaching these decisions, the CRC considered that harm done to the environment was often trivialized, and laws were often flouted because they are non-justiciable under the Constitution; they remained confined to the policy commitment of the State.

The CRC suggested that if environmental rights are incorporated in the chapter on Fundamental Principles of State Policy as positive rights, as was done in the 1991 Constitution, it would be considered as undermining or neglecting the right of every Sierra Leonean to overall development, including their environmental, cultural, political, social and economic rights.

The CRC further recommended that since environmental rights in the Constitution are not self-executing i.e. made directly and automatically implementable, therefore relevant legislation needs to be updated, and the institutional capacity of relevant agencies needs to be improved to implement the recommended constitutional provisions on the environment.

Land and Environmental Tribunals

The CRC endorsed the PTC Report recommendation to amend section 21(1)(c) and section 21(5) by: adding “provided that after the passing of this revised Constitution into law – parliament shall legislate for the establishment of a Land Compensation Tribunal charged with the responsibility of adjudicating and determining adequate compensation to persons whose property has been compulsorily acquired by the Government”; deleting the reference to “the High Court” and replacing it with a reference to “the Land Compensation Tribunal”; and including the phrase “search warrants” in section 22(2)(d).⁵⁹⁹

However, the CRC further recommended the establishment of a National Environmental Tribunal that is not to be bound by strict rules of evidence to hear grievances arising from the decisions of environmental management authorities such as Environmental Protection Agency and the National Protected Area Authority (NPAA) and with respect to, for example, the right to compensation for the violation of any fundamental environmental rights and freedom and the right to compensation for a loss caused by an effect on the environment.

Land and Environmental Court

The CRC was of the view that the attainment of ecologically sustainable development hinges on the collaboration of the three arms of State – the Legislature, the Executive, and the Judiciary – as well as other stakeholders such as local government and civil society.

Klaus Toefer, former Director of United Nation Environmental Program (UNEP), captured this in a message to the UNEP Global Judges Program: “Success in tackling environmental degradation relies on the full participation of everyone in society. It is essential, therefore, to forge a global partnership among all relevant stakeholders for the protection of the environment based on the affirmation of the human values set out in the United Nations Millennium Declaration: freedom, equality, solidarity, tolerance, respect for nature and shared responsibility”.

He further stated that the Judiciary is a “crucial partner in promoting environmental governance, upholding the rule of law and in ensuring a fair balance between environmental, social and development considerations through its judgements and declarations”. A further comment is that “in the enhancement and interpretation of environmental law and the vindication of the public interest in a healthy and secure environment”⁶⁰⁰.

During the nationwide consultations, concerns were raised about how non-specialized court systems handle environmental and land issue, reflecting the need to provide expeditious and cost-effective justice. Furthermore, numerous position papers called for the establishment of a special environmental and land court to avoid the challenges facing ordinary courts including

⁵⁹⁹ PTC Report, pages 29 to 31

⁶⁰⁰ Kaniaru, Kurukulasuriya, & Okidi, 1998, page 22

accessibility, delay, cost, complexity, lack of legal and technical expertise and quality of decisions.⁶⁰¹

As explained by one Paramount Chief in Moyamba District, land cases take several years to go through the court system. This view was supported in the position paper submitted by the NCD, which concluded that “the anomaly (a long backlog of land cases waiting to be heard) often result in uncertainty, insecurity and countless unresolved land disputes.”⁶⁰²

The CRC discussed with the Ministry of Agriculture the issue of establishing environmental courts, and Ministry officials stated the need to “establish courts with the status of a high court to hear and determine, among other matters, disputes relating to the environment and natural resources”.

The CRC was therefore of the view that a court with special expertise in land and environmental matters offered the best means of adjudicating disputes to attain the wider goal of sustainable development as articulated in the nation’s Poverty Reduction Strategy Paper III, the Conference on Transformation and Development, TRC recommendations, and position papers.

The CRC therefore recommended that legislation should be enacted to establish a Land and Environmental Court to hear disputes relating to the environment and use and occupation of, and title to, land. Among the many reasons advanced in position papers and during nationwide consultations were:

- a. Relieving the backlog in other courts and resolving more efficiently matters involving land and environmental issues;
- b. Being better positioned to deal with complex environmental and land cases, achieving efficiency and reducing the overall cost of litigation;
- c. Facilitating lawyers and officers to gain specialised knowledge of land and environmental law and issues;
- d. Bringing together in one court, officers (both judges and non-lawyers specialists) with knowledge and expertise in land and environmental law; and;
- e. Having a comprehensive, integrated jurisdiction to deal with a range of land and environmental matters, providing a “one stop shop” for merits appeals, judicial review and criminal and civil enforcement.

⁶⁰¹ The Freetown Declaration

⁶⁰² NCD position paper, page 26

15.32 Theme - Promotion and Protection of the Environment

The CRC deliberated on the issue of the promotion and protection of the environment, and was informed by expert opinion, position papers, feedback from the public, and regional best practices. The CRC recommends that this issue must be enshrined in the revised Constitution, and all relevant legislation must be updated in line with international treaties and Conventions signed and ratified by Sierra Leone.

15.33 Recommendation

The CRC endorses a recommendation of the Environmental Protection Agency on the promotion and protection of the environment, and recommends that the following provisions to be included in the new chapter of the revised Constitution on lands, natural resources, and the environment:

PART III**“Promotion and Protection of the Environment**

1. The State shall promote the effective protection of the environment by empowering and enabling such bodies, agencies, institutions, organizations, to formulate, adopt and apply laws and policies and regulations for that purpose and to enhance economic growth.”

15.34 Theme - Climate Change

The CRC deliberated on the issue of climate change, and was informed by expert opinion, position papers, feedback from the public, and regional best practices, and therefore recommends that a provision to be included in the new chapter of the revised Constitution on lands, natural resources, and the environment.

15.35 Recommendation

The CRC recommends the following provision on climate change be included in the new chapter of the revised Constitution on lands, natural resources, and the environment:

“Climate Change

2. It shall be the responsibility of government, both national and local, citizens, agencies, public or otherwise, and civil society organisations to undertake measures that guarantee and promote climate change mitigation, and adoption programmes and actions for the purpose of the preservation, conservation, and cultivation of dynamic climate-resilient

practices and; provide to maintain a balanced ecology that is conducive for the existence of living organisms for present and future generations in Sierra Leone.”

15.36 Theme - The Right to Environmental Information

The CRC deliberated on the issue of the right to environmental information, and was informed by expert opinion, position papers, feedback from the public, and regional best practices. The CRC recognised that this right is critical and needs to be captured in the revised Constitution.

15.37 Recommendation

The CRC recommends the following provision should be included in the new chapter of the revised Constitution on lands, natural resources, and the environment:

“The Right to Environmental Information

3. The State shall--

- a) Promote the effective protection of the environment by empowering and enabling such bodies, agencies, institutions and organizations, to formulate, adopt and apply laws, policies and regulations for that purpose and to enhance economic growth;**
- b) Enhance the knowledge of present and future generations on the environment of Sierra Leone;**
- c) Provide required information on harmful materials to the public whether from State, corporate or private institutions.”**

15.38 Theme - Environmental Rights

The CRC deliberated on the issue of the right to environmental information, and was informed by expert opinion, position papers, feedback from the public, and regional best practices. The CRC recognised that every person has a right to an environment that is conducive to health and to the natural environment whose productivity and diversity are maintained. Natural resources should be managed on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations.

The CRC also acknowledged that everyone has the right to clean air, pure water and productive soils; to the construction of the natural, scenic, historic, recreational, aesthetic, and economic values of Sierra Leone’s natural resources; and to protection from exposure to toxic chemicals and other

contaminants.

In addition, there is the right to equitable access and sustainable use of environmental resources, goods and services, and to equitable distribution of the benefits accruing from the utilization of such resources, services and goods to indigenous people who have lost their identity, or to those that are on the verge of losing it, such as underprivileged communities, the disabled, women, or other minorities.

It is the responsibility of the State as public trustees and citizens as beneficiaries to safeguard these rights.

15.39 Recommendation

The CRC recommends that the following provision should be included in the new chapter of the revised Constitution on lands, natural resources, and the environment:

“Environmental Rights

4. (a) Every person has a right to an environment that is conducive to health and to the natural environment whose productivity and diversity are maintained.

(b) Each person has the right to clean air, pure water and productive soils and to the construction of the natural, scenic, historic, recreational, aesthetic, and economic values of Sierra Leone natural resources.

(c) The right to equitable access and sustainable use of environmental resources, goods and services and to equitable distribution of the benefits accruing from the utilization of such resources, services and goods to indigenous peoples who have lost their identity or are on the verge of losing it like the underprivileged communities, persons with disabilities and women or minorities of any class of people in the society.

(d) The right to adaptation for protecting oneself from the adverse impact of climate change.

(e) An inalienable right (fundamental and self-executing) to an ecologically healthy environment for present and future generations including the enjoyment of clean air, pure water, and scenic lands; freedom from unwarranted exposure to toxic chemicals and other contaminants; and a secure climate.

(2) There shall be no entitlement, public or private, competent to impair these rights.

(3) It is the responsibility of the State as public trustees and citizens as beneficiaries to safeguard them for the present and for the benefit of future.”

15.40 Policy Recommendations and Additional Rights

Observance of International Law

The CRC recognised that the broad range of political, socio-economic, and human rights treaties signed by Sierra Leone need to be domesticated. The CRC therefore suggests that the revised Constitution should present Sierra Leone as an environmentally-responsible nation and so fulfill its core environmental obligations.

The CRC noted that section 40 of the 1991 Constitution sets a time limit for Parliament to ratify treaties. The CRC therefore suggests that the procedure in section 40 should be amended so that once a treaty is signed, it requires no further ratification for its domestication and implementation.

An alternative to the above suggestion could read: “within two years of signing an environment-related treaty, Parliament shall ratify and domesticate such a treaty as part of the laws of Sierra Leone.”

Furthermore, the revised Constitution should oblige the State to:

- a. Exercise its sovereign right to “exploit” its natural resources according to its environmental and developmental” policies. In doing so, the state shall utilise available measures to ensure that activities within its activity or control do not cause damage to the environment of other States or to areas beyond national jurisdiction or control.
- b. Assure that conservation will remain an integral part of the implementation of plans and development activities.
- c. Assist other countries, especially developing ones, with nature conservation and sustainable development; and
- d. Help another State to carry out the preceding rights and responsibilities in good faith.

The CRC further recommends that:

- a. Within five years of the coming into force of the revised Constitution, Parliament shall enact laws to give full effect to the revised Constitution, including the new chapter on lands, natural resources and the environment.
- b. The Government must ensure the timely establishment of the new institutions recommended in the new chapter on lands, natural resources and the environment.

Merger of the National Protected Areas Authority and the Environmental Protection Agency

The Environmental Protection Agency is a department of the Ministry of Lands, Housing and Country Planning and the Environment, and was established under the Environmental Protection Agency Act, 2008, with regulatory and enforcement powers, as well as many environment management functions.

The CRC deliberated on empowering the Environmental Protection Agency further, and so recommends that all rights, obligations and responsibilities of the National Protected Areas Authority should be transferred to the Environmental Protection Agency.

The merger of the two bodies would reduce the cost to the State and enable the Environmental Protection Agency to operate more effectively.

15.41 Access to Environmental Resources

The ownership, usage and disposition of land and other natural resources is to be realized freely if it does not inflict damage on the surrounding environment and does not violate the law and legal interests of other people.

Parliament should within two years of the coming into force of the revised Constitution enact and update relevant legislation on the access, exploitation and use of natural resources.

15.42 Right to Environmental Information

Taking cognizance of the right to environment-related information and the right to information on governance, the CRC took account of expert workshop reports and the position paper of the National Commission for Democracy (NCD), which proposed the following new right:

“The right to unrestricted access to environmental information held by public authorities, including information on perilous substances and activities undertaken by Government, cooperate persons, within or without their communities according to set lawful procedures for access.”

In fulfilling this right, the State shall ensure adequate structures are put in place and made easily accessible to all citizens. The CRC concurred with the NCD’s comment in their position paper that: “Societies where access to information is strongly supported give room for transparency and accountability”⁶⁰³

⁶⁰³ NCD position paper page 9

15.43 Right to Development

During public consultations, there was widespread support for the protection of the environment. The CRC therefore recognised that there should be a right for Sierra Leone to pursue activities that may not only lead to the protection of the environment for its own sake and for its potential to negatively affect society but to also pursue or refuse to participate in programs national or international which, in its determination, do not guarantee the prospects for sustainable development.

The CRC also considered the public view that local people should be involved in the design and implementation development programs within their communities. The CRC therefore recognised that the following developmental rights should be guaranteed in the revised Constitution:

- The right of citizens to their personal development, prestige, economic, cultural and social development.
- The right to raise the standard of life and do sustainable development and national development and participate in the decision-making of issues of own community

15.44 Right to Participation

The CRC accepted that environmental and developmental issues were best handled when people were allowed to participate in the decision-making process. The CRC therefore recognised the right of people and communities to participate without discrimination in the environmental policy formulation, decision-making, evaluation and monitoring processes in a meaningful way based on one's political, economic, religious, social, gender, geographical and regional status.

In addition, in the fulfillment of this right, the State should promote and encourage public awareness and participation by making information widely and freely available according to the law. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

15.45 Right to Compensation

During nationwide consultations, participants suggested the inclusion of a right, and an associated State obligation, to environmental compensation as follows:

- i) The right to compensation for the violation of any fundamental environmental rights and freedom:

Within two years of the coming into force of the revised Constitution, the State shall enact legislation regarding liability and compensation for the victims of pollution and other environmental damages. It

shall also be the responsibility of every individual to protect and preserve the environmental resources, goods and services.

ii) The right to compensation for a loss caused by an effect on the environment:

The State shall enact legislation regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

iii) The right to compensation from government, public and private organizations, and individuals, among others, that cause significant environmental damage or pollution or for colluding to cause such damage:

It shall be the responsibility of every individual to protect and preserve environmental resources, goods and services.

15.46 Right to Adequate Standard of Living

With respect to calls for the provision of adequate, accessible and affordable housing for citizens, and security of tenure, the CRC noted the UN Declaration on Human Rights 1948 that security of tenure is an “integral part of the right to adequate housing and a necessary ingredient for the enjoyment of many other civil, cultural, economic, political and social rights”.

The CRC further recognised that the State must ensure greater commitment to respect, protection and fulfillment of the right to adequate housing. This includes: strengthening diverse tenure forms; improving security of tenure; combating discrimination on the basis of tenure; promoting women’s security of tenure; respecting security of tenure in business and development activities; empowering citizens; and ensuring access to justice.

The CRC therefore recommends that there should be security of tenure, guaranteeing legal protection against forced eviction, harassment and other threats for all citizens. Security of tenure should also include the right to an adequate standard of living on a non-discriminatory basis.

15.47 Right to Food

As a component of the right to an adequate standard of living, the right to food was deliberated on and recommended by civil society organisations.

The CRC has already recommended amendments to section 7 (economic objectives) of Chapter II of the 1991 Constitution and section 15 (fundamental human rights and freedoms of the individual) of Chapter III of the 1991 Constitution.

The CRC reiterated that government should pursue the following objectives to ensure that the right to food and food security issues are dealt with urgently:

- a. Protection from hunger and malnutrition through equal access at all times to adequate food, or means of its procurement.
- b. Place proper and adequate emphasis on access to land for women to encourage equal access to economic participation to ensure self-sufficiency in food production.
- c. The government shall have and maintain the right to food for every man, woman and child, alone or in communities, as a human right; enabling access at all time to adequate food or means for its procurement.

15.48 Right to Access to Water

The CRC deliberated on the existing legislation relating to water to ascertain the extent to which the State had, over the years dealt with the growing scarcity of clean and safe water. It was evident that the Guma Valley Act 1961 and the Water Supply and Control Act 1963 did not give citizens a right to water. In addition, these Acts apply only in the Western Area. For the vast majority of the territory of Sierra Leone (the Provinces, including rural areas), there is no national legislation addressing water rights, catchment management, and pollution.

The legislation is outdated and does not appear to be referenced in the governance of water resources: the Forestry Regulations 1990 include provisions on catchment management. The Sierra Leone Water Company Act 2001 obliges the Sierra Leone Water Company (SALWACO) to “develop and operate satisfactory water services at reasonable cost” and on a self-supporting basis, and to develop and maintain waterworks necessary to ensure water services. The Local Government Act 2004 provides for community ownership of wells and requires SALWACO to provide rural water at reasonable cost.

16 CHAPTER SIXTEEN

NATIONAL DEVELOPMENT PLANNING COMMISSION

16.1 Introduction

The Constitutional Review Committee (CRC) conducted nationwide consultations on the country's socio-economic development situation. During these consultations, serious concerns were unanimously expressed that Sierra Leone's national development planning had remained ad hoc and uncoordinated, and this had badly affected public service delivery. The views on the need to have long-term plan and vision, which successive governments and all development actors should adhere to, were widespread.

These arguments are not strange. They are shared among newly industrialized and emerging countries in Asia and Africa, which have focused on directed and coordinated development. The process of preparing national development plans and visions has given countries worldwide the opportunity to consider the kind of future they want for their country.

Many countries have used the mechanism of national development plans to chart paths of prosperity for their people. The Asian Tigers such as Hong Kong, South Korea, Taiwan, Singapore, and Malaysia in South East Asia, as well as Botswana in Africa have used national development plans to achieve tremendous social, economic and political growth in the last half century. Ghana and Kenya are also strongly following these paths, with the result that their economies have grown.

Sierra Leone has never been oblivious to the enormous dividends to society that could be derived from having a strategic direction and vision, even before independence in 1961. The country has made many attempts to formulate and implement national development plans since the colonial era. However, the continued ad hoc nature of planning, and the uncoordinated approach to implementation suggest a need to have well-defined institutional anchor for coordinating planning in the country.

This is the foundation to the recommendation for the provision for the establishment of a National Development Planning Commission (NDPC) in the revised Constitution of Sierra Leone, with clearly articulated functions and powers to provide strategic direction to State development aspirations.

Sierra Leone is not alone in having witnessed incoherent development planning. Countries such as Ghana and Uganda eventually succeeded with their development plans, and one of the reasons for this is that they acted early to entrench and stabilize development planning through the establishment of appropriate institutions.

The narrative for the establishment of the NDPC in Sierra Leone is drawn from various reviews and position papers submitted to the CRC, engagements with experts, and study tours undertaken in other

countries. The CRC particularly noted the example of Ghana, which undertook a constitutional review in 2010, stressing the need for a long-term, strategic and legally-binding National Development Plan for Ghana, moving from a political to a development Constitution.

16.2 Historical Background

Before independence in 1961, the colonial administration implemented a ten-year national development plan (1945-1954), which was mainly focused on exploiting local raw materials such as cash crops and minerals. There was no successor plan until independence, when the post-colonial administration formulated and implemented another ten year framework, the Economic and Social Development Plan (1963-1974), with the broad objective of promoting balanced and diversified growth. This plan was fraught with many problems, ranging from the spate of military coups that characterized the country during 1967-1968 thereby putting an end to it halfway into its implementation, to the suspension of all local councils in 1972, thereby removing grassroots participation in national development planning.

The government later implemented a five-year national development plan (1975-1979), with special focus on agricultural development within the framework of the integrated agricultural development projects introduced at the time. With no local councils in existence, the plan had no input from local communities and thus could not deliver on poverty reduction and economic growth.

The ensuing period until the outbreak of the civil war in 1991 saw haphazard planning, with attendant socio-economic crises. A three-year national development plan (1983-1985) was developed but never formally adopted because of adverse economic conditions and donor neglect. The harsh economic conditions characterized by huge foreign debt, inflation and high unemployment, and foreign exchange disturbances engendered the declaration of the new economic order and the adoption of the Structural Adjustment Programme (SAP) in 1985. The SAP had its own harsh economic and social consequences, and was partly blamed for the failure of other frameworks such as the Green Revolution Programme and the Sierra Leone Produce Marketing Board. Austerity measures introduced within the framework of the Economic Emergency Programme of 1987 to curb the effects of failing policies and programmes only made matters worse.

The SAP was substantially implemented during the Civil War, especially during military rule (1992-1996). Public investment programme was introduced, whereby various ministries, departments and agencies of government were required to prepare yearly plans of activities in order to access national budgetary resources. Yet, neither SAP nor ad hoc planning worked for the country effectively. While the war devastated most agricultural activities, for areas where farming was still possible the implementation of the SAP saw the removal of subsidies on agricultural activities thereby further deteriorating the sector.

A wide continuum of structural reforms was pursued after the Civil War to restore state legitimacy, recover the economy, and lay out a national path to sustainable development. The end of the war in

2002 ushered in principles of democratic governance in the national planning process. Since then, the national development plans have taken the form of Poverty Reduction Strategy Papers (PRSPs) implemented within international development frameworks such as the Millennium Development Goals 2000-2015 that have been succeeded by the Sustainable Development Goals 2016-2030. The PRSPs have been nationally guided by two long-term perspectives: Sierra Leone's Vision 2025 and Vision 2035. In addition, local councils have been revived since 2004.

Merger of the Ministry of Development and Economic Planning (MoDEP) with the Ministry of Finance (MoF)

The call for a centrally-placed and highly-capacitated institution to give strategic direction to national policy and economic development planning, including cross-sectoral development analysis had necessitated the establishment of the Ministry of Development and Economic Planning in 1968 to perform the following core functions:

- Facilitating the formulation of national policies, priorities and strategic development plans; gaining collective political support for implementation; and setting benchmarks for nationwide economic and social development; and to monitor and evaluate progress in meeting benchmarks, such as measuring poverty levels.
- Evaluating large cross-sectoral development projects; providing policy guidelines in the preparation of annual national budget; assisting with cross-sectoral coordination at budget policy hearings for Government institutions; and harmonizing local council development plans with national development goals.
- Acting as a think-tank for Government on cross-sectoral development management issues such as determining how much should be spent on social-sector development as opposed to building infrastructure for productive sector and what should be the size and cost to Government; and dialoguing with the other countries.
- Overseeing the effectiveness of the development planning machinery in the Ministries, Departments and Agencies (MDAs) and local councils, whilst guarding against micro-managing individual sectoral development plans.

MoDEP had non-core functions, which included: managing donor relations such as the coordination of technical assistance from United Nations Development Programmes, the Economic Community of West Africa States, and a range of other development assistance; coordinating non-governmental organizations at national level; collaborating with the then Ministry of Finance in preparing the development budget; and administration of the Ministry including human resource management and procurement.

MoDEP had the Central Planning Unit (CPU) as its centre of excellence with the following sub-units and specific functions:

- The Development Finance and Financial Planning Section, which: provided technical support to ministries in the assessment of sectoral development needs; developed appropriate projects for inclusion in the public investment programme; and liaised with development partners such as the World Bank on project implementation issues including donor and Government counterpart funding.
- The Social Development & Strategic Planning Section, which undertook development research to inform inclusion of prioritized critical poverty sectors in the national budget; developed measurable indicators for development projects; collaborated with local government in establishing development planning committees in local councils; provided technical back-up to regional planning offices in formulating development plans, policies and strategies; compiled and analyzed data on regional development activities; and trained line ministries in strategic planning methodology.
- The Macroeconomic Developing Planning Section (which became the Economic Policy and Research Unit established in the then Ministry of Finance), which updated the national and sectoral development strategies and policies; prepared the macroeconomic framework for inclusion in the public expenditure programme; analyzed macro-economic statistics and practical problems of inflation, debt management, taxation, income inequality and structural adjustment; and collaborated with Statistics Sierra Leone.
- The Population Planning Section, which guided the integration of population issues and concerns into national and sectoral development policies, plans, programmes and strategies; and followed up with relevant development partners on population development issues.
- The Social Services Section, which liaised with relevant line ministries such as education, health and gender institutions and relevant development partners in addressing and programming social development issues.
- The Industry and Mining Section, which provided strategic policy and planning input to the development of small and medium scale businesses and mining activities;
- The Food Security and Micro Finance Section, which provided strategic policy and planning input towards national food security and micro-finance provision and programming.
- The Development Monitoring and Evaluation Section, which was responsible for monitoring and assessing project outputs and outcomes, facilitating data collection, and carrying out project impact analysis.

MoDEP coordinated external development relations and assistance, divided into the following sub-units: the Mano River Union Coordination Unit; the NGO Coordination Unit; the Commonwealth and UNDP Coordination Unit; the ECOWAS Unit; and other intermittent arrangements such as the

Integrated Approach to Aid Coordination. The Development Assistance Coordination Office was established after the Civil War and temporarily placed under the Office of the Vice President. There was also the administrative section of the Ministry.⁶⁰⁴

Key Challenges encountered by MoDEP

The above functions and structure could not be sustained by MoDEP, which became severely incapacitated mainly as a result of the following:

- MoDEP was a hub of well-qualified professional staff, but many went to work in donor-funded project implementation units, international organizations, and private businesses.
- There were serious constraints on MoDEP's budget, as it had to compete with other MDAs for resources from the limited government budget.
- The creation of new post-conflict organizations with parallel functions within government weakened MoDEP, and there was generally lack of job satisfaction at the Ministry.⁶⁰⁵

Post-Civil War Restructuring of Government Ministries, Departments and Agencies including MoDEP

The government embarked on a wide range of governance reforms following the end of the Civil War in 2002 to achieve sound public sector management policies. Management and Functional Reviews (MFRs) were conducted for key government ministries including MoDEP, and a series of recommendations were made for each reviewed Ministry as to how their functions should best be delivered.

The MFRs helped to determine whether reviewed ministries should continue to exist as separate entities on the basis of core or non-core functions: Ministries with core functions were recommended to exist as separate entities. Non-core functions were performed by different Ministries, and it was recommended that they would be best delivered if rationalized and placed under one entity.

Against this background, the MFR conducted on MoDEP proposed three options with regard to the continued existence of MoDEP. Those options were submitted, with pros and cons, to Government for consideration towards enhancing delivery of the strategic planning function of the State. The options were as follows:-

Option 1: Strengthen and Streamline MoDEP

⁶⁰⁴ See Report of Management and Functional Review of MoDEP (2006, pages 13-18)

⁶⁰⁵ See Report of Management and Functional Review of MoDEP (2006, pages 14)

This aimed at streamlining the Ministry's activities towards its core functions, requiring its Central Planning Unit to be restructured and made more technically-equipped to carry out strategic thinking and planning. The non-core functions were to be transferred to other Ministries and Agencies. This option was not preferred by the MFR because of the risk of MoDEP remaining too large, with non-essential staff in the delivery of the core function for which it was established in 1968.⁶⁰⁶

Option 2: Merge MoDEP with the Ministry of Finance

This option was also not preferred because, as the MFR noted, "experience has shown that when such mergers take place the focus has been generally on public financial management and budgeting rather neglecting the importance of the policy and planning function. Clearly also, the link between planning and budgeting is strong but there always remains the need to distinguish between the policy development role inherent in planning activities, and the narrower process of allocating resources to a time-bound financial budget."⁶⁰⁷

Before the merger of MoDEP with the MoF, "attempts had been made to merge the two Ministries, but each time this happened, they had subsequently been separated again. This had to a large extent been as a result of the fact that such mergers only took place at the political level and never in terms of integrating staff and work."⁶⁰⁸

While there was a strong case for unifying responsibilities such as aid management and coordination (undertaken by MoDEP and MoF at the same time, and also by the Ministry of Foreign Affairs), it was said that it was not advisable to merge the core policy development and strategic planning functions of MoDEP with MoF.

Option 3: Create a New Planning Secretariat or Commission

This was the preferred option of the MFRs, which recommended the establishment of an autonomous National Development Planning Secretariat or Commission to report to the Office of the President. The new body would focus solely on the core medium to long-term policy development and strategy planning function of the State; harmonize and translate successive governments and presidential visions into national goals and strategies; and consist of a compact group of policy developers and strategic planners assisted by a few support staff.

The MFR consultants noted that although this type of model might overburden the Presidency and also have the tendency to dictate to MDAs, the merits of this option were as follows.

- It would bring about a re-establishment of an effective policy development and strategic planning function at the centre of Government.

⁶⁰⁶ See Report of Management and Functional Review of MoDEP (2006, page 27)

⁶⁰⁷ See Report of Management and Functional Review of MoDEP (2006, page 28)

⁶⁰⁸ See Report of Management and Functional Review of MoDEP (2006, page 28)

- The Policy and Strategic Planning Secretariat would be a catalyst and support to the development and implementation of national policies and plans which would take into account public opinion and have government and Presidential backing, and collective agreements with wider ‘society’ and international stakeholders to support implementation.
- It would be less expensive and easier to co-ordinate than retaining a Ministry.
- It would ensure that the policy development and strategic planning functions would drive the budget preparation process, rather than risk being submerged in the MoF.
- It would focus solely on the core development and strategic planning functions, and would avoid getting distracted by non-core activities that could easily be assumed in other MDAs.⁶⁰⁹

Under this option, it was recommended to have a Technical Co-operation Unit to interface with governments, regional and international agencies and develop current and new initiatives on technical co-operation, focusing on:

- (i) formulating programmes and projects of technical co-operation in accordance with overall national development priorities;
- (ii) assessing the demand for and supply of technical co-operation to contribute to meeting the priority needs of the country;
- (iii) providing information on technical co-operation opportunities to public sector agencies and civil society;
- (iv) liaising with donor agencies to ensure that there is no overlap of technical co-operation initiatives and to minimize gaps; and
- (v) managing international relations relating to development issues, for example south-south cooperation, New Partnership for Africa’s Development.⁶¹⁰

Current Status of Planning and Development in Sierra Leone

Despite the preferred option of the MFRs, MoDEP and MoF were merged in 2007/2008, with the new structure becoming the Ministry of Finance and Economic Development (MoFED). However, it is generally acknowledged that national development planning has deteriorated further since the merger.

Within MoFED, there is a Central Planning, Monitoring and Evaluation (CPM&E) Division to deliver the core function of MoDEP. This Division underperformed for several years, and recent efforts to rationalize functions into a single logical structure within the merger have not succeeded. This led to duplication of development planning, monitoring and evaluation coordination functions across the public sector.

⁶⁰⁹ See Report of Management and Functional Review of MoDEP (2006, pages 28-29)

⁶¹⁰ See Report of Management and Functional Review of MoDEP (2006, pages 24-25)

Within MoFED, units that duplicate development planning and monitoring related functions are mainly the CPM&E, the Public Investment Programme and Management Unit, the Multilateral Project Department, the NGO Coordination Unit, the Regional Integration Coordination Unit, the Development Assistance Coordination Office, and the Local Government Finance Department, and, to some extent, the Economic Policy and Research Unit and the Budget Bureau.

In addition, some planning, monitoring and evaluation functions are also performed in the Office of the President, with the establishment of the Strategy and Policy Unit, the Performance Management and Service Delivery Directorate, and the recently established Delivery Team in the Office of the Chief of Staff to coordinate the implementation of the Ebola Recovery Strategy, even though it was MoFED that prepared this strategy through its CPM&E. A Sierra Leone International Benchmarks System has recently been established in the Office of the President, with its own Secretariat.

There is also the Decentralization Secretariat in the Ministry of Local Government and Rural Development that coordinates district development planning together with the Local Government Finance Department in MoFED, with little or no reference to the CPM&E Division that traditionally coordinated the formulation of national development plans, seated also in MoFED.

Aspects of performance monitoring of the public sector are also carried out and coordinated by the Cabinet Secretariat and the Office of the Head of Civil Service, and the Human Resource Management Office, both of whom have Performance Management Directorates or Units.

Planning and Legislative Issues

45. The above background suggests that since the end of the Civil War in 2001/2002, planning in Sierra Leone has been ad hoc and uncoordinated, which was also a feature of pre-war planning processes. It is not really clear where sustainable direction for national development planning is currently drawn from, in terms of generating strategic input and information to guide priority determination. There is also no legislation providing central strategic guidance to national development planning processes.

Nature and Character of a National Development Plan

What is a good national development plan? Should it be short, medium, or long-term? Should it be a single national plan or different plans for the various regions of the country, taking into account the local needs of the regions? And should the plan be binding on successive governments or should it change with changes of government?

The views and arguments generated during the constitutional review process about national development resulted in the following as key characteristics of a productive and sustainable plan:

1. The Plan should be national in character for the following reasons:

- a. It will ensure that there is a blueprint for national progress and sustainable development.
- b. It will be the framework for accelerated growth and reduction in poverty levels among Sierra Leoneans.
- c. It will ensure that national development is not centred on sectional political party manifestos; manifestos must rather be aligned to the Plan.
- d. It will reduce the party politicization of the national development process.
- e. It will serve as a holistic basis for the assessment of the performance of successive governments.
- f. A development plan which is national in character stands a greater chance of being adhered to by successive governments than a sectional policy.

2. The Plan should be binding on all successive governments for the following reasons:

- a. It will ensure that projects initiated under a previous government are not abandoned when there is a change of government.
- b. It will ensure that national resources, annual budgets and government programmes, projects and initiatives are directed to realizing the ends of the Plan.
- c. It will make it possible for any Sierra Leonean to enforce adherence to the Plan by successive governments.
- d. It will ensure that national resources are not wasted on projects that do not lead to the ultimate good of the nation.
- e. It will lead to the censoring of government officials who act contrary to the Plan.

3. The Plan should be region and district sensitive:

- a. It should address the peculiar needs of regions and districts.
- b. It should make districts and regions take part in deciding their own needs.
- c. It should ensure that district and regional plans are aligned to it.

4. The Plan should be long-term for the following reasons:

- a. A long-term development framework, incorporating short-term and medium-term goals, accords with international best practice.

- b. Only long-term planning can deal with the intractable developmental challenges that the nation faces.
- c. Only a long-term plan may be incorporated into the Constitution, since constitutions are crafted as long-term documents.
- d. A long-term development plan will ensure that present and the future generations are catered for in development planning.
- e. Long-term plans provided for in constitutions will enforce the adherence to laid down national sustainable development objectives by successive governments.

Findings and Observations

The CRC finds that:

There were widespread and consistent calls for a long-term and binding national development plan during the review process.

There were also calls for the establishment of a National Development Planning Commission to be provided for in the revised Constitution as has occurred in a number of emerging countries with relatively stable economies, such as Ghana, which enshrined a Planning Commission in its 1992 Constitution, with further entrenchment in its revised Constitution, transitioning from a political to development constitution.

Sierra Leoneans have expressed the need to pay great attention to national development planning and coordination. The establishment of a sustainable institutional anchor to coordinate planning processes would therefore prevent the historical experiences of haphazard and discontinued strategic development direction of the State and avert the present ad hoc planning arrangement, thereby ensuring that the path to sustainable development the country wishes is not interrupted.

As in Ghana, the inclusion of definitive provisions on national development in the Constitution will help transform the Constitution from essentially a political constitution to a developmental constitution.

Sierra Leone needs a stable and sustainable development plan that will deliver improved livelihoods for its citizens comparable to those of other nations which were similarly poorly situated.

Constitutions should be prevented from being geared towards the fulfillment of election promises contained in political party manifestos. Instead, they should be focused on an all-inclusive programme of ensuring social and economic progress.

A constitutional provision for a national development plan provides the assurance required for institutional certainty, thereby providing direction for the nation.

The Constitution should be fashioned in such a way as to direct national and long-term development plans from which the budgets of all public institutions, including Ministries, should be drawn.

Participants at the various nationwide consultations called for the nation to adopt for itself a long term and binding national development plan, which will serve as the blueprint for the accelerated development of the country.

The Committee observed that many nations have national development plans. For example:

- Uganda has a National Planning Authority established by an Act of Parliament and charged with producing comprehensive and integrated development plans for the country, elaborated in terms of vision and medium-term and long-term plans.
- The Irish Plan is a roadmap for sustainable economic expansion, social justice and better quality of life for the Irish people. The Plan is also to deliver a programme of integrated investments that will underpin Ireland's ability to grow in a manner that is economically, socially and environmentally sustainable.
- Kenya's Vision 2030 was developed to cover the period 2008 to 2030. Its objective is to help transform Kenya into a middle-income country, providing a high quality of life for all citizens by the year 2030. It incorporates successive 5-year medium-term plans beginning from 2008.
- In Malaysia, development planning covers the long, medium, and short-term. Vision 2020 was launched in Malaysia in 1991 to cover a 30-year period. It spells out Malaysia's national development aspirations over the long-term, and provides a focus for their national development effort. 5-year medium-term development plans are formulated to make the long term Vision 2020 functional; short-term planning is achieved through annual budgets.
- Zambia has a long-term national planning instrument entitled Vision 2030. Medium-term national development plans have been implemented to actualize the Vision - the current one is the sixth National Development Plan, 2011-2015.

The CRC observed that strategic national development plans are almost always long-term visions, although medium-term and short-term plans may be developed from these long-term visions.

The CRC additionally observes that long-term strategic national development plans enhance systematic growth and continuity in development, which, overall have a huge potential to deliver for citizens improved livelihoods.

Finally, the CRC noted that Sierra Leone has developed long-term perspectives such as Vision 2025 and Vision 2030, as well as different short to medium-term plans. The continuity of one vision or plan across different political party rules has been questionable, and has called for the need to have a semi-

autonomous institutional anchor driven by professionals to ensure the effective operationalization and implementation of a national development plan.

National Development Planning Commission

The CRC therefore recommends that the Constitution should be amended to include a provision on the establishment of a National Development Planning Commission (NDPC) to coordinate the preparation, implementation and monitoring of national development plans that would transition from one political regime to the other in Sierra Leone.

The CRC recommends that all national development plans, including medium to short term plans at national, regional, district and community levels, should be comprehensive and strategic in nature and enforceable at the instance of any person or institution covered by those plans.

All development planning bodies in the public sector should be merged into a single national integrated NDPC.

NDPC should undertake research to inform development policy planning and to achieve the desired policy, programme and project objectives.

There should be a strong national monitoring and evaluation function within the NDPC to coordinate monitoring of public projects, and undertake impact evaluation of those projects.

National development reporting and follow-ups will be rationalized and coordinated by the NDPC. In addition, MDAs will be required to forward timely periodic/annual sector progress reports to the NDPC on relevant sector programme provisions within the National Plan, and these sector reports will be a condition for MDAs' access to subsequent disbursements from their allocation from the Consolidated Fund.

There should be a national monitoring and evaluation plan for government development programmes, linked to sectoral, regional and district monitoring and evaluation plans.

A monitoring and evaluation policy should be developed to guide operations of all development actors whose activities bear on delivery of public goods and services.

Each government Ministry, Department and Agency, and local council shall have a policy, research and monitoring department that will be directly linked to or anchored on the national development policy research, monitoring and evaluation facility established in the NDPC.

Regional Development Planning Offices should be revived to coordinate and fast-track development planning and reporting in districts falling under each of the four regions of the country: North, South, East and West. In this regard, district/local councils will be required to work closely with the Regional Development Planning Offices in district and regional planning processes.

The Government will strengthen Sierra Leone's International Benchmarks System within the overall national development planning, monitoring and evaluation coordination arrangement, to consolidate and rationalize the reporting and follow-up on all international benchmarks on which Sierra Leone's development is assessed. This system will be situated within the NDPC.

The NDPC will be an autonomous institution, and will report to Parliament and the Office of the President.

Scope of the National Development Plan

National development planning will have a focus on a broad range of socio-economic and other development issues, including:

- a. Promoting macro-economic development in the country.
- b. Creating jobs by: setting up industries; promoting the private sector; providing incentives to boost local and indigenous businesses; and developing small and medium enterprises.
- c. Supporting economic diversification.
- d. Transforming the informal sector into formal sectors and broadening the tax net to cover their activities.
- e. Improving public financial management reforms and general governance of development, ensuring effective service delivery.
- f. Guiding development and planning of lands and natural resources through the development of a land use policy to address the ownership of land and streamline the process of acquiring land, especially for developmental purposes.
- g. Guiding efforts aimed at building resilient villages, towns and cities, especially with regard to emerging environmental threats, requiring strong guidelines on implementation of housing and other land use projects.
- h. Processing natural resources to add value to them in order to maximise revenue for the country through the export of semi-processed and finished products.
- i. Ensuring management and exploitation of natural resources that benefit communities; supporting economic diversification; and promoting the principle of equitable and sustainable use of natural resources including being mindful of inter-generational justice issues.
- j. Harnessing the potential of the agricultural and fisheries sectors, including aquaculture.

- k. Promoting cash crop development, including traditional crops (cocoa and coffee) and emerging crops such as oil palm, cashew so as to create more jobs and reduce poverty.
- l. Ensuring food self-sufficiency and security in staple crop such as rice; developing its export potential, as well as cassava with wide range of uses and export potential; and development of other food crops.
- m. Providing incentives for farmers including risk guarantees and other types of support such as boosting rural education, health and other services.
- n. Promoting agricultural trade fairs.

Following nationwide public consultations, the CRC recommends the full coverage in national development plans of issues relating to: educational development; supporting sector planning; strengthening healthcare system planning; energy, road and transport development planning; tourism; information, communication and technology; security and justice system; and planning relating to all other socio-economic, cultural, environmental and general governance issues.

Process of Developing a National Development Plan

Findings and Observations

The CRC observed that the majority of Sierra Leoneans want the process of devising national plans to serve as an opportunity for them to express their views on the development agenda of the country. This is because for a national development plan to succeed, it must be owned and cherished by the people, and so the plans must be scripted with the full participation of the people. This is best done through a decentralised, bottom-up approach, which accords with international best practice. For example, in Botswana (as reported in the Constitutional Review Process of Ghana), the Vision 2016 Council, which is responsible for the preparation of their National Development Plan, has to work with key stakeholder sectors to generate a common understanding of their role in creating progress towards the national Vision.

The key stakeholder sectors must be broken down into smaller groups. The implementation strategy is a bottom-up affair, with the key sector strategic plans working to achieve the goals. The Council also has to collaborate with each of the sectors, separately and together, so that they build and then implement strategies which will drive the nation towards achieving the Vision 2016 goals in each of the Pillars identified. Based on the Strategic Plan for 2009-16, each sector will annually build and implement an Operational Plan for that year.

The Council is tasked to commission the translation of materials relating to the Vision into Setswana (the major local language) and other local languages. The Council also relies largely on the public sector, private sector and civil society as its key strategic partners.

These processes are not new in Sierra Leone, but there is a need to establish a better institutional coordination mechanism, strengthen existing participatory processes, improve coordination among actors, and ensure a proper link between national, sectoral, regional and district plans and the budget. This will address regional disparities in the planning and development process.

16.3 Recommendations

The CRC recommends that planning be conducted within a national decentralization system, with the NDPC to be mandated to prescribe the format for preparing regional, district and sectoral development plans. All district development plans should be submitted to the NDPC, through the Regional Development Planning Offices.

When a district development plan has been approved by the NDPC, a district/local council may seek the permission of the NDPC to modify the approved plan; and the NDPC shall sign off on all regional, district/local council and sectoral plans submitted for budget allocation to the Ministry of Finance and Economic Development in light of the need to ensure that all sub-national plans are aligned to the national plans.

The NDPC should be the national coordinating body of the decentralised national development planning system. This system should be made up of District Planning Authorities (district or local councils), Regional Planning Committees facilitated by Regional Development Planning Offices, sector Ministries, Departments and Agencies, and the NDPC.

Participatory methodologies shall be used at local level to collate the views of communities in the process of developing district plans. Public hearings are mandated for proposed district plans, and reports of the hearings should be attached to the proposed plans when they are forwarded for collation.

A government decentralization system will assure that direct grassroots participation is a critical ingredient for the integrity, ownership and acceptability of the plans.

Decentralisation will ensure that the peculiar local resources, needs and concerns of ordinary Sierra Leoneans are factored into the plans.

A decentralised process will allow the participation of traditional authorities who operate at local level and who are critical stakeholders in any developmental endeavour.

Decentralising the process will also increase the likelihood of the plans, serving as an instrument for comprehensive development and for bridging the development gaps in Sierra Leone, having the advantage of bringing out the various developmental disparities through the localised processes of developing the plans.

The CRC also recommends that the Constitution be amended to require Parliamentary approval of all future National Plans by a two-thirds majority in Parliament before it becomes operational. The Committee further recommends that once approved by Parliament, the Plan and any amendments to it, be widely disseminated.

Implementation of the National Development Plan

All District Planning Authorities are mandated to coordinate planning processes and to develop and implement plans in their respective districts. Also, government Ministries and sector agencies can develop plans of their own, but these plans must accord with broad national development goals.

It was recommended that the proposed NDPC should be responsible for coordinating the implementation of national development plans across the country because it is best placed to do so.

The role of the NDPC is to coordinate the planning process rather than implementation; ensuring, guiding, and enabling public institutions to implement plans through providing strategic direction and advice. In many countries, where national development plans and visions have been developed, the implementations of these plans have not been the function of the body that developed them. However, the mechanisms in some countries are such that there is strong interface between the agency that develops the plans and the agencies that are charged with implementing them. In Malaysia, there is a National Action Council which sees to the implementation of the Plans developed by the National Planning Council. The connection between the Plans and the implementing agency is the vice President who chairs both the National Planning Council and the National Action Council.

The CRC strongly recommends the need to guide all development processes, from planning to implementation, to be people-centred, as this urges all governments to ensure timely completion of projects.

16.4 Recommendations

The CRC recommends that the NDPC should only develop national plans, and facilitate and coordinate their implementation, monitoring and evaluation.

The CRC recommends that the MDAs be primarily responsible for implementing the National Development Plan.

The CRC recommends that any policy, legislation, administrative action, programme, project, initiative, budget and financial disbursements which are not consistent with the National Development Plan should be considered unconstitutional.

Furthermore, the CRC recommends that the Plan should be the basis for the development of all the operational plans and annual budget of MDAs. Effectively, the fiscal year will become the development year as well, since the budget becomes more or less the plan in action.

Parliament should play significant role in the preparation, implementation and monitoring of the National Development Plan, especially in ensuring that any policy, legislation, administrative action, programme, project, initiative, budget and financial disbursements are consistent with the National Development Plan.

Sustainability of the National Development Plan

Concerns were expressed during consultations that the Plan may be changed too easily.

The CRC recognized that there may be a need to permit changes to the Plan so that it can remain relevant to the changing development needs of the nation. However, it is important to ensure that the Plan is not changed too easily. This is necessary to ensure that the Plan is indeed binding and long-term, and would avoid the problem of development projects that are not completed. It would also guard against extra-budgetary provisions that are inconsistent with a planned and endorsed national budget linked to the National Development Plan. Too much flexibility in the Plan may derail it.

The CRC accordingly finds that the procedure for changing the Plan must be well-thought out in order to ensure a balance between stability and continuity and the need to adapt the Plan to changes in the environment. The Plan must, therefore, contain in-built mechanisms that will permit changes and amendments where necessary.

The CRC finds that changes to the Plan must be spearheaded by the NDPC, which is charged with developing the Plan, and must involve broad consultations with stakeholders. This will ensure that the body of experts that develop and monitors the implementation of the Plan will be the same body that will propose amendments to it.

The CRC recognised that only Parliament should have the power to effect amendments to the Plan. Given that the Plan is generated in a bottom-up fashion, it is important that the representatives of the people be active participants in the review of the Plan. Any proposed amendment by the NDPC must be supported by two-thirds of all members of Parliament to ensure that there is bi-partisan or multi-partisan consensus on any amendments to the Plan.

The CRC also recognised that the main provisions of the Plan, being long-term, will hardly be subject to change. What may change are the short-term and medium-term plans that draw from the long-term plan and the strategies for achieving the Plan.

The CRC observes from submissions that proposed changes to the Plan be effected by the NDPC with the prior approval of Parliament, and therefore recommends that:

- a. Any proposal to amend the plan should require the approval of Parliament.
- b. Parliament will approve proposals for changes to the Plan with a vote of two-thirds majority of all Members of Parliament.
- c. All amendments and adaptations to the Plan should be published, and Parliament should be notified of such publication.

16.5 Monitoring and Evaluation of the National Development Plan

Monitoring and Evaluation (M&E) is likely to ensure the successful implementation of the Plan. The NDPC should be mandated to monitor and evaluate the implementation of the Plan, and the capacity of the NDPC should be built to carry out not only development policy research and planning and coordination of plan implementation, but also monitoring and evaluation of the plan, with a focus on highly prioritized, strategic and flagship project monitoring and impact analysis. This must be provided for in the Constitution. As the facilitator of the development of the Plan, the NDPC, together with relevant institutions, should develop the necessary performance indicators and guidelines for effective monitoring and evaluation.

In addition, independent monitoring and evaluation of the implementation of the Plan should also be part of the process so as to ensure greater objectivity. The Monitoring and Evaluation mechanism should include the preparation and presentation to Parliament of quarterly progress reports by the NDPC.

The CRC therefore recommends that the NDPC should submit annual monitoring and evaluation reports to the President and Parliament.

The CRC also recommends that the NDPC should set up an effective Development Policy Research Unit, and that in the performance of its functions, should have regard to the Directive Principles of State Policy in Chapter II of the 1991 Constitution.

Composition and Organizational Structure of the NDPC

The dimension to the issue is how to compose an NDPC which has the requisite technical capacities for realizing its mandate while also giving representation to the key institutions that are indispensable for the acceptability and implementation of the Plan.

Various proposals were received on the composition of the NDPC, as follows:

- 1) The NDPC should be a purely technical body composed solely of persons with the requisite technical capacities and knowledge in development planning and similar fields.
- 2) The NDPC should be composed of representatives of different interest groups such as farmers, teachers, lawyers, engineers, and other professional bodies. This will make the NDPC broadly representative of the society and ensure that the interests of all segments of the society are taken into account in the design and monitoring of the Plan.
- 3) The NDPC should include representatives of government institutions such as the Statistical Service, the Central Bank and the Ministry of Finance because these state institutions play vital roles in data gathering and processing, fiscal policy planning, and public financial management. Their inclusion will also ensure that there is government participation in the design and monitoring of the Plan.
- 4) The NDPC should include representation from local, district and regional levels. This will ensure that the NDPC is better able to use the semi-autonomous local government agencies to monitor the implementation of the Plan. Local government institutions are also better able to generate the necessary popular local level participation in the development of district plans and in monitoring the implementation of the Plan at that level.
- 5) A Governing Council should be established for the NDPC, chaired by the President so that the NDPC is given the highest political attention.
- 6) The NDPC should be decentralised so that the units can take greater account of peculiar local development needs in the design and monitoring of the Plan.
- 7) The NDPC should be serviced by a technical secretariat.

The organizational structure of the NDPC should have technical support facilities. As documented in the recently concluded Constitutional Review Report of Ghana, in Uganda, there is a Secretariat responsible for the day-to-day administration of the Authority which is headed by an Executive Director. In Malaysia, development planning is undertaken by the Economic Planning Unit of the Prime Minister's Office and is headed by a Director General. In Kenya, there is a Ministry of State for Planning, National Development and Vision 2030 under the Office of the Prime Minister and it is headed by a Minister of State, and there is a Vision Delivery Secretariat which provides leadership for the realization of Vision 2030. The Secretariat is managed by a Director-General under the overall guidance of the Vision 2030 Delivery Board, which plays a policy-making and advisory role.

The CRC observed that international best practice requires professionals for effective development planning and monitoring.

16.6 Recommendations

The CRC recommends that NPDC shall have a Governing Council, chaired by the President; in his absence, by the Vice-President or any other suitably qualified person. The Council should include the Minister of Finance, the Bank Governor, the Statistician General, and other suitable members to be appointed from the public and private sector, civil society, and academia and research institutions.

The CRC also recommends that the NDPC should have a Secretariat comprising technocrats and headed by a Director-General. Only those with knowledge relevant to development, economic, social and special planning should constitute the technical arm of the NDPC.

Further, the CRC recommends that the NPCD should have the following Directorates: a Development Policy Research Directorate; a Development Plan and Programme Formulation Directorate; a Monitoring and Evaluation Coordination Directorate; and an Information and Communication Directorate. There should also be a support division to deal with administrative, financial and logistical matters.

The CRC further recommends that the NDPC should report to the President, with Parliament playing central role in the plan formulation process and in the approval of and authorization of changes to the Plan.

16.7 Appointment of Members and Staff of the NDPC Secretariat

Based on various submissions and other country reviews, the CRC recommends the following:

- The Minister of Finance, the Central Bank Governor and the Statistician General should each have a permanent position on the Governing Council of the NDPC, while all other members are to be appointed by the President and approved by Parliament.
- The Secretariat of the NDPC should be headed by a Director-General appointed by the Office of the President following a recruitment process that involves the Public Service Commission and the Governing Council. The Director-General will be answerable to the NDPC Governing Council, chaired by the President.
- All other members of the NDPC Secretariat should be appointed by the NDPC following a recruitment process that involves the Public Service Commission and the Deputy-Director-General. It is essential for the integrity and acceptability of the work of the NDPC that its members and personnel have technical competence, independence and autonomy.

Tenure of Members of the Governing Council

Based on various submissions and other country reviews, the CRC recommends the following:

- Members of the Governing Council of the NDPC (other than the Minister of Finance, Governor of the Central Bank and the Statistician General) should serve on the Council for a non-renewable term of five years.
- The procedure for removing a member of the Governing Council of the NDPC should be similar to the procedure for removing a member of other constitutional bodies.
- The term of office of the Director-General should be six years, with the possibility of renewal, and subject to approval by Parliament.

Functions of the National Development Planning Commission

Based on various submissions and other country reviews, the CRC recommends the following:

- The NDPC should be an autonomous constitutional body; every President and government should be bound to comply with the terms of the long-term national development plan developed by the NDPC and approved by Parliament.
- The NDPC should be mandated to develop a comprehensive, strategic, multi-year, long-term national development plan, with short- and medium-term plans built into it, from which programmes, projects, activities and budgets will be drawn.
- The NDPC should be empowered to undertake and commission development research to inform national development planning process.
- The NDPC should coordinate the implementation of the Plan across MDAs and the country.
- The NDPC must be empowered to monitor and evaluate the implementation of the Plan and to institute corrective action.
- The NDPC should propose amendments to the Plan to the NDPC Governing Council, and the approval of its proposal should be endorsed by Parliament.
- The NDPC should present annual monitoring and evaluation reports to the NDPC Governing Council, the President, and Parliament.
- The NDPC should coordinate the preparation of 30-year long-term plan from which 5-year and short-term plans will be drawn.

16.8 Funding of the National Development Planning Commission

The CRC noted the experiences of funding constitutional bodies in other countries and the concerns raised in submissions about the independence and stability of the proposed NDPC in Sierra Leone with regard to the source of funding.

In other countries, planning bodies have been funded operationally and administratively by allocations from Parliament, normally in the annual appropriations, while receiving funds from other sources approved by the Minister of Finance.

The CRC noted the concern in other countries that financial dependence of key constitutional bodies leads to functional and operational dependence of that body; that an almost complete reliance on the Executive and Parliament for funding carries the risk of being starved of funds. Thus, it has been argued that constitutional bodies, such as the proposed NDPC can only be truly independent, functional, and effective when it is financially independent and not subject to budgetary shortfalls.

Suggestions were made that a separate fund should be set up to finance the work of the NDPC in order to guarantee its financial independence, and, by extension, its functional and operational independence.

The CRC therefore concluded that the NDPC must have dedicated funding so that it can be independent in its operations. This can be achieved by establishing a special fund for all independent constitutional bodies.

16.9 Recommendation

The CRC therefore recommends that a robust financing mechanism be discussed, agreed, and legislated, involving the MoFED and the Office of the President to ensure that the NDPC receives sustained and uninterrupted financing for delivery of its mandate. The NDPC will be permitted to mobilize external resources through the NDPC Governing Council.

Conditions of Service of Members and Staff of the NDPC

The CRC recommends that the conditions of service of technical members of the NDPC, their salaries, allowances and other benefits be determined consistent with the functions expected of an independent constitutional body required to exercise professionalism and expertise.

The Governing Council, in consultation with stakeholders, should determine conditions of service, salaries, allowances and other benefits; allowances of the members of the Governing Council should be endorsed by Parliament in consultation with the Minister of Finance.

17 CHAPTER SEVENTEEN

COMMISSIONS AND INDEPENDENT OFFICES

17.1 Introduction

In democracies, it is imperative to embed important state institutions in the constitution to make them more effective and efficient in executing their mandate.

In Sierra Leone, commissions are established by Acts of Parliament which means that they can be easily dissolved by simple legislation. In order to make the work of commissions more effective, the Constitutional Review Committee (CRC) recognises that it will be important to incorporate the mandate of commissions in the revised Constitution.

The overwhelming recommendation from nationwide consultations, position papers, experts and stakeholders was that commissions should be included in the revised constitution in order to: clarify their composition, functions and powers; make provision for the appointment and removal from office of senior personnel within commissions; and guarantee their financial autonomy.

After the Civil War, Sierra Leone established several commissions and independent offices based on recommendations made by the Truth and Reconciliation Commission and international commitments. However, many of these institutions are not referred to in the 1991 Constitution. The CRC looked into this matter in depth and acknowledged the suggestions received from independent institutions regarding the need to safeguard their mandate by including it in the revised Constitution.

Commissions such as the Electoral Commissions, Human Rights Commissions, National Land Commissions and Gender Commissions are captured in the constitutions of several countries, and the CRC took special note of the constitutions of Kenya and Ghana in devising recommendations for the proposed new chapter on commissions and independent offices.

Current Context

The CRC reviewed the 1991 Constitution and recognised that the provisions relating to the powers and procedures of Commissions are contained in different parts of the Constitution.

For example, in Part IV of Chapter X of the 1991 Constitution, section 162 of the 1991 Constitution deals with the powers of Commissions in relation to pensions and gratuities. Similarly, section 163 sets out the powers and procedures of Commissions, and section 164 makes provision to protect Commissions from legal proceedings.

In Part I of Chapter X of the 1991 Constitution, section 151 established the Public Service Commission; in Part VI of Chapter VII of the 1991 Constitution, section 140 established the Judicial

and Legal Service Commission; and Chapter VIII of the 1991 Constitution established the office of Ombudsman.

17.2 Recommendation

The CRC has identified the main Commissions and independent offices currently established in Sierra Leone, and recommends that they should all be listed in a new chapter of the revised Constitution.

The CRC also recommends that their objectives, independence and funding arrangements should be set out in the new chapter, together with details of their composition, procedure for the appointment to and removal from office, and also their term of office; provision should also be made as to their functions and powers.

The CRC further recommends that all Commissions and independent offices should be corporate bodies that are obliged to submit annual reports to Parliament.

As regards the existing provision made in the 1991 Constitution as regards procedural matters and specific Commissions, the CRC recommends that those provisions should be merged into the new chapter so that all Commissions and independent offices are referred to in one inclusive chapter.

The CRC therefore recommends that the new chapter of the revised Constitution on commissions and independent offices should read as follows:

“Chapter

Commissions and Independent Offices

1. (1) This Chapter applies to the Commissions specified in this Chapter. The Commissions are-

- (a) Anti-Corruption Commission (ACC)
- (b) National Electoral Commission (NEC)
- (c) Human Rights Commission of Sierra Leone (HRC-SL)
- (d) National Commission for Social Action (NaCSA)
- (e) Environmental Protection Agency
- (f) National Social Security and Insurance Trust (NASSIT)
- (g) National Commission for Democracy (NCD)
- (h) National Minerals Agency (NMA)
- (i) National Commission for Privatization

- (j) Independent Media Commission
- (k) Any other Commission established under this Constitution.

2. The Independent Offices are-

- (a) Audit Service Sierra Leone
- (b) National Revenue Authority (NRA)
- (c) Statistics Sierra Leone
- (d) Any other Independent Office established under this Constitution.

Objectives, authority and funding of Commissions and Independent Offices

3. The objectives of the Commissions and Independent Offices are to-

- (a) Protect the sovereignty of the people of Sierra Leone
- (b) Secure the observance by all State organs of democratic values and principles; and
- (c) Promote constitutionalism.

4. The Commissions and the holders of Independent Offices-

- (a) are subject only to this Constitution and the law; and
- (b) are independent and not subject to direction or control by any person or authority.
- (c) Parliament shall allocate adequate funds to enable each commission and independent office to perform its functions and the budget of each commission and independent office shall be a separate vote.

Composition, appointment and terms of office

5. (1) Each Commission shall consist of at least three, but not more than nine, members.

(2) The Chairperson and each member of a Commission, and the holder of an Independent Office, shall be-

- (a) identified and recommended for appointment in a manner prescribed by this constitution
- (b) approved by Parliament; and
- (c) appointed by the President.

- (3) To be appointed, a person shall have the specific qualifications required by this Constitution or national legislation.
- (4) Appointments to Commissions and Independent Offices shall take into account the national values mentioned in section 6(1), and the principle that the composition of the Commissions and independent Offices, taken as a whole, shall reflect the regional and ethnic diversity of the people of Sierra Leone.
- (5) A member of a Commission may serve on a part-time basis.
- (6) A member of a Commission, or the holder of an Independent Office-
- (a) unless ex officio, shall be appointed for a single term of six years and is not eligible for re-appointment; and
 - (b) unless ex officio or part-time, shall not hold any other office or employment for profit, whether public or private.
- (7) The remuneration and benefits payable to or in respect of a Commissioner or the holder of an Independent Office shall be a charge on the Consolidated Fund.
- (8) The remuneration and benefits payable to, or in respect of, a Commissioner or the holder of an Independent Office shall not be varied to the disadvantage of that Commissioner or holder of an Independent Office.
- (9) A member of a Commission, or the holder of an Independent Office, is not liable for anything done in good faith in the performance of a function of office.
- (10) The members of a Commission shall elect a Vice-Chairperson from among themselves-
- (a) at the first sitting of the Commission; and
 - (b) whenever it is necessary to fill a vacancy in the office of the Vice-Chairperson.
- (11) The Chairperson and Vice-Chairperson of a Commission shall not be of the same gender.
- (12) There shall be a Secretary to each Commission who shall be-
- (a) appointed by the Commission; and
 - (b) the Chief Executive Officer of the Commission.

Removal from office

- 6.** A member of a Commission (other than an ex officio member), or the holder of an Independent Office, may be removed from office only for-
- (a) serious violation of this Constitution or any other law.

- (b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office;
- (d) incompetence; or
- (e) bankruptcy.

General functions and powers

7. (1) Each Commission, and each holder of an Independent Office-

- (a) may conduct investigations on its own initiative or on a complaint made by a member of the public;
- (b) has the powers necessary for conciliation, mediation and negotiation;
- (c) shall recruit its own staff; and
- (d) may perform any functions and exercise any powers prescribed by legislation, in addition to the functions and powers conferred by this Constitution.

(2) The following Commissions and Independent Offices have the power to issue a summons to a witness to assist for the purposes of its investigations-

- (a) the Sierra Leone Human Rights Commission;
- (b) the Judicial Service Commission;
- (c) the National Land Commission; and
- (d) the Auditor-General.

Incorporation of Commissions and Independent Offices

8. Each Commission and each Independent Office-

- (a) is a body corporate with perpetual succession and a seal; and
- (b) is capable of suing and being sued in its corporate name.

Reporting by Commissions and Independent Offices

9. (1) As soon as practicable after the end of each financial year, each Commission, and each holder of an Independent Office, shall submit a report to Parliament.

(2) At any time, the Sierra Leone Parliament may require a Commission or holder of an Independent Office to submit a report on a particular issue.

(3) Every report required from a Commission or holder of an Independent Office under this section shall be published and publicised.

PART THREE

**18 SUMMARY OF RECOMMENDATIONS OF THE CONSTITUTIONAL
REVIEW COMMITTEE**

**CRC RECOMMENDS A PREAMBLE FOR THE REVISED CONSTITUTION TO
READ AS FOLLOWS:**

“We the people of Sierra Leone,

Recognise the brutal wars, injustices and agony of the past;

Honour those who have died in defense of the unity and freedom of our land;

Respect those who have worked tirelessly to build and develop the country and

Resolve never again to fight and destroy our motherland.

We therefore adopt this Constitution as the Supreme law of the land so as to heal the pains of our brutal past and establish a society that is based on democratic values, the rule of law, peace and justice, religious tolerance, social cohesion, unity in diversity and fundamental rights and freedoms.

No other law should conflict with it; nor should any person or institution do anything to violate it.

We do this for posterity and for the land that we love. May God bless our Sierra Leone.

CHAPTER TWO**FUNDAMENTAL PRINCIPLES OF STATE POLICY**

1. Section 5 subsection (1) is amended to include “human dignity”

“The Republic of Sierra Leone shall be a State based on the principles of Human Dignity, Equality, Freedom, Democracy and Justice.”

2. Section 5(2) (b) is amended to make the matter of national security of the country a collective responsibility.

“The security, peace and welfare of the people of Sierra Leone shall be the primary purpose and responsibility of Government and it shall be the duty of all Public Officers and all representatives of the people to protect and safeguard the rights and freedoms of the people.”

Section 6(1) is amended as follows

“The national values of Sierra Leone shall be Patriotism, Participation, Human Dignity, Equality, Unity, Freedom and Justice.”

3. Section 6(2) is amended to replace the word “discourage” with “prohibit”.

“Accordingly, the State shall promote national integration and unity and prohibit discrimination on the grounds of place of origin, circumstance of birth, sex, religion, status, ethnic or linguistic association or ties.”

4. Section 6(5) is amended to read as follows:

“(5) The State shall take all steps to eradicate all corrupt practices and the abuse of power.

All organs of Government, authorities and public officers shall not-

(a) act in any way that is inconsistent with this Constitution or their office; and

(b) expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests.”

5. Section 7 is amended to read as follows:

“a comprehensive chapter on lands, natural resources and the environment in the revised Constitution to mainstream all these important sectors to maximise the benefits for the people of Sierra Leone.

A) a chapter on a national planning and development to ensure effective coordination between ministries and institutions to develop the long-term national development plan in the AfP.

6. Section 8(1) is amended to read as follows:-.

“The social order of the state shall be founded on the ideals of human dignity, freedom, equality and justice.”

7. Section 8(3) (c) and (d) are amended to read as follows:-

“(3) The State shall direct its policy towards ensuring that—

- (a) every citizen, without discrimination on any grounds whatsoever, shall have the opportunity for securing adequate means of livelihood as well as adequate opportunities to secure suitable employment;**
- (b) conditions of service and work are fair, just and humane and that there are adequate facilities for leisure and for social, religious and cultural life;**
- (c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused, and in particular that special provisions be made for working women with children;**
- (d) there are adequate medical and health facilities for all persons;**
- (e) there is equal pay for equal work without discrimination on account of sex, and that adequate and satisfactory remuneration is paid to all persons in employment; and**
- (f) the care and welfare of the aged, young and disabled shall be actively promoted and safeguarded”.**

8. Section 8 (3)(f) is amended to replace the term “disabled” with “persons with disability” as being a more appropriate and modern phrase.

“the care and welfare of the aged, young and persons with disability shall be actively promoted and safeguarded”.

9. Section 8(3)(g) is amended to read as follows:

“The State shall provide appropriate social security and social assistance to persons who are unable to support themselves and their dependants and parliament shall enact legislation to that effect.”

10. Section 9(1) and 9(2) are amended to delete the phrase “as and when practicable”

9. (1) The Government shall direct its policy towards ensuring that there are equal rights and adequate educational opportunities for all citizens at all levels by—

- (a) ensuring that every citizen is given the opportunity to be educated to the best of his/her ability, aptitude and inclination by providing educational facilities at all levels and aspects of education such as primary, secondary, vocational, technical, college, and university;**
- (b) safeguarding the rights of vulnerable groups, such as children, women and peoples with disability in securing educational facilities; and**
- (c) Providing the necessary structures, finance and supportive facilities for education.**

(2) The Government shall strive to eradicate illiteracy, and to this end, shall direct its educational policy towards achieving—

- (a) free adult literacy programmes;**
- (b) free compulsory basic education at primary and junior secondary school levels;**
- (c) And free senior secondary education.**

Section 9(3) is amended to read as follows:

- (3) The Government shall promote the learning of indigenous languages and the study and application of modern sciences, foreign languages, technology, human rights, education, conflict management and commerce”.**

11. Section 12 is amended to read as follows:-

Enhancement of National Culture – Section 12

“The Government shall—

- (a) promote Sierra Leonean culture such as music, art, dance, dress, science, philosophy, education and traditional medicine which is compatible with national development;**
- (b) recognize traditional Sierra Leonean institutions compatible with national development;**
- (c) protect and enhance the cultures of Sierra Leone; and**
- (d) Facilitate the provision of funds for the development of culture in Sierra Leone.”**

12. Section 13 is amended to add “National Currency” and “National Pledge” and also adding two new subsections (k) and (l)

“Every citizen shall—

(a) abide by this Constitution, respect its ideals and its institutions, the National Flag, the National Anthem, National Currency, National pledge and authorities and offices established or constituted under this Constitution or any other law;

(k) Satisfy all tax obligations

(l) Protect and safeguard the environment

13. Section 14 is amended to make Fundamental Principles of State Policy justiciable.

The proposed wording of section 14 should therefore read as follows:-

“The principles contained in this Chapter are fundamental in the governance of the State.”

CHAPTER THREE**THE RECOGNITION, PROTECTION AND PROMOTION OF HUMAN RIGHTS AND
FREEDOMS OF THE INDIVIDUAL****14. The Chapter Title is amended to be renamed****Option I**

“The Recognition, Protection, and Promotion of Human Rights and Freedoms of the Individual”

Or

Option II:

“The Bill of Rights”

15. 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-

- (a) life, liberty, security of person, the enjoyment of property, the protection of the law, the protection of the environment, education, health, food, dignity and shelter.**
- (b) freedom of conscience, of expression and of assembly and association;**
- (c) respect for private and family life, and**
- (d) protection from deprivation of property without compensation;**

the subsequent provisions of this chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

16. Section 16 is amended based on these divergent opinions, to abolish the death penalty**Option I:-**

“Every person has the right to life. No person shall be deprived of his/her life.”

Or

Option II:-**“Protection of right to life****Section 16 of the 1991 Constitution states:**

16. (1) No person shall be deprived of his/her life intentionally except in execution of the sentence of a court in respect of a criminal offence under the laws of Sierra Leone, of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his/her life in contravention of this section if he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case, that is to say—

- (a) for the defence of any person from unlawful violence or for the defence of property; or**
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
or**
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or**
- (d) in order to prevent the commission by that person of a criminal offence; or**
- (e) if she/he dies as a result of a lawful act of war.”**

17. Section 17 is amended to ensure that a person unlawfully detained should be entitled to a public apology as well as compensation from the appropriate public authority or person be specified by law. It also suggests adding a new subsection (5).

“No person shall be deprived of his personal liberty except as may be authorised by law in any of the following cases, that is to say —

(g) in the case of a person who has not attained the age of eighteen years, for the purpose of his/her education or welfare;”

Section 17 (3), (4) and (5):

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

- a. within seven days from the date of arrest in cases of capital offences, offences carrying life imprisonment and economic and environmental offences; and**
- b. within forty eight hours of his/her arrest in case of other offences;**

and if any person arrested or detained in such a case as is mentioned in the said

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

(4) Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person.

(5) The appropriate authority or person referred to in subsection 4 means an appropriate authority or person specified by law

18. Section 18(3) (a) amended to add “National Security” before “Defence”

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

- a. which is reasonably required in the interests of national security, defence, public safety, public order, public morality, public health or the conservation of the natural resources, such as mineral, marine, forest and other resources of Sierra Leone, except in so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;”**

The proviso of section 18 is amended to read as follows:

“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.”

19. Section 20 is amended to delete section 20(2) because it is obsolete.

“20. No person shall be subject to any form of torture or any punishment or other treatment which is inhuman or degrading.”

20. Section 21(1) (a) and section 21 (3) should be amended to read as follows:-

“(a) the taking of possession or acquisition is necessary in the interests of national security, defence, public safety, public order, public morality, public health, town and country planning, the development or utilization of any property in such a manner as to promote the public benefit or the public welfare of citizens of Sierra Leone”

“(3) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property or the compulsory acquisition in the public interest in or right over property, where that

property, interest or right is held by a body corporate which is established directly by any law and in which no monies have been invested other than monies provided by Parliament.”

21. Section 22 (2) (a), Section 22 (2) (e) and a new paragraph (f) is amended to read as follows:-

“(a) in the interest of national security, defence, public safety, public order, public morality, public health, town and country planning, or the development or utilization of any property in such a manner as to promote the public benefit;”

22. Section 22(2) (e) should therefore read as follows:-

“(e) for the purpose of affording such special care and assistance as are necessary for the health, safety, development and well-being of women, children and young persons, the aged and persons with disability”;

“(f) for the protection of home, communications, property and privacy, Parliament shall enact legislation to that effect.”

23. Section 23 is amended to read as follows:

“(3) All proceedings of every court and proceedings relating to the determination of the existence or the extent of civil rights or obligations before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public:

Provided that the court or other authority may, to such an extent as it may consider necessary or expedient in circumstances where publicity would prejudice the interest of justice or interlocutory civil proceedings or to such extent as it may be empowered or required by law so to do in the interest of national security, defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings, exclude from its proceedings, persons other than the parties thereto and their legal representatives.”

24. Section 23(10) should be deleted, and a new subsection should be added, dealing with the right to remain silent.

“Everyone who is detained, including every sentenced prisoner and detained person awaiting trial, has the right:

(a) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and

(b) to communicate with, and be visited by, that person's

(i) spouse or partner;

- (ii) next of kin;**
- (iii) chosen religious counsellor; and**
- (iv) chosen medical practitioner**
- (v) legal counsel.”**

25. Section 24 is amended to read as follows:

“(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes a provision which is reasonably required—

(a) in the interest of national security, defence, public safety, public order, public morality or public health;”

26. Section 25 is amended to ensure Freedom of Expression and the Media

“25. (1) Except with his/her own consent, no person shall be hindered in the enjoyment of his freedom of expression.

(2) Expression includes the freedom to hold opinions and to receive and impart ideas and information without interference with his/her correspondence.”

27. Section 26 is amended to ensure Freedom of Assembly and Association

26. (1) (a) Every Trade Union, employers’ organizations and employers has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining.

(b) National legislation may recognize union security of tenure contained in collective agreements.

28. Section 27 is amended with a new section that expressly prohibits discrimination.

(1) Every person is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes full and equal enjoyment of all rights and fundamental freedoms. Women and men have the rights to equal treatments including the rights to equal opportunities in political, economic, cultural and social spheres.

(3) A person may not be discriminated against on the grounds of race, colour, ethnic origin, religion, creed, social or economic status.

(4) For the purposes of this section discriminates means to give different treatment to different persons attributable or mainly to their respective description by race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

- (5) Neither the state nor any person shall discriminate against any other on any of the grounds specified in section 5.**
- (6) The state shall take legislative and other measures to implement the principle that not more than two thirds of the members of elective or appointive bodies shall be of the same gender**
- (7) Nothing in this section shall prevent Parliament from enacting laws that are necessary to provide for the implementation of policies and programmes aimed at addressing social, economic, and educational imbalances in the Sierra Leonean society.”**

29. Section 28 to stay as is in the 1991 Constitution:

“28. (1) Subject to the provisions of subsection (4), if any person alleges that any of the provisions of sections 16 to 27 (inclusive) has been, is being or is likely to be contravened in relation to him by any person (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person, (or that other person), may apply by motion to the Supreme Court for redress.

(4) The Supreme Court shall have original jurisdiction—

- (e) to hear and determine any application made by any person in pursuance of subsection (1); and**
- (f) to determine any question arising in the case of any person which is referred to in pursuance of subsection (3), and may make such order, issue such writs, and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of any of the provisions of the said sections 16 to 27 (inclusive) to the protection of which the person concerned is entitled:**

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any court other than the Supreme Court, any question arises as to the contravention of any of the provisions of sections 16 to 27 inclusive, that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court.

(4)(a) The Rules of Court Committee may make rules with respect to the practice and procedure of the Supreme Court for the purposes of this section;

(b) Parliament may confer upon the Supreme Court such powers in addition to those conferred by this section as may appear to Parliament to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by this section.

(9) Parliament shall make provision—

- (e) for the rendering of financial assistance to any indigent citizen of Sierra Leone where his right under this Chapter has been infringed, or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim; and**
- (f) for ensuring that allegations of infringements of such rights are substantial and the requirement or need for financial or legal aid is real.**

(10) The Supreme Court—

- (e) consisting of not less than five Justices of the Supreme Court shall consider every question referred to it under this Chapter for a decision, and, having heard arguments by or on behalf of the parties by Counsel, shall pronounce its decision on such question in open court as soon as may be and in any case not later than thirty days after the date of such reference;**
- (f) shall for the purposes of this Chapter, give its decision by a majority of the Justices of that Court and such decision shall be pronounced by the Chief Justice or any other of the Justices as the Court shall direct.”**

30. Section 29 is amended to ensure the reduction in the time of a State of Emergency

“(i) Where a state of emergency exists, the President will not derogate from the recognized international requirements pertaining to certain human rights, such as the right to life, the prohibition of torture, the principles of legality in the field of criminal law, and the freedom of thought, conscience and religion.”

The CRC also recommends that the period within which Parliament must pass a resolution approving a declaration of a state of emergency should be reduced from twelve months to three months. Section 29(13) should therefore be amended as follows:-

“(13) A resolution of Parliament passed for the purpose of this section shall remain in force for a period of three months or such shorter period as may be specified therein:

Provided that any such resolution may be extended from time to time by such resolution, supported by the votes of two-thirds of Members of Parliament, each extension not exceeding three months from the date of the resolution effecting the extension; and any such resolution may be revoked at any time by a resolution supported by the votes of a simple majority of all the Members of Parliament.”

Additional amendments to this Chapter

The following rights should be incorporated as new human rights provisions: the right to the environment; rights of the aged; persons with disability; rights of the child; and protection of socio-economic rights.

31. Right to the Environment

“Everyone has the right

(a) to an environment that is not harmful to his/her health or well being

(b) to have the environment protected for the benefit of the future generation through reasonable legislative and other measures that -

i. prevent pollution and ecological degradation

ii. promote conservation and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”

32. Rights of the Aged

“The State shall provide welfare facilities for the aged such as medical care, housing and transportation.”

Rights of Persons with Disability

“1. Persons with disability shall be entitled-

(a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;

(b) to have the right to access housing, educational facilities, medical care, employment, transportation and other required facilities designed to overcome constraints arising from the persons condition.

2. Political parties shall take action to include persons with disability in all their activities and programmes, including nomination in national elections.

3. The Parliament should enact relevant legislation to ensure representation of persons with disability in Parliament and local councils.

4. Inclusion of the National Commission for Persons with Disability (NCPD) in the Constitution.”

33. Right of the Child

“A child’s best interest is of paramount importance; all means should be taken to protect children from all forms of exploitation and abuse.”

Protection of Socio-economic Rights

“Every person has the right-

- (a) to highest attainable standard of health;**
- (b) to affordable housing and hygienic standards of sanitation;**
- (c) to be free from hunger and to have food of acceptable quality;**
- (d) to clean and safe drinking water;**
- (e) to social security; and education.”**

CHAPTER FOUR**REPRESENTATION OF THE PEOPLE**

34. Section 31 is amended to read as follows

“31. Every citizen of Sierra Leone being eighteen years of age and above and of sound mind shall have the right to vote, and accordingly shall be entitled to be registered as a voter for the purposes of public elections and referenda.”

35. Section 32(2) is amended to ensure that the regional Commissioners of the National Electoral Commission should reside in the four regions in order to make them more accessible and to decentralise the Commission’s work.

“(2) The members of the Electoral Commission shall be a Chief Electoral Commissioner, who shall be the Chairperson, and four other members who shall reside in the regions and shall be referred to as Regional Electoral Commissioners.”

36. Section 32(3) is amended that in appointing Electoral Commissioners, the relevant authorities must ensure that there is regional, ethnic, and gender diversity.

“(3) The members of the Electoral Commission shall be appointed by the President after consultation with the leaders of all registered political parties and subject to the approval of Parliament.”

37. Section 32(7) (b) is amended to delete the age limit

“(b) to hold office as a member of the Electoral Commission if she/he is a Minister, a Deputy Minister, a Member of Parliament, or a public officer.

38. Provided that a person shall not serve as a member of the Electoral Commission more than two terms of five years.”

39. Section 32 (7) is amended to add a new sub section 32 (7) (d) to require Electoral Commissioners to declare their assets to ensure greater transparency and credibility in relation to their office.

“(d) Members of the Electoral Commission shall declare their assets in accordance with the relevant law.”

40. Section 33 amended to ensure that NEC should be involved in all elections, including Paramount Chieftaincy elections.

“33. Subject to the provisions of the Constitution, the Electoral Commission shall be responsible for the conduct and supervision of the registration of voters for, and of, all public elections and referenda; and for that purpose shall have power to make regulations by statutory instrument for the registration of voters, the conduct of Presidential,

Parliamentary, Local Government and Chieftaincy elections and referenda, and other matters connected therewith, including regulations for voting by proxy.”

41. The CRC acknowledged the fact that Sierra Leoneans living abroad are directly or indirectly affected by socio-economic and political developments in the country and consequently should be eligible to participate in national decision-making processes, including elections. The CRC also took account of the suggestion made as to how this could be funded, namely by Sierra Leoneans in the diaspora paying some form of tax to the government of Sierra Leone.

The CRC therefore recommends that the government should consider allowing Sierra Leoneans in the diaspora to have the right to vote in elections in Sierra Leone

42. Section 34 is amended to ensure that the regulatory role of the PPRC should be included in the revised constitution. The new name should be the “Political Parties Registration and Regulation Commission (PPRRC)”.

The marginal note to section 34 should therefore read as “Political Parties Registration and Regulation Commission”. Furthermore, PPRC shall decide candidate fees for Presidential, Parliamentary and Local Council elections in consultation with NEC.

“(4) The Commission shall be responsible for the registration of all political parties and for that purpose may make such regulations as may be necessary for the discharge of its responsibilities under this Constitution. Its functions shall include setting candidate fees for Presidential, Parliamentary and Local Council elections in consultation with the National Electoral Commission;”

43. Section 35(3) is amended to add the words “and Regulatory” after the word “Regulation”.

“(3) A statement of the sources of income and the audited accounts of a political party, together with a statement of its assets and liabilities, shall be submitted annually to the Political Parties Registration and Regulatory Commission, but no such account shall be audited by a member of the political party whose account is submitted.”

44. Section 35(2) should be amended as well to read as follows:

“(e) The internal organisation of a political party shall conform to democratic principles, and its aims, objectives, purposes and programmes shall not contravene, or be inconsistent with, any provisions of this Constitution. At least 30% of the party’s nominees for national and local government elections shall be women.”

CHAPTER FIVE**THE EXECUTIVE**

45. Section 40 is amended to ensure that Presidential styles and titles constitute power rather than honours.

“40. (1) There shall be a President of the Republic of Sierra Leone who shall be Head of State, the Chief Executive of the Republic and the Commander-in-Chief of the Armed Forces.

Section 40(4) is also be amended:

“(4) Notwithstanding any provisions of this Constitution or any other law to the contrary, the President shall, without prejudice to any such law as may for the time being be adopted by Parliament, be responsible, in addition to the functions conferred upon him in the Constitution, for—

- (a) To ensure that laws are executed;**
- (b) To guard all constitutional matters concerning legislation;**
- (c) Power to appoint Ambassadors, envoys, Judges of the Superior Court of Judicature, Ministers of Government, Public Officials subject to the provisions of this constitution and Parliamentary approval;**
- (d) To constitute any public office, appoint and dismiss to and therefrom;**
- (e) To declare war;
- (f) To make and execute treaties, agreements, diplomatic compacts, agreements and conventions in the name of Sierra Leone;
- (g) To conduct foreign policy, receive envoys accredited to Sierra Leone and the appointment of principal representatives of Sierra Leone abroad;**
- (h) To exercise the Prerogative of Mercy **including the granting pardons, reprieves;**
- (i) To grant Honours and Awards;
- (j) To veto disagreeable legislation in accordance with the provisions of this Constitution;**
- (k) To present the State of Nation in an address to Parliament;**

(l) To declare states of emergency, manage, regulate disasters and other states of emergency in accordance with the provisions of this Constitution; and

(m) such other matters as may be referred to the President by Parliament.”

46. The election of the President, Parliament, and local government should be held on the same day, and an amendment is therefore be made to the relevant sections of Chapter IV of the 1991 Constitution (Representation of the People).

47. The proviso to section 43 is to be amended to add a new paragraph that sets a fixed date for the inauguration of the elected President to ensure that there is no vacuum of power during and after the election:

Section 43(c)

“There shall be a Fixed Date for the Inauguration of the Elected President.”

48. Section 48 is amended to ensure that the President’s salary, emoluments and allowances drawn from the Consolidated Fund as privileges of the office of President should not be subject to taxation. The President nonetheless is not to be exempt from personal taxation on income derived from other sources, including any enterprise, business venture in mining, agriculture, among others taxable and applicable to all other citizens.

“48(3) The President shall not be exempted from personal taxation”.

49. Section 50(2) should be amended to read as follows:

“(2) The Board appointed under subsection (1) shall enquire into the matter and make a report within 90 days to the Speaker stating the opinion of the Board whether or not the President is, by reason of any infirmity of mind or body, incapable of discharging the functions conferred on the President by this Constitution.”

50. Section 51 is amended to set out an impeachment procedure and to widen the scope of the process so that citizens are informed and involved in it:

Proposed impeachment procedure

“51. (1) A member of parliament and/ or a citizen (who is not a member of parliament) can give notice in writing clearly outlining offences committed or violation of the constitution by the president and proposing that a tribunal be established to investigate the allegation signed by half of all members of parliament may provoke a motion in parliament to impeach a sitting president.

- a. **if Parliament is then sitting or has been summoned to meet within five days, cause the motion to be considered by Parliament within seven days of the receipt of the notice; or**

- b. if Parliament is not then sitting (and notwithstanding that it may be prorogued), summon Parliament to meet within twenty-one days of the receipt of the notice, and cause the motion to be considered by Parliament.**

(2) When the motion proposed under this section is been considered by parliament, it shall meet in secret session and shall not debate the motion. The speaker or presiding officer shall cause a vote to be immediately taken. The motion will be considered passed if supported by two-thirds votes of all members of parliament.

(3) The speaker of parliament shall immediately inform the Chief Justice to appoint a tribunal of four judges (two of whom shall have high judicial office) and a chairperson who shall be justice of the Supreme Court to investigate the alleged offense(s) the president is deemed to have committed within 90 days.

(4) The tribunal shall investigate the allegations specified in the motion and report its findings to parliament through the speaker within ninety days from the date on which the motion was passed.

(5)The President shall have the right to appear before the tribunal and be represented by counsels of his/her choice during investigation of the allegation against him/her.

6. The investigation shall be held in full public view.
 7. If the Report of the tribunal indicates that the president has committed the allegations specified in the motion, the chief justice shall communicate the findings to the speaker of parliament.
 8. If parliament is in sitting, the speaker shall summon parliament within five days of receipt of the Report and shall lay the Report before parliament within seven days.
 9. If parliament is in recess, the speaker shall summon parliament within twenty one days after receipt of the Report of the tribunal and will lay the Report of the tribunal before parliament.
 10. If the president is found guilty of an offence by the tribunal, parliament shall vote to remove the President by two-thirds votes of all members of parliament present.
 11. However, if the report of the tribunal indicates that the allegations specified in the motion against the president are not substantiated, no further proceedings under this section shall be taken against the president.”
51. Section 52 is amended to ensure that in case of the death, illness, or absence of the Vice-President from office, the President must appoint a new Vice-President from the same political party.

Section 54 is amended to add a new subsection (8) to section 54, which reads as follows:

“(8) Loss of party membership shall not nullify⁶¹¹ from office a sitting President or Vice-President”.

Provided in case of loss party membership, section 51 procedure will follow.

54. Section 55 is amended to add a new section 55(e):

“(e) if she/he voluntarily ceases to be a member of the political party of which he was a member at the time of election to office.”

55. Section 64 is amended to ensure that the position of the Minister of Justice and the Attorney-General should be separated:

“64. (1) There shall be an Attorney-General who shall be the principal legal adviser to the Government.

(2) Same as the 1991 Constitution

(3) the holder of the Office of the Attorney-General must be a Sierra Leonean.”

56. Section 65(2) is amended to add the reference to the need for Parliamentary approval, and to raise the retirement age from 65 to 70

“(2) The Solicitor-General shall be appointed by the President on the advice of the Judicial and Legal Service Commission, subject to the approval of Parliament, and shall, before assuming the functions of office, take and subscribe to the oath as set out in the Third Schedule to this Constitution.”

“(7) Subject to the provisions of this section, a person holding the office of Solicitor-General shall vacate office upon attaining the age of seventy years.”

Section 66(7) and (8) are amended to replace the phrase “Attorney-General and Minister of Justice” with the word “Attorney-General”, and to amend section 66(10) to raise the retirement age from 65 to 70

“(7) The powers conferred upon the Attorney-General by this section shall be vested in him/her to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this section shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.”

⁶¹¹ Nullify means invalidate or disqualification.

“(8) In the exercise of the powers conferred upon him/her by this section, **the Attorney-General** shall not be subject to the direction or control of any other person or authority.”

“(10) Subject to the provisions of this section, a person holding the office of Director of Public Prosecutions shall vacate his/her office when he attains the age of **seventy** years.”

57. Section 67(2) (a) should be deleted so as to remove the function of principal adviser to the President on public service matters from the Secretary to the President.

“(2) The functions of the Secretary to the President shall include –

(a) the administration and management of the Office of the President, of which she/he shall also be Vote Controller;

(b) the performance of all other functions assigned to him/her from time to time by the President.”

58. Section 68 is amended to delete the phrase **“who shall be the Head of the Civil Service and”**. Further, the CRC recommends that the phrase “and Public Service” should be deleted from section 68(3) (a) and (d).

“**68.** (1) There shall be a Secretary to the Cabinet whose office shall be a public office.

(2) The Secretary to the Cabinet shall be appointed by the President.

(3) The functions of the Secretary to the Cabinet shall include--

(a) acting as the Principal Adviser to the President and having charge of the Cabinet Secretariat;

(b) responsibility for arranging the business for, and keeping the minutes of, the Cabinet, and for conveying the decisions of the Cabinet to the appropriate person or authority, in accordance with such instructions as may be given to him by the President;

(c) co-ordinating and supervising the work of all administrative head of ministries and departments;

(d) such other functions as the President may from time to time determine.”

59. Section 69(2) is amended to delete the phrase **“in consultation with the Public Service Commission”** to make it consistent with sections 67 and 68 of the revised Constitution.

“**69.** (1) There shall be a Secretary to the Vice-President whose office shall be a public office.

(2) The Secretary to the Vice-President shall be appointed by the President and shall, before assuming the functions of his office, take and subscribe to the oath as set out in the Third Schedule to this Constitution.”

60. Section 72 is amended to read as follows:

“The CRC has already recommended the establishment of a national house of chiefs. The CRC further recommends that the issue of the office of the paramount chiefs, their election, removal, entitlements, and other matters should be dealt with by the proposed national house of chiefs.”

CHAPTER SIX**THE LEGISLATURE**

61. Section 73(1) is amended to ensure that the President should cease to be part of the composition of Parliament.

“73. (1) There shall be a legislature of Sierra Leone which shall be known as Parliament, and shall consist of the Speaker and Members of Parliament.”

62. Section 74(1) is amended to remove the reference to Paramount Chiefs so that they no longer form part of Parliament, and to make provision for the introduction of proportional representation in the voting system. Section 74(1)(a) is therefore amended as follows:.

“74. (1) Members of Parliament shall comprise the following-

(a) such number of Members as Parliament may be prescribed who, subject to the provisions of this Constitution, shall be elected in accordance with the system of proportional representation, the threshold for which shall be 30% of popular votes;

(b) not less than 30% of Members of Parliament shall be women, details of which must be prescribed by Act of Parliament

(2) The number of Members of Parliament to be elected pursuant to subsection (1) shall not together be less than sixty.

(3) In any election of Members of Parliament the votes of the electors shall be given by ballot in such manner as not to disclose how any particular elector votes.

(4) Members of Parliament shall be entitled to such salaries, allowances; gratuities, pensions and such other benefit as may be prescribed by Parliament.”

63. Bicameral Parliament – Establishment of Senate

“The CRC therefore recommends that the existing unicameral system be retained.”

64. Theme - Establishment of National House of Chiefs

The CRC recommends that a national House of Chiefs should be established and enshrined in the Constitution.

A. The creation of a national House of Chiefs should be included in the Local Government chapter.

B. The establishment, composition, role, responsibilities, power, location, mode of election and such other matters should be determined through consultation between local government, stakeholders, and the National Council of Paramount Chiefs.

Section 75 should remain as it is in the 1991 Constitution; the reference in section 75(c) to “**the Franchise and Electoral Registration Act 1961**” should be replaced with a reference to “**the Public Elections Act 2012**”.

“75. Subject to the provisions of section 76, any person who—

- (a) is a citizen of Sierra Leone (otherwise than by naturalization); and
- (b) has attained the age of twenty-one years; and
- (c) is an elector whose name is on a register of electors under the **Public Elections Act 2012**, or under any Act of Parliament amending or replacing that Act; and
- (d) is able to speak and to read the English Language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of Parliament,

shall be qualified for election as such a Member of Parliament:

Provided that a person who becomes a citizen of Sierra Leone by registration by law shall not be qualified for election as such a Member of Parliament or of any Local Authority unless he shall have resided continuously in Sierra Leone for twenty-five years after such registration or shall have served in the Civil or Regular Armed Services of Sierra Leone for a continuous period of twenty-five years.”

65. Section 76 is amended to read as follows:

“76. (1) No person shall be qualified for election as a Member of Parliament—

- (a) if she/he is a naturalised citizen of Sierra Leone or is a citizen of a country other than Sierra Leone having become such a citizen voluntarily or is under a declaration of allegiance to such a country; or
- (b) if she/he is a member of any Commission established under this Constitution, or a member of the Armed Forces of the Republic, or a public officer, or an employee of a Public Corporation established by an Act of Parliament, or has been such a member, officer or employee, except people of teaching profession, within **six months** prior to the date on which she/he seeks to be elected to Parliament; or
- (c) if under any law in force in Sierra Leone she/he is **clinically certified** to be a lunatic or otherwise declared to be of unsound mind; or
- (d) if she/he has been convicted and sentenced for an offence which involves **misconduct** or dishonesty; or
- (e) if she/he is under a sentence of death imposed on him by any court; or
- (f) if in the case of the election of such member as is referred to in paragraph (b) of subsection (1) of section 74, she/he is for the time being a Paramount Chief under any law; or

- (g) if being a person possessed of professional qualifications, she/he is disqualified (otherwise than at his own request) from practising his profession in Sierra Leone by order of any competent authority made in respect of him personally within the immediately preceding five years of an election held in pursuance of section 87; or
- (h) if she/he is for the time being the President, the Vice-President, a Minister or a Deputy Minister under the provisions of this Constitution

(2) A person shall not be qualified for election to Parliament if she/he is convicted by any court of any offence connected with the election of Members of Parliament:

Provided that in any such case the period of disqualification shall not exceed a period of five years from the date of the general election following the one for which she/he was disqualified.

- (3) Any person who is the holder of any office the functions of which involve responsibility for, or in connection with, the conduct of any election to Parliament or the compilation of any register of voters for the purposes of such an election shall not be qualified for election to Parliament.
- (4) A person shall not be disqualified for election as a Member of Parliament under paragraph (b) of subsection (1) by reason only that she/he holds the office of member of a Chiefdom Council, member of a Local Court or member of any body corporate established by or under any of the following laws, that is to say, the Freetown Municipality Act, the Chiefdom Councils Act, the Rural Area Act, the District Councils Act, the Sherbro Urban District Council Act, the Bo Town Council Act, and the Townships Act or any law amending or replacing any of those laws.
- (5) Save as otherwise provided by Parliament, a person shall not be disqualified from being a Member of Parliament by reason only that she/he holds office as a member of a Statutory Corporation.

66. Section 77 is amended to add a recall clause:

“77. A Member of Parliament shall vacate his/her seat in Parliament—

- (a) on the dissolution of Parliament next following his/her election; or**
- (b) if she/he is elected Speaker of Parliament; or**
- (c) if any other circumstances arise that if she/he were not a Member of Parliament would cause him/her to be disqualified for election as such under section 76; or**
- (d) if she/he ceases to be a citizen of Sierra Leone; or**
- (e) if she/he is absent from sittings of Parliament for such period and in such circumstances as may be prescribed in the rules of procedure of Parliament; or**
- (f) if in the case of such a Member as is referred to in paragraph (b) of subsection (1) of section 74, she/he becomes a Paramount Chief under any law; or**

- (g) if she/he ceases to be qualified under any law to be registered as an elector for election of Members to Parliament; or**
- (h) if she/he is adjudged to be a lunatic or declared to be of unsound mind or sentenced to death; or**
- (i) if she/he is adjudged or otherwise declared a bankrupt under any law and has not been discharged; or**
- (j) if she/he resigns from office as a Member of Parliament by writing under his/her hand addressed to the Speaker, or if the Office of Speaker is vacant or the Speaker is absent from Sierra Leone, to the Deputy Speaker; or**
- (k) if she/he voluntarily ceases to be a member of the political party of which she/he was a member at the time of his/her election to Parliament and she/he so informs the Speaker, or the Speaker is so informed by the Leader of that political party; or**
- (l) if by his/her conduct in Parliament by persistently sitting and voting with members of a different party, the Speaker shall constitute a committee to investigate and upon the submission of the report and after consultation with the Leader of that Member's party and upon sufficient evidence that the Member is no longer a member of the political party under whose symbol she/he was elected to Parliament; or**
- (m) if, being elected to Parliament as an independent candidate, she/he joins a political party in Parliament; or**
- (n) if she/he accepts office as Ambassador or High Commissioner for Sierra Leone or any employment with an International or Regional Organization.**
- (o) The constituents shall have the right to recall a respective Member of Parliament of the same constituency before the end of their term.**

Provided that Parliament shall enact legislation and procedure for the grounds on which a member may be recalled.

(2) Any Member of Parliament who has been clinically certified to be a lunatic, declared to be of unsound mind, or sentenced to death or imprisonment, may appeal against the decision in accordance with any law provided that the decision shall not have effect until the matter has been finally determined.”

67. Section 79 (1) is amended to ensure that Amendment Act 2013 should be repealed. It also recommends that section 79 of the 1991 Constitution prior to 2013 amendment be retained with minor changes, as follows:.

“79. (1) 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 and

who are qualified to be appointed Judges of the Superior Court of Judicature or have held such office:

Provided that a person shall be eligible for election as Speaker of Parliament notwithstanding that such person is a Public Officer or a Judge of the High Court, a Justice of the Court of Appeal or a Justice of the Supreme Court, and such person, if elected, shall retire from the Public Service on the day of his/her election with full benefits.

- 1. 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:**

Provided that if three successive resolutions proposing the election of a Speaker fail to receive the votes of two-thirds of the Members of Parliament, the Speaker shall be elected by a resolution passed by a simple majority of all the Members of Parliament.

(3) No person shall be elected as speaker—

- a. if she/he is a member of the Armed Forces; or**
- b. if she/he is a Minister or a Deputy Minister.**

(4) The Speaker shall leave his/her office—

- a. if she/he becomes a Minister or a Deputy Minister; or**
- b. if any circumstances arise that, if she/he were not the Speaker, would disqualify him/her from election as Speaker; or**
- c. when Parliament first meets after any dissolution; or**
- d. if she/he is removed from office by a resolution of Parliament supported by the votes of not less than two-thirds of the Members of Parliament.**

(5) No business shall be transacted in Parliament (other than an election to the office of Speaker) at any time if the office of Speaker is vacant.

(6) Any person elected to the office of Speaker who is not a Member of Parliament shall before entering upon the duties of his/her office, take and subscribe before Parliament the oath as set out in the Third Schedule in this Constitution.

(7) The Speaker, or in his/her absence the Deputy Speaker, shall preside over all sittings of Parliament.”

68. Section 82 is amended to read as follows:

“82. (1) There shall be a Parliamentary Service Commission to support the Parliament of Sierra Leone to perform its constitutional and other functions as specified in the Parliamentary Service Act”.

(2) There shall be a Clerk of Parliament who shall be appointed by the President in consultation with the Parliamentary Service Commission and shall be responsible for the

administration of Parliament. The office of the Clerk of Parliament and the offices of the Parliamentary service shall be public”.

69. Section 84 is amended to read as follows:

“84. (1) Each session in Parliament shall be held at such place within Sierra Leone and shall commence at such time as the President in consultation with the Speaker shall decide the place and time for each session of Parliament may by Proclamation appoint.

(2) There shall be a session of Parliament at least once in every year, so that a period of twelve months shall not intervene between the last sitting of Parliament in one session and the first sitting thereof in the next session:

Provided that there shall be a session of Parliament not later than forty-eight days from the holding of a general election of Members of Parliament

(3) The President shall at the beginning of each session of Parliament present to Parliament an address on the state of the nation.”

70. Section 86 is amended to read as follows:

“86. (1) The Speaker of Parliament in consultation with the President shall decide a summoning of Parliament, emergencies exempted”.

71. Section 92 is amended that the fine should be increased

“92. Any person who sits or votes in Parliament knowing or having reasonable ground for knowing that she/he is not entitled to do so shall be liable to a penalty not exceeding Five Million Leones or such other sum as may be prescribed by Parliament for each day in which she/he so sits or votes in Parliament, which shall be recoverable by action in the High Court at the suit of the Attorney”

72. Section 93(1) is amended to read as follows:

“93. (1) At the beginning of each session of Parliament, but in any case not later than twenty-one days thereafter, there shall be appointed from among its members the following Standing, Sessional, special and Ad-hoc Committees necessary for the efficient discharge of its functions as may be specified in the standing Orders, and

Standing Committees, that is to say—

- a. the Legislative Committee;**
- b. the Finance Committee;**
- c. the Committee on Appointments and Public Service;**
- d. the Foreign Affairs and International Co-operation Committee;**

- e. the Public Accounts Committee;
 - f. the Committee of Privileges;
 - g. the Standing Orders Committee;
 - h. such other Committees of Parliament as the rules of procedure of Parliament shall provide.
- (2) It shall be the duty of any such “sessional committees” such Committee as is referred to in subsection (2) to investigate or inquire into the activities or administration of such Ministries or Departments or “Agencies” as may be assigned to it, and such investigation or inquiry may extend to proposals for legislation.
- (3) Notwithstanding anything contained in subsections (1) and (2), Parliament may at any time appoint any other Committee to investigate any matter of public importance.
- (4) The composition of each of the Committees appointed under subsections (1), (2) and (4) shall, as much as possible, reflect the strength of the political parties and Independent Members in Parliament.
- (5) For the purposes of effectively performing its functions, each of the Committees shall have all such powers, rights and privileges as are vested in the High Court at a trial in respect of—
- a. enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
 - b. compelling the production of documents; and
 - c. The issue of a commission or request to examine witnesses abroad.”

73. Section 99 is amended that section 99(1) and (2) should remain and that section 99(3), (4) and (5) should be deleted.

“99. (1) Subject to the provisions of this section, but without prejudice to the generality of section 97, no civil or criminal proceedings shall be instituted against a Member of Parliament in any court or place out of Parliament by reason of anything said by him/her in Parliament.

(2) Whenever in the opinion of the person presiding in Parliament a statement made by a Member is *prima facie* defamatory of any person, the person presiding shall refer the matter for inquiry to the Committee of Privileges which shall report its findings to Parliament not later than thirty days of the matter being so referred.”

74. Section 103 is amended to delete the phrase “or otherwise in good faith”

“103. Subject to the provisions of this Constitution, no person shall be under any civil or criminal liability in respect of the publication of—

**(a) the text or a summary of any report, papers, minutes, votes or proceedings of Parliament;
or**

(b) a contemporaneous report of the proceedings of Parliament,

unless it is shown that the publication was effected maliciously.”

75. Section 106 is amended to read as follows:

“106. (1) The power of Parliament to make laws shall be exercised by Bills passed by Parliament and signed by the President.

(2) Subject to the provisions of subsection (8), a Bill shall not become law unless it has been duly passed and signed in accordance with this Constitution.

(3) An Act signed by the President shall come into operation on the date of its publication in the *Gazette* or such other date as may be prescribed therein or in any other enactment.

(4) When a Bill which has been duly passed and is signed by the President in accordance with the provisions of this Constitution it shall become law and the President shall thereupon cause it to be published in the *Gazette* as law.

(5) No law made by Parliament shall come into operation until it has been published in the *Gazette*, but Parliament may postpone the coming into operation of any such law.

(6) All laws made by Parliament shall be styled "Acts", and the words of enactment shall be "Enacted by the President and Members of Parliament in this present Parliament assembled.”

(7) Where a Bill has been passed by Parliament but the President refuses to sign it, the President shall within fourteen days of the presentation of the Bill for his signature cause the unsigned Bill to be returned to Parliament giving reasons for his/her refusal.

(8) Where a Bill is returned to Parliament at the expiration of the period stated at subsection (7) and the Bill is thereafter passed by the votes of not less than two thirds of all Members of Parliament, it shall immediately become law and the Speaker shall thereupon cause it to be published in the *Gazette*.

(9) Nothing in this section or in section 53 of this Constitution shall prevent Parliament from conferring on any person or authority the power to make statutory instruments.”

76. Section 108(2)(b), (4) and (5) are amended to read as follows:

“(2) A Bill for an Act of Parliament under this section shall not be passed by Parliament unless—

(a) before the first reading of the Bill in Parliament the text of the Bill is published in at least two issues of the *Gazette*:

Provided that not less than nine days shall elapse between the first publication of the Bill in the *Gazette* and the second publication; and

(b) the Bill is supported on the second and third readings by the votes of not less than two-thirds of all the Members of Parliament.”

“(4) Every person who is entitled to vote in the elections of Members of Parliament shall be entitled to vote at a referendum held for the purposes of subsection (3) and no other person may so vote; and the Bill shall not be regarded as having been approved at the referendum unless it was so approved by the votes of not less than one-half of all such persons or by not less than two-thirds of all the votes validly cast at the referendum:

Provided that in calculating the total number of persons entitled to vote at such referendum, the names of deceased persons, of persons disqualified as electors, and of persons duplicated in the register of electors and so certified by the Electoral Commission, shall not be taken into account.

“(5) The conduct of any referendum for the purposes of subsection (3) of this section shall be under the general supervision of the National Electoral Commission and the provisions of subsections (4), (5) and (6) of section 38 of this Constitution shall apply in relation to the exercise by the Electoral Commission of its functions with respect to a referendum as they apply in relation to the exercise of its functions with respect to elections of Members of Parliament.

A referendum should be clearly presented to the public by ensuring there is sufficient time for public review.”

77. Section 119 is amended to replace the reference to “the Public Service Commission” in section 119 (1) with “the Audit Service Commission”

“119. (1) There shall be an Auditor-General for Sierra Leone whose office shall be a public office, and who shall be appointed by the President after consultation with the Audit Service Commission, and subject to the approval of Parliament.”

CHAPTER SEVEN**THE JUDICIARY**

78. Section 120(1) and minor amendments to subsections (4) and (9)

“120. (1) The Judicial power of Sierra Leone shall be vested in the Judiciary of which the Chief Justice shall be the Head and shall be responsible for the administrative, financial, and supervisory aspects thereof”.

“(4) The Judicature shall consist of the Supreme Court of Sierra Leone, the Court of Appeal and the High Court of Justice which shall be the superior courts of record of Sierra Leone and which shall constitute one Superior Court of Judicature, and such other subordinate and traditional courts as Parliament may by law establish.”

“(9) A Justice or Judge of the Superior Court of Judicature shall not be liable to any action or suit for any matter or thing done by him in the performance of his judicial functions.”

79. Section 121(1) is amended to ensure that the number of Judges in the Supreme Court should be increased to not less than seven.

“121. (1) The Supreme Court shall consist of—

(a) the Chief Justice;

(b) not less than seven other Justices of the Supreme Court; and

(c) such other Justices of the Superior Court of Judicature or of Superior Courts in any State practising a body of law similar to Sierra Leone, not being more in number than the number of Justices of the Supreme Court sitting as such, as the Chief Justice may, for the determination of any particular cause or matter by writing under his/her hand, request to sit in the Supreme Court for such period as the Chief Justice may specify or until the request is withdrawn.”

In addition, subsection (3) is also amended to read as follows:

“(3) The Chief Justice shall preside at the sittings of the Supreme Court and in his/her absence the most senior of the Justices of the Supreme Court, not including such Justices as are appointed under Section 121(1)(c), as constituted for the time being shall preside.”

80. Section 122 is amended so that the proviso should be enlarged to make further provision for the circumstances in which a matter may be referred to the Supreme Court.

“122. (1) The Supreme Court shall be the final court of appeal in and for Sierra Leone and shall have such appellate and other jurisdiction as may be conferred upon it by this Constitution or any other law:

Provided that:

- (i) **Notwithstanding any law to the contrary, the President may refer any Petition in which she/he has to give a final decision to the Supreme Court for a judicial opinion.**
 - (ii) **Notwithstanding any law to the contrary, the Speaker of Parliament may refer any Petition or matter pending before Parliament and in which he has to give a final decision, to the Supreme Court for a judicial opinion.**
- (2) **The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears right so to do; and all other Courts shall be bound to follow the decisions of the Supreme Court on questions of law.**
- (3) **For the purposes the hearing and the determination of any matter within its jurisdiction and the amendment, execution or the enforcement of any judgement or order made on any such matter, and for the purposes of any other authority, expressly or by necessary implication given to it, the Supreme Court shall have all the powers, authority and jurisdiction vested in any Court established by this Constitution or any other law.”**

81. Section 123(1) and (1) (b) are amended to add the phrase “**or from a judgment of a Court Martial**”.

“123. (1) An appeal shall lie from a judgment, decree or order of the Court of Appeal or from a judgment of a Court Martial to the Supreme Court—

(a) as of right, in a civil cause or matter;

(b) as of right, in any criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment, decree or order of the High Court of Justice in the exercise of its original jurisdiction or from a judgment of a Court Martial; or

(c) with leave of the Court of Appeal in any criminal cause or matter, where the Court of Appeal is satisfied that the case involves a substantial question of law or is of public importance.”

Subsection (2) remains the same.

82. Section 127(4) is amended to be replaced, as follows:-

“(4) The Supreme Court shall treat or deal with failure to obey or to 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.”

83. Section 128 is amended so that the number of judges should be increased from seven to nine.

”128. (1) The Court of Appeal shall consist of—

- (a) The Chief Justice;**
 - (b) not less than nine Justices of the Court of Appeal; and**
 - (c) such other Justices of the Superior Court of Judicature as the Chief Justice may, for the determination of any particular cause or matter by writing under his/her hand, request to sit in the Court of Appeal for such period as the Chief Justice may specify or until the request is withdrawn.**
- (2) 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.**
- (3) Subject to the provisions of subsection (1) and (2) of section 122 of this Constitution, the Court of Appeal shall be bound by its own previous decisions and all Courts inferior to the Court of Appeal shall be bound to follow the decisions of the Court of Appeal on questions of law.**
- (4) The Chief Justice shall by Statutory Instrument create such Divisions of the Court of Appeal as she/he may consider necessary—**
- (a) consisting of such number of Justices as may be assigned thereto by the Chief Justice**
 - (b) sitting at such places in Sierra Leone as the Chief Justice may determine; and**
 - (c) 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.”**

84. Section 129(2) is amended to add a reference to the Court Martial in order to be consistent with section 123.

“(2) Save as otherwise provided in this Constitution or any other law, an appeal shall lie as of right from a judgement, decree or order of the High Court of Justice or of a Court Martial to the Court of Appeal in any cause or matter determined by the High Court of Justice or the Court Martial”

85. Section 131(1) is amended to increase the number of High Court judges not be less than 15.

“131. (1) The High Court of Justice shall consist of—

- (a) the Chief Justice;**
- (b) not less than fifteen High Court Judges; and**

- (c) such other Judges of the Superior Court of Judicature as the Chief Justice may, for the determination of any particular cause or matter, by writing under his/her hand request to sit in the High Court of Justice for such period as the Chief Justice may specify or until the request is withdrawn.”

86. Section 132 is amended so that the word “original” in section 132(1) should be deleted

“132. (1) The High Court of Justice shall have jurisdiction in civil and criminal matters and such other appellate and other jurisdiction as may be conferred upon it by this Constitution or any other law.”

- (12) 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.

(13) 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.”

87. Section 134 is amended to delete “inferior” and replace it with “subordinate”.

134. The High Court of Justice shall have supervisory jurisdiction over all subordinate and traditional Courts in Sierra Leone and any adjudicating authority, and in the exercise of its supervisory jurisdiction shall have power to issue such directions, writs and orders, including writs of habeas corpus, and orders of certiorari, mandamus and prohibition as it may consider appropriate for the purposes of enforcing or securing the enforcement of its supervisory powers.”

88. Section 135(1), (2), (3), and (5) should remain the same, and that a minor amendment be made to section 135(4), as follows:-

“(4) 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.”

89. Section 136(4) and (6) be amended to read as follows:

“(4) Where the office of a Justice of the Supreme Court or of the Court of Appeal is vacant or for any reason a Justice thereof is unable to perform the functions of his/her office or if the Chief Justice advises the President that the state of business in the Supreme Court or in the Court of Appeal, as the case may be, so requires, the President may, acting in accordance with the advice of the Judicial and Legal Service Commission, and subject

to the approval of Parliament, appoint a person who has held office as, or a person qualified for appointment as a Justice of the Superior Court of Judicature to act as a Justice of the Supreme Court or of the Court of Appeal, as the case may be.”

“(6) 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 137 is amended to increase the age limit of retirement from 65 to 70 would mitigate some of the understaffing of the Judiciary, which contributes to the delays in the justice system.

“137. (1) Subject to the provisions of this section, a Justice or a Judge of the Superior Court of Judicature shall hold office during good behaviour.

- (2) A person holding office as Chief Justice, Justice of the Supreme Court, Justice of Appeal, or, a Judge of the High Court—**
- a. may retire as a Justice or Judge at any time after attaining the age of sixty-five years;**
 - b. shall vacate that office on attaining the age of seventy years**
- (3) 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.**
- (4) 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.**
- (5) If the Judicial and Legal Service Commission represents to the President that the question of removing a Judge of the Superior Court of Judicature, other than the Chief Justice, under subsection (4) ought to be investigated then—**
- (a) the President, acting in consultation with the Judicial and Legal Service Commission, shall appoint a tribunal which shall consist of a Chairperson and two other members, all of whom shall be persons qualified to hold or have held office as a Justice of the Supreme Court; and**
 - (b) the tribunal appointed under paragraph (a) shall enquire into the matter and report on**

the facts thereof and the findings thereon to the President and recommend to the President whether the Justice or Judge ought to be removed from office under subsection (7).

(6) 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.

(7) A Justice or a Judge of the Superior Court of Judicature shall be removed from office only by the President—

- a. if the question of his/her removal from office has been referred to a tribunal appointed under subsection (5) and the tribunal has recommended to the President that she/he ought to be removed from office; and
- b. if his/her removal has been approved by a two-thirds majority in Parliament.

(8) If the President is satisfied on a petition presented to him in that behalf, that the question of removing the Chief Justice ought to be investigated, then—

- a. the President shall, acting in consultation with the Cabinet, appoint a tribunal which shall consist of—
 - i. three Justices of the Supreme Court, or legal practitioners qualified to be appointed as Justices of the Supreme Court; and
 - ii. two other persons who are not Members of Parliament or legal practitioners;
- b. the tribunal shall enquire into the matter and report on the facts thereof and the findings thereon to the President whether the Chief Justice ought to be removed from office under subsection (10), and the President shall act in accordance with the recommendations of the tribunal.

(9) Where the question of removing the Chief Justice from office has been referred to a tribunal under subsection (8), the President shall by warrant under his/her hand suspend the Chief Justice 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 Chief Justice shall not be removed from office.

(10) The Chief Justice shall be removed from office only by the President—

- (a) if the question of his/her removal from office has been referred to a tribunal appointed under subsection (8) and the tribunal has recommended to the President that she/he ought to be removed from office; and

(b) if his/her removal has been approved by a two-thirds majority in Parliament.”

Section 138 is amended to read as follows:

“(4) A Judge of the Superior Court of Judicature shall not while he continues in office, hold any other employment or office or profit or emolument, whether by way of allowances or otherwise, whether private or public, and either directly or indirectly, 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 140(1) is amended so that the proviso be added at the end of section 140 to have a fully established Judicial and Legal Service Commission with funding from the Consolidated Fund. The Judicial and Legal Service Commission members should be increased by having a new composition that includes: two lay representatives; the Chief Justice (Chair); one Judge from each Court (the Supreme Court, the High Court and the Court of Appeal); and a representative from: - Human Resource Management Office, the Financial Secretary, the Sierra Leone Bar Association, and the Solicitor-General.

”140. (1) There shall be established a Judicial and Legal Service Commission which shall advise the Chief Justice in the performance of his/her administrative functions and perform such other functions as provided in this Constitution or by any other law, and which shall consist of—

- (a) the Chief Justice, who shall be the Chairperson;
- (b) the most senior Justice of the Supreme Court;
- (c) the most Senior Justice of the Court of Appeal;
- (d) the most senior Judge of the High Court;
- (e) the Solicitor-General;
- (f) two practising Counsel of not less than ten years standing nominated by the Sierra Leone Bar Association and appointed by the President;
- (g) the Director-General of the Human Resource Management Office, or other public officer charged with managing the public service establishment;
- (h) the Financial Secretary;
- (i) two other persons, not being legal practitioners, to be appointed by the President, subject to the approval of Parliament.

(2) The Chief Justice shall, acting in accordance with the advice of the Judicial and Legal Service Commission and save as otherwise provided in this Constitution, be responsible for the effective and efficient administration and financial management of the Judiciary.

(3) The following provisions shall apply in relation to a member of the Judicial and Legal Service Commission who is appointed pursuant to paragraphs (b), (c), (d), (f) and (i) of subsection (1)—

- (a) subject to the provisions of this subsection, such member shall vacate office at the expiration of three years from the date of his/her appointment; and in the case of (b), (c) and (d), upon vacating his membership, the next most senior Justice or Judge shall replace him/her**
- (b) any such member may be removed from office by the President for inability to discharge the functions of his/her office (whether arising from infirmity of mind or body or any other cause) or for misconduct, or, for gross incompetence; and**
- (c) such member shall not be removed from office except in accordance with the provisions of this subsection.**
- (d) A member of the Judicial and Legal Service Commission shall, before assuming the functions of his/her office, take and subscribe before the President the oath as set out in the Third Schedule to this Constitution.”**

90. Section 141 is amended to increase the number of judges in the High Court, the Court of Appeal, and the Supreme Court. However, it strongly recommends that the government should consider increasing the number of magistrates at district level to ensure effective dispensation of justice.

The CRC recommends a minor amendment to section 141(1), as follows:

“141. (1) The power to appoint persons to hold or act in an office to which this section applies (including the power to make appointments on promotion and transfer from one office to another and to confirm appointments) and to dismiss and exercise disciplinary control over persons holding or acting in such office shall vest in the Judicial and Legal Service Commission to the exclusion of any other body or authority.”

91. Section 142 (2) is amended to read as follows:

“142. (1) The appointment of officers and servants of the Courts of Sierra Leone shall, subject to the provisions of section 141 of this Constitution, be made by the Chief Justice or such other Justice or Judge or officer as the Chief Justice may direct, acting in consultation with the Judicial and Legal Service Commission.

(2) The Judicial and Legal Service Commission may, acting in consultation with the Human Resource Management Office and with the prior approval of the President, make regulations by statutory instrument prescribing the terms and conditions of service of officers and other employees of the Courts and of the Judicial and the Legal Services established by this Constitution or any other law.”

92. Section 143 is amended to ensure that the Judiciary should be self-financing. Fees and other monies should be retained by the Judiciary, whilst fines should be paid into the Consolidated Fund.

“143. 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”.

93. Alternative Dispute Resolution mechanism:

”In the exercise of judicial authority, the Court shall promote alternative forms of dispute resolution including conciliation, mediation, arbitration, and other traditional dispute resolution mechanisms. Traditional mechanisms shall not be used in a way that is repugnant to justice or morality, inconsistent with this Constitution or any written law.”

CHAPTER EIGHT**CITIZENSHIP - PROPOSED NEW CHAPTER****94. Section 1 - Rights of Citizens**

“(1) Subject to the provisions of this Constitution every citizen shall be entitled to:

- (a).the rights, privileges and benefits of citizenship;**
- (b).A Sierra Leonean passport or other document of registration or identification issued by the State to citizens.**

(2) Such passport or other document of registration or identification may be denied, suspended or confiscated only in accordance with an Act of Parliament.”

95. “Acquisition of Citizenship:

Citizenship may be acquired by birth, naturalisation, marriage or adoption.”

96. “Citizenship by Birth

A person is a citizen by birth if:

(a) on the day of the person’s birth, whether in Sierra Leone or not, either the mother or father of the person is a citizen of Sierra Leone.

(b) if the person is born in Sierra Leone before the coming into force of this Constitution who is not a citizen of Sierra Leone under sub-section (a) of this section and whose father or mother were born in and ordinarily resident in Sierra Leone at the time of the birth of such person shall be a citizen of Sierra Leone by birth.

(c) either one or both parents were born in Sierra Leone and deprived of citizenship by birth due to previous legislation on citizenship.”

97. “Citizenship by Naturalisation:

A person may apply to be a citizen by naturalisation if that person -

- a. Has been resident in Sierra Leone for a period of ten years ;**
- b. Has made or is capable of making useful and substantial contribution to the advancement, progress and well-being of Sierra Leone; and**
- c. Satisfies the conditions prescribed by an Act of Parliament.”**

“Citizenship by Marriage

A person may apply to be a citizen by marriage if that person has been married to a citizen for at least five years.”

98. **“Citizenship by Adoption**

“A child who is not a citizen, but is adopted by a citizen, shall be entitled on application to be a citizen of Sierra Leone”

99. **“Child found in Sierra Leone**

“A child found in Sierra Leone who is, or appears to be, less than five years of age, and whose nationality and parents are not known, shall be presumed to be a citizen by birth”.

100. **“Dual Citizenship**

“A citizen by birth shall not lose citizenship by acquiring the citizenship of another country”.

101. **“Citizenship not lost through Marriage**

“Citizenship shall not be lost through marriage or the dissolution of marriage”.

102. **“Revocation of Citizenship**

“(1) If a person acquires citizenship by naturalisation, the citizenship may be revoked if the person–

- (a) acquired the citizenship by fraud, false representation or concealment of any material fact;**
- (b) has, during any war in which Sierra Leone was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was knowingly carried on in such a manner as to assist an enemy in that war;**
- (c) has, within five years after naturalisation, been convicted of an offence and sentenced to a fine and imprisonment for a term of five years or longer; or**
- (d) has, at any time after naturalisation, been convicted of treason, or of an offence for which a penalty of at least seven or more years imprisonment may be imposed.**

(2) The citizenship of a person who was presumed to be a citizen by birth, as contemplated in section 7, may be revoked if—

- (a) the citizenship was acquired by fraud, false concealment of any material fact by any person;**
- (b) the nationality or parentage of the person becomes known, and revealed that the person was a citizen of another country; or**
- (c) the age of the person becomes known, and it is revealed that the person was older than five years when found in Sierra Leone.”**

103. **Enacting provisions:**

“Parliament shall enact legislation—

- (a) prescribing procedures by which a person may become a citizen;**
- (b) governing entry into and residence in Sierra Leone;**
- (c) providing for the status of permanent residents;**
- (d) providing for voluntary renunciation of citizenship;**
- (e) prescribing procedures for revocation of citizenship;**
- (f) prescribing the duties and rights of citizens; and**
- (g) generally giving effect to the provisions of this Chapter.**

CHAPTER NINE**LOCAL GOVERNMENT AND DECENTRALIZATION**

104. “Establishment of Local Government

1. There shall be a system of decentralized local government and administration for Sierra Leone.”

105. “Principle of Local Government

2. The Local government system shall be based on the principles of Democratic Good Governance.”

106. “Composition of Local Government System

“3. The Local Government system shall establish the following councils-

(a) City Municipal Councils;

(b) District Councils;

(c) Chiefdom Councils; and

(d) any other council as the system may deem necessary.”

107. “Responsibility of Local Council

“4. A Local Council shall be the highest political authority in the locality and shall be responsible for the general administration of its locality.”

108. “Composition of Local Council

5. A local council shall consist of-

(a) a General Assembly ---

Comprising all councillors of the council which shall be headed by a Chairperson elected from amongst them; and

(b) an Executive body—comprising of all chairpersons of committees, core staff, Mayor and deputy mayor, responsible for the execution of the policies of the council, which shall be headed by a mayor in the case of a City Council and a Chairperson in the case of a District Council;

c) a council elected under this section shall consist of not less than 12 members and not less than 30% of whom shall be of one gender.”

The CRC received feedback from the Ministry of Finance and Economic Development that rather than the term “General Assembly”, the term “General Council” is more appropriate in the proposed section 5(a).

109. **“Chief Administrator**

6. There shall be a Chief Administrator who shall be secretary to the Council and head of administration in the executive body.”

110. **“Tenure of Local Council Members**

“7. (1) Local council elections shall take place at the same time as national elections.

(2) Local council elections shall take place every five years and shall be on a partisan basis.”

(3) And members shall be elected in accordance with the system of proportional representation, the threshold for which shall be 30% of popular votes;

111. **“National Local Government Finance Commission**

8. (1) There shall be a National Local Government Finance Commission, which shall ensure equitable distribution of national resource and shall have such other powers and functions as may be conferred on it by this Constitution or an Act of Parliament.

(2) The National Local Government Finance Commission shall –

(a) receive all estimates of revenue and all projected budgets of all local government authorities;

(b) supervise and audit accounts of local government authorities in accordance with any Act of Parliament or Council, subject to the recommendations of the Auditor-General;

(c) make recommendations relating to the distribution of funds allocated to local government authorities;

(d) vary the amount payable to an area periodically based on economic, geographic and demographic variables;

e) prepare a consolidated budget and estimates for all Local Government authorities and after consultation with the Ministry of Finance and Economic Development, which shall be presented to Parliament before the commencement of each financial year.”

NEW CHAPTER**CHAPTER****INFORMATION, COMMUNICATION AND THE MEDIA - PROPOSED**

112. “Obligation of the Mass Media

12. The mass media shall at all times be free to uphold the fundamental objectives contained in this Constitution. No person or body shall own establish, or operate a television or wireless broadcasting station for any purpose whatsoever unless that person or body holds a licence issued by the Independent Media Commission (IMC).”

113. Media Freedom and Independence

1. Media freedom and independence are hereby guaranteed but does not extend to—

- (a) propaganda for war;**
- (b) incitement to violence;**
- (c) hate speech; or**
- (d) advocacy of hatred.”**

114. “State Obligation

2. The State shall not—

- (a) exercise control or interfere with any person engaged in broadcasting (radio, television, internet), the production or circulation or dissemination of any publication (newspaper, magazine or any periodical) or the dissemination of information by any medium;**
- (b) Broadcasting and other electronic media shall have freedom of establishment, subject only to licensing procedures that— are necessary to regulate the airwaves and other forms of signal distribution; and are independent of control by government, political interests or commercial interest.”**

115. Responsibility of the Media

3. All State/public-owned media shall—

- (a) be free to determine independently the editorial content of their broadcast or other communications;**
- (b) be impartial; and**

(c) afford fair opportunity for the presentation of divergent views and dissenting opinions.”

“Establishment of the Independent Media Commission

4. There shall be an Independent Media Commission in Sierra Leone. This should consist of 11 members.”

116. “Composition of the Independent Media Commission

5. (1) The Independent Media Commission shall consist of the following members:

- (a) One expert in the field of print journalism, nominated by the Sierra Leone Association of Journalists;**
- (b) One expert in the field of electronic journalism nominated by the Sierra Leone Association of Journalists;**
- (c) One expert in the field of Information Communication Technologies (ICTs), nominated by the National Telecommunication Commission (NATCOM);**
- (d) One expert in the field of telecommunications, nominated by the Sierra Leone Institution of Engineers;**
- (e) Two legal practitioners qualified to hold office as Judge of the High Court of Sierra Leone, nominated by the Sierra Leone Bar Association;**
- (f) One expert in Mass Communication nominated by a recognised tertiary institution offering communication/journalism studies;**
- (g) One person nominated by the Ministry of Information and Telecommunications;**
- (h) Two persons nominated by the Inter-religious Council of Sierra Leone;**
- (i) One representative from civil society;**
- (j) One representative from the entertainment industry.**

(2) The nominees shall be subject to the approval of Parliament.”

117. “Chairperson of the Independent Media Commission

6. Upon approval by Parliament, the Commissioners shall elect one among them to be Chairperson; provided that no person shall be eligible for election to the position of Chairperson unless that person has a wide experience as a media practitioner, or is a legal practitioner qualified to hold office as a judge of the High Court of Sierra Leone.”

The CRC therefore recommends that the following provision should be included as section 7 in the new chapter on information, communication and the media of the revised Constitution:

118. “Functions of the Independent Media Commission

7. An Act of Parliament shall define the functions and duties of the IMC that shall include promoting a free and pluralistic media in Sierra Leone.”

CHAPTER**LAND, NATURAL RESOURCES AND THE ENVIRONMENT
- PROPOSED NEW CHAPTER****PART I – LANDS****Definition of Land**

1. Sovereignty and sovereign title to land belong to the people of Sierra Leone from whom Government through this constitution derives all its powers, authority and legitimacy--

(a) sovereignty and sovereign title to land meaning the hard surface as a natural resource belongs to the people of Sierra Leone without discrimination through the various local governance authorities, Paramount Chiefs, and the tenure regime operational in their localities or the National Lands Commission as trustee of the people only;

(b) whereas all non-renewal natural resources underneath the ground belong to the national government from whom through this Constitution derives all its powers, authority, and legitimacy.”

2. Classification of Lands

Lands in Sierra Leone shall be classified as--

(a) Government lands (inclusive of State and public lands);

(b) Private lands (inclusive of lands under customary law); and

(c) Freehold and leasehold lands.

(2) All lands in Sierra Leone share equal value regardless of the tenure system.

Provided that government, State, public land are all land which belong to the state by virtue of any treaty, concession, convention or agreement, and all lands which have been or may hereafter be acquired by or on behalf of the state, for any public purpose or otherwise howsoever and land acquired under the provision of the public land act and includes all shores, beaches, lagoons, creeks, rivers, estuaries and other places and waters whatsoever belong to, acquired by, or which may be lawfully disposed of by or on behalf of the state

Provided that private land is land held under customary tenure. Private land refers to land in respect of which sovereign title is held on behalf of a community, by family or an individual, groups of individuals or other entity under any one of the tenure regimes in force in Sierra Leone. All private lands are held on terms subject to the power of compulsory acquisition; subject to the right to take as bona vacantia in cases where the

owner dies without any heirs or, if held under customary laws, subject to the community or family's residual rights reversion if the owner dies without heirs or abandons the land."

"Ownership of Land by Citizens

Every Citizen has the right to acquire, inherit, transfer or receive as gift any right or interest in land in Sierra Leone."

"Non-citizens' Interest in Lands

Non-citizens' interest in lands in Sierra Leone is limited to leasehold--

(a) for a period of not more than 25 years at which expiration thereof, may be open to extension of such leases of not more than 10 years at any one period;

(b) in respect of interests for corporate person(s), leases shall not exceed 5,000 hectares for the same period."

"Compulsory Acquisition

- 6. (1) (a) The Government or a local government may, subject to this Constitution, acquire land in the public interest; and the conditions governing such acquisition shall be prescribed by Parliament or the local government authority.**

(b) For the purposes of subsection (a) public interest is limited to all development undertaken by either national or local/municipality government for the purposes of providing enhancement of public utility and should be used only for the intended purpose.

(2) In pursuance therefore this Constitution guarantees the following:

- e. In the use and enjoyment of land or interest in land, a person shall not be deprived thereof except in accordance with law and/or the principles of fundamental justice. Land in the public interest (enforcement of law and order) or securing against land the payment of taxes or duties or other levies or penalties**
- f. In the exercise of this power of the individual rights over property shall be respected and sustained**
- g. Compensation for properties compulsorily acquired shall be on the basis of the fair market value and shall not be disadvantageous to the owner, persons or communities directly affected**
- h. Property owners reserve the option of seeking legal redress where discontent exist as to the fairness of such compensation and the decision of such actions will be final."**

"National Land Commission

6. (1) There is established the National Land Commission.

(2) The functions of the National Land Commission are-

- (h) to manage public land on behalf of the national government;**
- (i) to recommend a national land policy to the national government;**
- (j) to advise the national government on a comprehensive programme for the registration of title in land throughout Sierra Leone;**
- (k) to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;**
- (l) to encourage the application of alternative dispute resolution mechanisms in land conflicts;**
- (m) to assess tax on land and premiums on immovable property in any area designated by law; and**
- (n) to monitor and have oversight responsibilities over land use planning throughout the country.”**

Theme – Updating Land Laws

The following statutes have been identified for repeal, updating, or amendment:

- 31 Crown Lands Ordinance No. 19 of 1960**
- 32 Transfer of Defence Lands Ordinance No. 8 of 1961**
- 33 Crown Lands Ordinance (Amended) No. 37 of 1961**
- 34 Crown Lands (Amendment) Act No. 18 of 1963.**
- 35 Public Lands Ordinance, Cap 116**
- 36 Unoccupied Lands Ordinance, Cap 117**
- 37 Protectorate Lands Ordinance, Cap 122**
- 38 An Ordinance to Amend the Protectorate Land Ordinance No. 15 of 1961**
- 39 Control And Protection of Land Development of Non-Citizens (Amendment) Act No. 61 of 1962**

- 40 Provinces Land (Amendment) Act No. 11 of 1965**
- 41 Provinces Land (Amendment) Act No. 18 of 1976**
- 42 Laws Adaptation Act No. 29 of 1972.**
- 43 Airfields and Defence Lands (Acquisition Of Clearance Rights) (Amendment) Act No. 48 of 1962**
- 44 Freetown Improvement Ordinance, Cap 66**
- 45 Freetown Improvement Ordinance (Amendment) No. 56 of 1961**
- 46 Freetown Improvement (Extension) Act No. 10 of 1964**
- 47 Freetown Improvement (Extension) Act, Public Notice No. 75 of 1964**
- 48 Freetown Improvement (Extension) Act, Public Notice No. 76 of 1964**
- 49 War Department Lands, Cap 124**
- 50 Town and Country Planning Ordinance No. 19 of 1946**
- 51 The Town And Country Planning (Amendment) Act No. 3 of 2001.**
- 52 The Non-Citizens (Interest in Land) Act No. 30 of 1966**
- 53 The Non-Citizens (Interest in Land) Act (Amendment) Decree No. 7 of 1968**
- 54 Ordinance to Provide For and Regulate the Survey of Lands and the Licensing Of Surveyors, Cap 12**
- 55 The Survey Ordinance No. 11 of 1950**
- 56 The Survey Rules, 1953**
- 57 General Registration Act, Cap 255**
- 58 Registration of Instrument Act, Cap 256**
- 59 Forestry Act 1988**
- 60 Foreshores Act, Cap 14.**

PART II – NATURAL RESOURCES

“National Resources and Trusteeship

1. All natural resources in their natural state in, under or upon any land in Sierra Leone, rivers, streams, water courses throughout Sierra Leone, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the republic of Sierra Leone and shall be vested in the Natural Resources Commission on behalf of, and in trust for the people of Sierra Leone.”

“Protection of Natural Resources

8. (1) The State shall provide for the protection and responsible use of natural resources within its territories.

(1) The State shall harness all natural resources of Sierra Leone to promote a sustainable and equitable distribution for national prosperity, efficient, dynamic and self-reliant economy.

(2) All transactions, contracts or undertakings be it for reconnaissance, exploration or large scale involving the grant of a right or concession by or on behalf of any person including the Government of Sierra Leone, to any other person or body of persons as described in this section, for the exploitation of any mineral, water or other natural resources of Sierra Leone shall be subject to the approval of Parliament.

(3) The award of small scale and artisanal mining/fishing contracts for any natural resource is reserved for the local government general assembly to members of local communities residing under that local council government.

(4) Parliament may, by a resolution supported by the votes of not less than two-thirds of all the members of Parliament, exempt from the provisions of subsection (2) of this section any particular class of transactions, contracts or undertakings.

(5) All mining concessions approved by Parliament or a Local Authority shall be binding only upon agreed terms between communities and that person or body of persons for the use of their land and shall form part of the concession.

(6) No mining concession shall be made without a strategic land rehabilitation plan and fees charged should be commensurate to fund the necessary land reclamation to its original status; and shall be paid and withheld in the account of the government organ dealing with environmental protection before such a concession is deemed effected.

Whereas the concession holder is charged with the land reclamation is provided for in subsection (6) and are permitted to utilise same fees for that purpose, in case that concession holder defaults and or refuses to undertake the required land reclamation, the

body withholding such funds in subsection 6 will take necessary activities to reclaim the land to its original status utilising such fees.

Parliament to enact the legislation every 3 years specifying the quantum of money according to a) land mass b) types of mining and, c) minerals mined.”

“Allocation of proceeds from natural resources

Parliament shall enact laws every five years for the equitable distribution of proceeds from natural resources to Districts Councils, Municipalities and Chiefdoms in Sierra Leone.”

“Citizens’ Access to Natural Resources

The State shall protect the rights of citizens engaged in farming, fishing, and artisanal mining as a means of livelihood to the preferential use of Land and Marine both inland and offshore.”

Policy Recommendation:

Establishment of Natural Resources Commission

The CRC deliberated on the issue of establishing a new Natural Resources Commission, and merging existing institutions into one empowered institution. In addition, the CRC was informed through various position papers, expert opinions, and public feedback that a Scandinavian model of development fund should be established, such as a Transformation and Development Fund from the proceeds of natural resources. This fund would also support youth and women.

- d) The CRC recommends the creation of a Natural Resources Commission.**
- e) All Ministries dealing with natural resources be merged into one Ministry to be referred to as the Ministry of Lands, Fisheries, Natural and Marine Resources.**
- f) A Commission should be established to coordinate all Ministries, Departments and Agencies that deal with lands, natural resources, and the environment**

PART III – THE ENVIRONMENT**“PART III****Promotion and Protection of the Environment**

The State shall promote the effective protection of the environment by empowering and enabling such bodies, agencies, institutions, organizations, to formulate, adopt and apply laws and policies and regulations for that purpose and to enhance economic growth.”

“Climate Change

2. It shall be the responsibility of government, both national and local, citizens, agencies, public or otherwise, and civil society organisations to undertake measures that guarantee and promote climate change mitigation, and adoption programmes and actions for the purpose of the preservation, conservation, and cultivation of dynamic climate-resilient practices and; provide to maintain a balanced ecology that is conducive for the existence of living organisms for present and future generations in Sierra Leone.”

“The Right to Environmental Information**3. The State shall--**

- d) Promote the effective protection of the environment by empowering and enabling such bodies, agencies, institutions and organizations, to formulate, adopt and apply laws, policies and regulations for that purpose and to enhance economic growth;**
- e) Enhance the knowledge of present and future generations on the environment of Sierra Leone;**
- f) Provide required information on harmful materials to the public whether from State, corporate or private institutions.”**

“Environmental Rights

4. (a) Every person has a right to an environment that is conducive to health and to the natural environment whose productivity and diversity are maintained.

(b) Each person has the right to clean air, pure water and productive soils and to the construction of the natural, scenic, historic, recreational, aesthetic, and economic values of Sierra Leone’s natural resources.

(c) The right to equitable access and sustainable use of environmental resources, goods and services and to equitable distribution of the benefits accruing from the utilization of such

resources, services and goods to indigenous peoples who have lost their identity or are on the verge of losing it like the underprivileged communities, persons with disabilities and women or minorities of any class of people in the society.

(d) The right to adaptation for protecting oneself from the adverse impact of climate change.

(e) An inalienable right (fundamental and self-executing) to an ecologically healthy environment for present and future generations including the enjoyment of clean air, pure water, and scenic lands; freedom from unwarranted exposure to toxic chemicals and other contaminants; and a secure climate.

(2) There shall be no entitlement, public or private, competent to impair these rights.

(3) It is the responsibility of the State as public trustees and citizens as beneficiaries to safeguard them for the present and for the benefit of future.”

CHAPTER**NATIONAL SECURITY - PROPOSED NEW CHAPTER****“PART I**

Principles of National Security

1. National security is the protection against internal and external threats to Sierra Leone’s territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability, prosperity, wellbeing; and other national interests.

The national security of Sierra Leone shall be promoted and guaranteed in accordance with the following principles –

- a. national security shall be subject to the authority of this Constitution and Parliament;**
- b. national security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms;**
- c. In performing their functions and exercising their powers, the national security organs shall respect the diverse culture of the communities within Sierra Leone; and**
- d. Recruitment by the national security organs shall reflect the diversity of the Sierra Leonean people equitably.”**

The CRC recommends that the following provision should be included in the new chapter on national security in the revised Constitution:

“PART II

Organs of National Security

2. (1) The national security organs shall be –

- a. the Office of National Security**
- b. the Republic of Sierra Leone Armed Forces**
- c. the Sierra Leone Police**
- d. the Central Intelligence and Security Agency**
- e. the Sierra Leone Correctional Services**
- f. the National Fire Force**

(2) The primary object of the national security organs and security system is to promote and guarantee national security in accordance with the principles mentioned in section 1(1).

(3) In performing their functions and exercising their powers, the national security organs and every member of the national security organs shall not –

(a) act in a partisan manner;

(b) further any interest of a political party or cause; or

(c) prejudice a political interest or political cause that is legitimate under this Constitution.

(4) A person shall not establish a military, paramilitary or similar organization that purports to promote and guarantee national security, except as provided for by this Constitution or an Act of Parliament.

(5) The national security organs shall be answerable to civilian authority.

(6) Parliament shall enact legislation to provide for the functions, organization and administration of the national security organs.

The CRC recommends that the following provision should be included in the new chapter on national security in the revised Constitution:

“PART III

Establishment of National Security Council

3. (1) There is hereby established a National Security Council.

(2) The Council shall consist of –

- | | | |
|---|----------|---------------------------|
| a. The President | - | Chairperson |
| b. The Vice President | - | Deputy Chairperson |
| c. Minister responsible for Finance | | |
| d. Minister responsible for Internal Affairs | | |
| e. Minister responsible for Foreign Affairs | | |
| f. Minister of Information & Communication | | |
| g. Minister or Deputy Minister of Defence | | |

- h. Attorney-General**
- i. Minister of Mineral Resources**
- j. Minister of Agriculture, Forestry & Food Security**
- k. Minister of Social Welfare, Gender & Children's Affairs**
- l. Minister of Health & Sanitation**
- m. Secretary to the Cabinet**
- n. The National Security Coordinator**
- o. The Inspector General of Police**
- p. The Chief of Defence Staff**
- q. The Director General, Central Intelligence and Security Agency; and**
- r. The Secretary to the President**

(3) The Council shall perform the following functions –

- a. provide the highest forum for the consideration and determination of matters relating to the security of Sierra Leone;**
- b. consider and take appropriate measures to safeguard the internal and external security of Sierra Leone through the integration of domestic and foreign security policies in order to enable Security Services, Departments and Agencies of Government to cooperate more effectively in matters relating to national security;**
- c. direct the operations of:**
 - i. the Joint Intelligence Committee**
 - ii. the Provincial Security Committees**
 - iii. the District Security Committees**
 - iv. the Chiefdom Security Committees**
 - v. the Joint Maritime Committee**
 - vi. the Transnational Organised Crime Unit**
 - vii. the Central Intelligence and Security Agency**

- viii. the National Security Council Coordinating Group**
- d. approve major plans and recommendations by the Ministry of Defence;**
 - e. serve as war cabinet in times of war; and**
 - f. monitor all external military support to Sierra Leone.”**

The CRC recommends that the following provision should be included in the new chapter on national security in the revised Constitution:

“PART IV

Security Coordination

- 4. (1) There is hereby established the Office of National Security as the Secretariat to the National Security Council and Coordinator of the national security organs.**
- (2) The functions of the Office of National Security shall be to –**
- a. provide support and secretarial services to the National Security Council;**
 - b. serve as the primary institution for the coordination of the management of national emergencies such as natural and artificial disasters;**
 - c. coordinate intelligence;**
 - d. maintain a cordial and cooperative relationship among security services and civil society;**
 - e. prepare and maintain the National Security Policy;**
 - f. supervise security vetting and investigations for the security clearance of persons who hold or may hold vettable post in Government Ministries, Departments and Agencies, who may have access to any sensitive or classified information; and**
 - g. implement protective security procedures in Government Ministries, Departments and Agencies.”**

“PART V

Intelligence Service

- 5. (1) There is hereby established a Central Intelligence and Security Agency to serve as Sierra Leone’s professional civilian intelligence service responsible for domestic and foreign intelligence collection.**
- (2) The functions of the Central Intelligence and Security Agency shall be to –**

- a. collect and assess intelligence in respect of internal or external activities that may constitute threats against the security of Sierra Leone;
- b. protect Sierra Leone against threats of espionage, sabotage, terrorism, hijacking, piracy, drug trafficking, money laundering or other serious crimes;
- c. protect Sierra Leone against the activities of persons intending to overthrow the democratically elected Government of Sierra Leone or undermine the constitutional order by illegal political, military, industrial or other means or through any other unconstitutional method;
- d. protect Sierra Leone against any threat to her economic interest, whether internal or external; and
- e. perform such other functions as the National Security Council or the President shall assign.”

PART VI

Defence Forces

6. (1) There is hereby established the Sierra Leone Defence Forces.

(2) The Defence Forces shall comprise –

- a. the Republic of Sierra Leone Armed Force (RSLAF)
- b. the Republic of Sierra Leone Maritime Services (RSLMS)
- c. the Republic of Sierra Leone Air Force (RSAF)

(3) The Defence Forces shall –

- a. be responsible for the defence and protection of the sovereignty and territorial integrity of Sierra Leone;
- b. assist and cooperate with other authorities in situations of emergency or disaster and report to the National Security Council whenever deployed in such circumstances; and
- c. deploy to restore peace in any part of Sierra Leone affected by unrest or instability with the approval of the National Security Council.

(4) There is hereby established a Defence Council.

(5) The Defence Council shall consist of –

- a. Minister of Defence - Chairperson

- b. Deputy Minister of Defence**
- c. Cabinet Secretary**
- d. National Security Coordinator, Office of National Security**
- e. The Chief of Defence Staff**
- f. Deputy Chief of Defence Staff**
- g. The Service Chiefs of the Defence Force**
- h. The Director General, Ministry of Defence - Secretary**

(6) The Defence Council shall –

- a. oversee policy, control and supervise the Republic of Sierra Leone Defence Forces; and**
- b. perform any other functions prescribed by national or secondary legislations.**

(7) The composition of the Command of the Defence Council shall reflect the regions and ethnic diversity of the people of the Republic of Sierra Leone.”

“PART VII

Police Services

7. (1) There is hereby established the Sierra Leone Police.

(2) The Sierra Leone Police shall –

- a. protect life and property;**
- b. maintain law and order;**
- c. preserve public peace and tranquility;**
- d. prevent and detect crime;**
- e. apprehend and prosecute offenders;**
- f. enforce laws and regulations in accordance with this Constitution; and**
- g. uphold human rights.**

(3) There is hereby established a Police Council.

(4) The Police Council shall consist of –

- a. The Vice-President - Chairperson**
- b. The Minister of Internal Affairs**
- c. The Inspector-General of Police**
- d. The National Security Coordinator**
- e. The Deputy Inspector-General of Police**
- f. The Chairperson, Public Service Commission**
- g. A member of the Sierra Leone Bar Association who shall be a legal practitioner of not less than ten (10) years standing as a practicing Barrister. He shall be nominated by the Sierra Leone Bar Association and appointed by the President.**
- h. Two (2) other members appointed by the President, subject to the approval of Parliament.**

(5) The Police Council shall –

- a. advise the President on all major matters of policy relating to internal security, including the role of the Police force, Police budgeting and finance, administration and any other matter as the President shall require;**
- b. with the prior approval of the President, make regulations for the performance of its functions under this Constitution or any other law, and for the effective and efficient administration of the Police Force.**

(6) Regulations made pursuant to the provisions of subsection (5)(b) shall include regulations in respect of:

- a. the control and administration of the Police Force of Sierra Leone;**
- b. the ranks of officers and men of each unit of the Police Force;**
- c. the members in each such rank and the use of uniforms by such members;**
- d. the conditions of service, including those relating to enrolment, salaries, pensions, gratuities and other allowances of officers and men of each unit and deductions thereof;**
- e. the authority and powers of command of officers and men of the Police Force; and**
- f. the delegation to other persons of powers or commanding officers to discipline personnel and the conditions subject to which such delegation may be made.”**

“PART VIII

Correctional Services

8. (1) There is hereby established the Sierra Leone Correctional Services.

(2) The Sierra Leone Correctional Services shall –

- a. keep inmates in a secure, safe and humane condition and shall produce them on demand based upon a judicial or executive warrant; and**
- b. Assist inmates in their reformation, rehabilitation and reintegration in order that they may become useful and productive citizens upon their release.**

(3) There is hereby established the Sierra Leone Correctional Service Council.

(4) The Council shall consist of –

- a. The Vice-President - The Chairperson**
- b. Minister responsible for Correctional Services**
- c. The National Security Coordinator**
- d. The Chairperson, Public Service Commission**
- e. A representative from civil society whose work is related to correctional services**
- f. A representative from the Sierra Leone Youth Commission**
- g. A representative from the Ministry responsible for Social Welfare**
- h. The Director-General, Sierra Leone Correctional Services**
- i. The President of the Sierra Leone Bar Association or his representative; and**
- j. Two retired Senior Correction Officers appointed by the President, one of whom shall be a woman**
- k. The Permanent Secretary responsible for Correctional Service - Secretary.”**

“PART IX

Fire Services

9. (1) There is hereby established a National Fire Force.

(2) The National Fire Force shall –

- a. **protect lives and properties against fire disasters; and**
 - b. **carry out search and rescue in fire disasters and render humanitarian services.**
- (3) No Fire Service shall exist except by or under the authority of an Act of Parliament and such Fire Service shall be supervised by the National Fire Force.**
- (4) No member of the National Fire Force shall hold office as President, Vice-President, Minister or Deputy Minister, or be qualified for election as a Member of Parliament while he remains a member of the National Fire Force.**
- (5) There is hereby established a National Fire Force Advisory Council.**
- (6) The National Fire Force Advisory Council shall consist of –**
 - a. **The Vice-President** - **Chairperson**
 - b. **The Minister of Internal Affairs**
 - c. **The Chief Inspector of Fire Service**
 - d. **The Deputy Chief Inspector of Fire Service**
 - e. **The Chairperson, Public Service Commission**
 - f. **The Director, Environmental Protection Agency**
 - g. **The National Security Coordinator, Office of National Security**
 - h. **Two other members appointed by the President, subject to the approval of Parliament**
 - i. **The Permanent Secretary, Ministry of Internal Affairs or the Ministry responsible for the National Fire Force** - **Secretary**
- (7) The National Fire Force Advisory Council shall –**
 - a. **Advise the Vice-President on all major matters of policy relating to fire safety measures, including the role of the National Fire Force, fire budgeting, finance, administration and any other matter as the Vice President shall require;**
 - b. **With the prior approval of the Vice-President, make regulations for the performance of its functions under this Constitution or any other law, and for the effective and efficient administration of the National Fire Force;**
- (8) Regulations made pursuant to the provisions of subsection (7)(b) shall include regulations in respect of:**

- a. the control and administration of the National Fire Force;**
- b. the ranks of officers and men of the Force and the use of uniforms by members of the Force;**
- c. the conditions of service, including those relating to enrolment, salaries, pensions, gratuities and other allowances of officers and men and deductions therefore; and**
- d. the delegation to other persons of powers or commanding officers to discipline personnel and the conditions subject to which such delegation may be made.”**

CHAPTER**THE PUBLIC SERVICE - PROPOSED NEW CHAPTER**

“The Public Service

1. (1) The Public Services of Sierra Leone shall include –

- (a) the Civil Service,**
- (b) the Judicial Service,**
- (c) the Audit Service,**
- (d) the Education Service,**
- (e) the Correctional Service,**
- (f) the Parliamentary Service,**
- (g) the Health Service,**
- (h) the Statistical Service,**
- (i) the National Fire Service,**
- (j) National Revenue Authority,**
- (k) the Police Service,**
- (l) the Immigration Service;**
- (m)and the Legal Service;**
- (n) public corporations other than those set up as commercial ventures;**
- (o) public services established by this Constitution; and**
- (p) such other public services as Parliament may by law prescribe**

(2) The Civil Service shall, until provision is otherwise made by Parliament, comprise service in both central and local government.

(3) Subject to the provisions of this constitution, an Act of Parliament enacted by virtue of clause (1) of this article shall provide for -

- (a) the governing council for the public service to which it relates;**
- (b) the functions of that service; and**
- (c) the membership of that service.**

(4) For the purposes of this article "public corporation" means a public corporation established in accordance with article 192 of this Constitution other than one set up as a commercial venture."

CHAPTER**COMMISSIONS AND INDEPENDENT OFFICES - PROPOSED NEW CHAPTER**

“Chapter

Commissions and Independent Offices

1. (1) This Chapter applies to the Commissions specified in this Chapter. The Commissions are-

- (a) Anti-Corruption Commission (ACC)
- (b) National Electoral Commission (NEC)
- (c) Human Rights Commission of Sierra Leone (HRC-SL)
- (d) National Commission for Social Action (NaCSA)
- (e) Environmental Protection Agency
- (f) National Social Security and Insurance Trust (NASSIT)
- (g) National Commission for Democracy (NCD)
- (h) National Minerals Agency (NMA)
- (i) National Commission for Privatization
- (j) Independent Media Commission
- (k) National Commission for Persons with Disability
- (l) Any other Commission established under this Constitution.

2. The Independent Offices are-

- (a) Audit Service Sierra Leone
- (b) National Revenue Authority (NRA)
- (c) Statistics Sierra Leone
- (d) Any other Independent Office established under this Constitution.

Objectives, authority and funding of Commissions and Independent Offices

3. The objectives of the Commissions and Independent Offices are to-

- (a) Protect the sovereignty of the people of Sierra Leone
- (b) Secure the observance by all State organs of democratic values and principles; and
- (c) Promote constitutionalism.

4. The Commissions and the holders of Independent Offices-

- (a) are subject only to this Constitution and the law; and
- (b) are independent and not subject to direction or control by any person or authority.
- (c) Parliament shall allocate adequate funds to enable each commission and independent office to perform its functions and the budget of each commission and independent office shall be a separate vote.

Composition, appointment and terms of office

5. (1) Each Commission shall consist of at least three, but not more than nine, members.

(2) The Chairperson and each member of a Commission, and the holder of an Independent Office, shall be-

- (a) identified and recommended for appointment in a manner prescribed by this constitution
- (b) approved by Parliament; and
- (c) appointed by the President.

(3) To be appointed, a person shall have the specific qualifications required by this Constitution or national legislation.

(4) Appointments to Commissions and Independent Offices shall take into account the national values mentioned in section 6(1), and the principle that the composition of the Commissions and Independent Offices, taken as a whole, shall reflect the regional and ethnic diversity of the people of Sierra Leone.

(5) A member of a Commission may serve on a part-time basis.

(6) A member of a Commission, or the holder of an Independent Office-

- (a) unless ex officio, shall be appointed for a single term of six years and is not eligible for re-appointment; and
- (b) unless ex officio or part-time, shall not hold any other office or employment for profit, whether public or private.

(7) The remuneration and benefits payable to or in respect of a Commissioner or the holder of an Independent Office shall be a charge on the Consolidated Fund.

(8) The remuneration and benefits payable to, or in respect of, a Commissioner or the holder of an Independent Office shall not be varied to the disadvantage of that Commissioner or holder of an Independent Office.

(9) A member of a Commission, or the holder of an Independent Office, is not liable for anything done in good faith in the performance of a function of office.

(10) The members of a Commission shall elect a Vice-Chairperson from among themselves-

- (a) at the first sitting of the Commission; and
- (b) whenever it is necessary to fill a vacancy in the office of the Vice-Chairperson.

(11) The Chairperson and Vice-Chairperson of a Commission shall not be of the same gender.

(12) There shall be a Secretary to each Commission who shall be-

- (a) appointed by the Commission; and
- (b) the Chief Executive Officer of the Commission.

Removal from office

6. A member of a Commission (other than an ex officio member), or the holder of an Independent Office, may be removed from office only for-

- (a) serious violation of this Constitution or any other law.
- (b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office;
- (d) incompetence; or
- (e) bankruptcy.

General functions and powers

7 (1) Each Commission, and each holder of an Independent Office-

- (a) may conduct investigations on its own initiative or on a complaint made by a member of the public;
- (b) has the powers necessary for conciliation, mediation and negotiation;
- (c) shall recruit its own staff; and
- (d) may perform any functions and exercise any powers prescribed by legislation, in addition to the functions and powers conferred by this Constitution.

(2) The following Commissions and Independent Offices have the power to issue a summons to a witness to assist for the purposes of its investigations-

- (a) the Sierra Leone Human Rights Commission;
- (b) the Judicial Service Commission;
- (c) the National Land Commission; and
- (d) the Auditor-General.

Incorporation of Commissions and Independent Offices

8. Each Commission and each Independent Office-

- (a) is a body corporate with perpetual succession and a seal; and
- (b) is capable of suing and being sued in its corporate name.

Reporting by Commissions and Independent Offices

- 9.** (1) As soon as practicable after the end of each financial year, each Commission, and each holder of an Independent Office, shall submit a report to Parliament.
- (2) At any time, the Sierra Leone Parliament may require a Commission or holder of an Independent Office to submit a report on a particular issue.
- (3) Every report required from a Commission or holder of an Independent Office under this section shall be published and publicised.

CHAPTER**NATIONAL DEVELOPMENT PLANNING COMMISSION
- PROPOSED NEW CHAPTER**

Recommendations

The CRC recommends that planning be conducted within a national decentralization system, with the NDPC to be mandated to prescribe the format for preparing regional, district and sectoral development plans. All district development plans should be submitted to the NDPC, through the Regional Development Planning Offices.

When a district development plan has been approved by the NDPC, a district/local council may seek the permission of the NDPC to modify the approved plan; and the NDPC shall sign off on all regional, district/local council and sectoral plans submitted for budget allocation to the Ministry of Finance and Economic Development in light of the need to ensure that all sub-national plans are aligned to the national plans.

The NDPC should be the national coordinating body of the decentralized national development planning system. This system should be made up of District Planning Authorities (district or local councils), Regional Planning Committees facilitated by Regional Development Planning Offices, sector Ministries, Departments and Agencies, and the NDPC.

Participatory methodologies shall be used at local level to collate the views of communities in the process of developing district plans. Public hearings are mandated for proposed district plans, and reports of the hearings should be attached to the proposed plans when they are forwarded for collation.

A government decentralization system will assure that direct grassroots participation is a critical ingredient for the integrity, ownership and acceptability of the plans.

Decentralisation will ensure that the peculiar local resources, needs and concerns of ordinary Sierra Leoneans are factored into the plans.

A decentralised process will allow the participation of traditional authorities who operate at local level and who are critical stakeholders in any developmental endeavour.

Decentralising the process will also increase the likelihood of the plans, serving as an instrument for comprehensive development and for bridging the development gaps in Sierra Leone, having the advantage of bringing out the various developmental disparities through the localised processes of developing the plans.

The CRC also recommends that the Constitution be amended to require Parliamentary approval of all future National Plans by a two-thirds majority in Parliament before it becomes operational. The

Committee further recommends that once approved by Parliament, the Plan and any amendments to it, be widely disseminated.

Implementation of the National Development Plan

All District Planning Authorities are mandated to coordinate planning processes and to develop and implement plans in their respective districts. Also, government Ministries and sector agencies can develop plans of their own, but these plans must accord with broad national development goals.

It was recommended that the proposed NDPC should be responsible for coordinating the implementation of national development plans across the country because it is best placed to do so.

The role of the NDPC is to coordinate the planning process rather than implementation; ensuring, guiding, and enabling public institutions to implement plans through providing strategic direction and advice. In many countries, where national development plans and visions have been developed, the implementations of these plans have not been the function of the body that developed them. However, the mechanisms in some countries are such that there is strong interface between the agency that develops the plans and the agencies that are charged with implementing them. In Malaysia, there is a National Action Council which sees to the implementation of the Plans developed by the National Planning Council. The connection between the Plans and the implementing agency is the Vice President who chairs both the National Planning Council and the National Action Council.

The CRC strongly recommends the need to guide all development processes, from planning to implementation, to be people-centred, as this urges all governments to ensure timely completion of projects.

Recommendations

The CRC recommends that the NDPC should only develop national plans, and facilitate and coordinate their implementation, monitoring and evaluation.

The CRC recommends that the MDAs be primarily responsible for implementing the National Development Plan.

The CRC recommends that any policy, legislation, administrative action, programme, project, initiative, budget and financial disbursements which are not consistent with the National Development Plan should be considered unconstitutional.

Furthermore, the CRC recommends that the Plan should be the basis for the development of all the operational plans and annual budget of MDAs. Effectively, the fiscal year will become the development year as well, since the budget becomes more or less the plan in action.

Parliament should play significant role in the preparation, implementation and monitoring of the National Development Plan, especially in ensuring that any policy, legislation, administrative action,

programme, project, initiative, budget and financial disbursements are consistent with the National Development Plan.

Sustainability of the National Development Plan

Concerns were expressed during consultations that the Plan may be changed too easily.

The CRC recognized that there may be a need to permit changes to the Plan so that it can remain relevant to the changing development needs of the nation. However, it is important to ensure that the Plan is not changed too easily. This is necessary to ensure that the Plan is indeed binding and long-term, and would avoid the problem of development projects that are not completed. It would also guard against extra-budgetary provisions that are inconsistent with a planned and endorsed national budget linked to the National Development Plan. Too much flexibility in the Plan may derail it.

The CRC accordingly finds that the procedure for changing the Plan must be well-thought out in order to ensure a balance between stability and continuity and the need to adapt the Plan to changes in the environment. The Plan must, therefore, contain in-built mechanisms that will permit changes and amendments where necessary.

The CRC finds that changes to the Plan must be spearheaded by the NDPC, which is charged with developing the Plan, and must involve broad consultations with stakeholders. This will ensure that the body of experts that develop and monitor the implementation of the Plan will be the same body that will propose amendments to it.

The CRC recognised that only Parliament should have the power to effect amendments to the Plan. Given that the Plan is generated in a bottom-up fashion, it is important that the representatives of the people be active participants in the review of the Plan. Any proposed amendment by the NDPC must be supported by two-thirds of all members of Parliament to ensure that there is bi-partisan or multi-partisan consensus on any amendments to the Plan.

The CRC also recognised that the main provisions of the Plan, being long-term, will hardly be subject to change. What may change are the short-term and medium-term plans that draw from the long-term plan and the strategies for achieving the Plan.

The CRC observes from submissions that proposed changes to the Plan be effected by the NDPC with the prior approval of Parliament, and therefore recommends that:

- a. Any proposal to amend the plan should require the approval of Parliament.
- b. Parliament will approve proposals for changes to the Plan with a vote of two-thirds majority of all Members of Parliament.
- c. All amendments and adaptations to the Plan should be published, and Parliament should be notified of such publication.

Monitoring and Evaluation of the National Development Plan

Monitoring and Evaluation (M&E) is likely to ensure the successful implementation of the Plan. The NDPC should be mandated to monitor and evaluate the implementation of the Plan, and the capacity of the NDPC should be built to carry out not only development policy research and planning and coordination of plan implementation, but also monitoring and evaluation of the plan, with a focus on highly prioritized, strategic and flagship project monitoring and impact analysis. This must be provided for in the Constitution. As the facilitator of the development of the Plan, the NDPC, together with relevant institutions, should develop the necessary performance indicators and guidelines for effective monitoring and evaluation.

In addition, independent monitoring and evaluation of the implementation of the Plan should also be part of the process so as to ensure greater objectivity. The Monitoring and Evaluation mechanism should include the preparation and presentation to Parliament of quarterly progress reports by the NDPC.

The CRC therefore recommends that the NDPC should submit annual monitoring and evaluation reports to the President and Parliament.

The CRC also recommends that the NDPC should set up an effective Development Policy Research Unit, and that in the performance of its functions, should have regard to the Directive Principles of State Policy in Chapter II of the 1991 Constitution.

Composition and Organizational Structure of the NDPC

The dimension to the issue is how to compose an NDPC which has the requisite technical capacities for realizing its mandate while also giving representation to the key institutions that are indispensable for the acceptability and implementation of the Plan.

Various proposals were received on the composition of the NDPC, as follows:

- 8) The NDPC should be a purely technical body composed solely of persons with the requisite technical capacities and knowledge in development planning and similar fields.
- 9) The NDPC should be composed of representatives of different interest groups such as farmers, teachers, lawyers, engineers, and other professional bodies. This will make the NDPC broadly representative of the society and ensure that the interests of all segments of the society are taken into account in the design and monitoring of the Plan.
- 10) The NDPC should include representatives of government institutions such as the Statistical Service, the Central Bank and the Ministry of Finance because these state institutions play vital roles in data gathering and processing, fiscal policy planning, and public financial management. Their inclusion will also ensure that there is government participation in the design and monitoring of the Plan.

- 11) The NDPC should include representation from local, district and regional levels. This will ensure that the NDPC is better able to use the semi-autonomous local government agencies to monitor the implementation of the Plan. Local government institutions are also better able to generate the necessary popular local level participation in the development of district plans and in monitoring the implementation of the Plan at that level.
- 12) A Governing Council should be established for the NDPC, chaired by the President so that the NDPC is given the highest political attention.
- 13) The NDPC should be decentralised so that the units can take greater account of peculiar local development needs in the design and monitoring of the Plan.
- 14) The NDPC should be serviced by a technical secretariat.

The organizational structure of the NDPC should have technical support facilities. As documented in the recently concluded Constitutional Review Report of Ghana, in Uganda, there is a Secretariat responsible for the day-to-day administration of the Authority which is headed by an Executive Director. In Malaysia, development planning is undertaken by the Economic Planning Unit of the Prime Minister's Office and is headed by a Director General. In Kenya, there is a Ministry of State for Planning, National Development and Vision 2030 under the Office of the Prime Minister and it is headed by a Minister of State, and there is a Vision Delivery Secretariat which provides leadership for the realization of Vision 2030. The Secretariat is managed by a Director-General under the overall guidance of the Vision 2030 Delivery Board, which plays a policy-making and advisory role.

The CRC observed that international best practice requires professionals for effective development planning and monitoring.

Recommendations

The CRC recommends that NPDC shall have a Governing Council, chaired by the President; in his absence, by the Vice-President or any other suitably qualified person. The Council should include the Minister of Finance, the Bank Governor, the Statistician General, and other suitable members to be appointed from the public and private sector, civil society, and academia and research institutions.

The CRC also recommends that the NDPC should have a Secretariat comprising technocrats and headed by a Director-General. Only those with knowledge relevant to development, economic, social and special planning should constitute the technical arm of the NDPC.

Further, the CRC recommends that the NPCD should have the following Directorates: a Development Policy Research Directorate; a Development Plan and Programme Formulation Directorate; a Monitoring and Evaluation Coordination Directorate; and an Information and Communication Directorate. There should also be a support division to deal with administrative, financial and logistical matters.

The CRC further recommends that the NDPC should report to the President, with Parliament playing central role in the plan formulation process and in the approval of and authorization of changes to the Plan.

Appointment of Members and Staff of the NDPC Secretariat

Based on various submissions and other country reviews, the CRC recommends the following:

- The Minister of Finance, the Central Bank Governor and the Statistician General should each have a permanent position on the Governing Council of the NDPC, while all other members are to be appointed by the President and approved by Parliament.
- The Secretariat of the NDPC should be headed by a Director-General appointed by the Office of the President following a recruitment process that involves the Public Service Commission and the Governing Council. The Director-General will be answerable to the NDPC Governing Council, chaired by the President.
- All other members of the NDPC Secretariat should be appointed by the NDPC following a recruitment process that involves the Public Service Commission and the Deputy-Director-General. It is essential for the integrity and acceptability of the work of the NDPC that its members and personnel have technical competence, independence and autonomy.

Tenure of Members of the Governing Council

Based on various submissions and other country reviews, the CRC recommends the following:

- Members of the Governing Council of the NDPC (other than the Minister of Finance, Governor of the Central Bank and the Statistician General) should serve on the Council for a non-renewable term of five years.
- The procedure for removing a member of the Governing Council of the NDPC should be similar to the procedure for removing a member of other constitutional bodies.
- The term of office of the Director-General should be six years, with the possibility of renewal, and subject to approval by Parliament.

Functions of the National Development Planning Commission

Based on various submissions and other country reviews, the CRC recommends the following:

- The NDPC should be an autonomous constitutional body; every President and government should be bound to comply with the terms of the long-term national development plan developed by the NDPC and approved by Parliament.

- The NDPC should be mandated to develop a comprehensive, strategic, multi-year, long-term national development plan, with short- and medium-term plans built into it, from which programmes, projects, activities and budgets will be drawn.
- The NDPC should be empowered to undertake and commission development research to inform national development planning process.
- The NDPC should coordinate the implementation of the Plan across MDAs and the country.
- The NDPC must be empowered to monitor and evaluate the implementation of the Plan and to institute corrective action.
- The NDPC should propose amendments to the Plan to the NDPC Governing Council, and the approval of its proposal should be endorsed by Parliament.
- The NDPC should present annual monitoring and evaluation reports to the NDPC Governing Council, the President, and Parliament.
- The NDPC should coordinate the preparation of 30-year long-term plan from which 5-year and short-term plans will be drawn.

Funding of the National Development Planning Commission

The CRC noted the experiences of funding constitutional bodies in other countries and the concerns raised in submissions about the independence and stability of the proposed NDPC in Sierra Leone with regard to the source of funding.

In other countries, planning bodies have been funded operationally and administratively by allocations from Parliament, normally in the annual appropriations, while receiving funds from other sources approved by the Minister of Finance.

The CRC noted the concern in other countries that financial dependence of key constitutional bodies leads to functional and operational dependence of that body; that an almost complete reliance on the Executive and Parliament for funding carries the risk of being starved of funds. Thus, it has been argued that constitutional bodies, such as the proposed NDPC can only be truly independent, functional, and effective when it is financially independent and not subject to budgetary shortfalls.

Suggestions were made that a separate fund should be set up to finance the work of the NDPC in order to guarantee its financial independence, and, by extension, its functional and operational independence.

The CRC therefore concluded that the NDPC must have dedicated funding so that it can be independent in its operations. This can be achieved by establishing a special fund for all independent constitutional bodies.

Recommendation

The CRC therefore recommends that a robust financing mechanism be discussed, agreed, and legislated, involving the MoFED and the Office of the President to ensure that the NDPC receives

sustained and uninterrupted financing for delivery of its mandate. The NDPC will be permitted to mobilize external resources through the NDPC Governing Council.

Conditions of Service of Members and Staff of the NDPC

The CRC recommends that the conditions of service of technical members of the NDPC, their salaries, allowances and other benefits be determined consistent with the functions expected of an independent constitutional body required to exercise professionalism and expertise.

The Governing Council, in consultation with stakeholders, should determine conditions of service, salaries, allowances and other benefits; allowances of the members of the Governing Council should be endorsed by Parliament in consultation with the Minister of Finance.

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59. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) 21 Oct 1986 (rat/acced)
60. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims on Non-International Armed Conflicts (Protocol II) 21 Oct 1986 (rat/acced)
61. Terrorism and Human Rights Signature Ratification Accession Succession

62. International Convention Against the Taking of Hostages 26 Sep 2003
63. International Convention for the Suppression of Terrorist Bombing 26 Sep 2003
64. International Convention for the Suppression of the Financing of Terrorism 27 Nov 2001 - 26 Sep 2003
65. International Convention for the Suppression of Unlawful Seizure of Aircraft 19 Jul 1971-13 Nov 1974
66. International Convention on the Prevention and Punishment of Crimes Against International Protected Persons-26 Sep 2003
67. U.N. Activities and Employees Signature Ratification Accession Succession
68. Convention on the Privileges and Immunities of the United Nations-13 Mar 1962
69. Convention on the Safety of United Nations and Associated Personnel 13 Feb 1995
70. Regional Conventions Signature Ratification Accession Succession
71. [European] Convention for the Protection of Human Rights and Fundamental Freedoms-Not signed
72. Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms-Not signed
73. Protocol No.2 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms-Not signed
74. Protocol No.3 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms-Not signed
75. Protocol No.4 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms-Not signed
76. Protocol No.5 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms-Not signed
77. Protocol No.6 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms-Not signed
78. Protocol No.7 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms-Not signed
79. Protocol No. 8 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms-Not signed

80. Protocol No. 9 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms-Not signed
81. Protocol No. 10 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms-Not signed
82. Protocol No. 11 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms-Not signed
83. Protocol No. 12 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms-Not signed
84. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment-Not signed
85. Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment-Not signed
86. Protocol No. 2 to the European Convention for the Prevention of Torture and inhuman or Degrading Treatment of Punishment-Not signed
87. African Regional Conventions Signature Ratification Accession Succession
88. African [Banjul] Charter on Human and Peoples' Rights *27 Aug 1981 - 21 Sep 1983
89. Convention Governing the Specific Aspects of Refugee Problems in Africa *10 Sep 1969 - 28 Dec 1987
90. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa *9 Dec 2003
91. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights * 9 Jul 1998
92. African Charter on the Rights and Welfare of the Child * 14 Apr 1992 - 13 May 2002
93. Protocol to the Constitutive Act of the African Union Relating to the Pan-African Parliament - 21 April 2016

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Minister of Health v. Treatment Action Campaign,

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- | | |
|---------------------|--------------------------------------|
| 1. Afghanistan 2004 | 25. Liberia 1986 |
| 2. Algeria 1989 | 26. Libya 2011 |
| 3. Angola 2010 | 27. Malawi 1994 |
| 4. Australia 1901 | 28. Morocco 2011 |
| 5. Botswana 1966 | 29. Mozambique 2004 |
| 6. Chad 1996 | 30. Namibia 1990 |
| 7. Chile 1980 | 31. Nigeria 1999 |
| 8. China 1982 | 32. Pakistan 1973 |
| 9. Congo | 33. Russian Federation 1993 |
| 10. Côte d | 34. Saudi Arabia 1992 |
| 11. Egypt 2014 | 35. Senegal 2001 |
| 12. Eritrea 1997 | 36. Somalia 2012 |
| 13. Ethiopia 1994 | 37. South Africa 1996 |
| 14. France 1958 | 38. South Sudan 2011 |
| 15. Germany 1941 | 39. Sudan 2005 |
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| 17. Guinea 2010 | 41. Switzerland 1999 |
| 18. India 1941 | 42. Tunisia 2014 |
| 19. India 1949 | 43. Uganda 1995 |
| 20. Iraq 2005 | 44. United Kingdom 1215 |
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2. Kenya's Constitution: An Instrument for Change-Yash Pal Ghai and Jill Cottrell Ghai
3. Governance and the three arms of Government in Sierra Leone – Abubakar Hasan Kargbo
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5. Tourism Development Study: Pannell Kerr Foster Associates – 1982.
6. Diagnostic Trade Integration Study: Integrated Framework for Trade-Related Technical Assistance to the Least Developed Countries. Tourism Development In Sierra Leone –World Bank 2005
7. Citizenship Law in Africa published by Open Society Institute

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2. The Right to Access Information Act, 2013 [No. 2 of 2013]
3. The National Minerals Agency Act, 2012 [No. 3 of 2012]
4. The Public Elections Act, 2012 [No. 4 of 2012]
5. The Legal Aid Act, 2012 [No. 6 of 2012]
6. The National Protected Area Authority and Conservation Trust Fund Act, 2012 [No. 11 of 2012]
7. The Sexual Offences Act, 2012 [No. 12 of 2012]
8. Statutes Relating to Land Law in Sierra Leone Cap. 19 (1960)
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12. The Persons with Disability Act, 2011 [No. 3 of 2011].

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14. The Registration of Customary Marriage and Divorce Act, 2009 [No. 1 of 2009].
15. The Chieftaincy Act, 2009 [No. 10 of 2009]
16. The Mines and Minerals Act, 2009 [No. 12 of 2009]
17. The National Youth Commission Act, 2009
18. The National Commission for Social Action (Amendment) Act, 2008 [No. 8 of 2008]
19. The Environment Agency Protection Act, 2008 [No. 11 of 2008] Repeals the Environment Protection Act, 2000 [No. 2 of 2000]
20. The Anti-Corruption Act, 2008 [No. 12 of 2008] Repeals the Anti-Corruption Act, 2000.
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2. Cultural Policy Of Ghana, National Commission On Culture, 2004

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1. Governing land for women and men: a technical guide to support the achievement of responsible gender-equitable governance of land tenure – FAO

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2. <http://www.nacsa.gov.sl/about-nacsa/>
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17. <http://www.worldcoalition.org/media/resourcecenter/SierraLeone-EN.pdf>
18. <http://www.carl-sl.org/home/reports/298-sierra-leone-parliament-passes-the-gender-billsinto-law>
19. info@democracysl.org
20. http://www.un.org/en/ga/search/view_doc.asp?symbol=A/69/PV.73

21. http://www.upr-info.org/sites/default/files/document/sierra_leone/session_24_-_january_2016/js4_upr24_sle_e_main.pdf page1/3
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30. <https://freedomhouse.org/report/freedom-press/2015/sierra-leone>
31. <http://www.pressreference.com/Sa-Sw/Sierra-Leone.html#ixzz4118zPV9u>
32. <http://www.org/en/news/feature/2013/08/27/taking-advantage-of-a-fast-growing->
33. <http://www.britishcouncil.org/land-and-pro-poor-change-in-sierra-leone.pdf>
34. http://www.afdevinfo.com/htmlreports/org/org_24403.html
35. <http://www.sierra-leone.org/laws.html>
36. <http://www.pressreference.com/Sa-Sw/Sierra-Leone.html#ixzz428Wed4HL>
37. www.constitutionalreview.gov.sl

PART FIVE

ANNEX

20 APPENDICES 3: DETAILED ACKNOWLEDGEMENT LIST**The Constitutional Review Committee (CRC) Sub-Committee Members**

NAME	DESIGNATION
Justice Edmond Cowan	Ombudsman
Appointed as Chairman CRC by H.E the President of the Republic of Sierra Leone.	

21 MEMBERS OF SUB-COMMITTEE**1. Members of the Judiciary Sub-Committee**

No:	NAME	REPRESENTATION
1	Hon. Justice N. C. Browne-Marke	Judiciary
2	Hon. Justice Eku Roberts	Judiciary
3	Mr. Charles A. Campbell	Chamber of Commerce
4	Ms Glenna Thompson	Sierra Leone Bar Association
5	Mr. E. V. Morgan	Association of Justices of Peace
6	Mr. Francis L. Keili	Office of National Security
7	Alhaji U. A. Sesay	National Asset and Government Property Commission
8	Mrs. Georgiana J. Benedict	Association of Justices of Peace
9	Mrs. Isatu Jabbie Kabbah	Sierra Leone People's Party
10	Mr. Victor W. Horton	Association of Justices of Peace
11	Hon. Justice Hamid A. Charm	Judiciary
12	Hon. Justice V. V. Thomas	Judiciary
13	Ms. Martina M. Kroma	Law Officers Department
14	Mr. Raymond B. Thompson	People's Movement for Democratic Change Political Party
15	Mr. Allieu I. Kanu	Sierra Leone Institute of International Law

2. Members of the Legislative Sub-Committee

No:	NAME	REPRESENTATION
1	Hon. Justice M. E. Tolla Thompson (Deceased)	Political Parties Registration Commission

No:	NAME	REPRESENTATION
2	Mr. Mohamed S. Jalloh	National Democratic Alliance Party
3	Mr. Gibril Thulla	Citizens Democratic Party
4	Mr. Mohamed Sowa	United Democratic Movement Party
5	Sheik Gibril Koroma	United National Peoples' Party
6	Mr. Suliaman Banja Tejan-Sei Esq	Sierra Leone People's Party
7	Hon. Justice Salimatu Koroma	Law Reform Commission
8	Mr. Arrow J. Bockarie	Attorney General Department
9	Mr. J. B. Jenkins-Johnson (Deceased)	Sierra Leone Bar Association

3. Members of the Local Government Sub-Committee

No:	NAME	REPRESENTATION
1	Dr. Abu Bakarr Kargbo	National Commission for Democracy
2	Mr. Aruna Mans Davies	Alliance for Positive Conscience Teachers
3	Mr. Osman Koroma	United National Peoples' Party
4	Mr. Alhassan J. Kanu	Decentralisation Secretariat
5	Mrs. Mary Harding	Peoples' Democratic Party
6	Ambassador Dauda Kamara	All People's Congress
7	Mr. Mohamed A. Deen (Deceased)	Sierra Leone Labour Congress
8	Ms. Aminata Sillah	National Youth Commission
9	Mr. Floyd Alex Davies	Center for Local Government Decentralization and the Environment
10	P. C. Charles Caulker	National Council of Paramount Chiefs
11	P. C. Haja Fatamata Meama Kajue	Traditional Women's Leader
12	Mr. Tasima Jah	MoFED

4. Members of the Executive Sub-Committee

No:	NAME	REPRESENTATION
1	Dr. Habib Sesay	People's Movement for Democratic Change Party
2	Hon I. B. Kargbo	All Peoples Congress
3	Chief Bai Seboru Somanoh Kapen III	Sierra Leone Peoples' Party
4	Dr. John L. Musa	Cabinet Oversight and Monitoring Unit
5	Mr. Nabieu M. Kamara	Peace and Liberation Party
6	Mr. Abass Kamara	National Democratic Alliance Party
7	Mr. Victor King	Citizen Democratic Party
8	Mr. Yusuf Bangura	Fourah Bay College
9	Mr. Africanus Sorie Sesay	Lawyer
10	Mr. Ismael Koroma	Lecturer FBC-USL
11	Mrs. Augusta James-Teima	National Democratic Alliance Party
12	Mr. Vandi Konneh	National Commission for persons with

No:	NAME	REPRESENTATION
		disability

5. Members of the Information, Communication and the Media Sub-Committee

No:	NAME	REPRESENTATION
1	Mr. Morlai Conteh	National Youth Coalition
2	Ms. Halimatu L. Deen	United Democratic Movement
3	Mrs. Memunatu Pratt	National Elections Watch
4	Mrs. Elfrida E. Conteh	Peoples' Liberation Party
5	Mrs. Marie Bob-Kandeh	Sierra Leone Market Women Association
6	Mr. Kabba Franklyn Bangura	Sierra Leone Union of Disability Issues
7	Hon. Alpha Kanu	All People Congress Party
8	Mr. Bai Mahmoud Bangura	All People Congress Party

6. Members of The State Policy Sub-Committee

No:	NAME	REPRESENTATION
1	Mrs. Olatungie Campbell	Women's Forum
2	Mr. Solomon Sogbandi	Amnesty International
3	Mr. Ansumana M. P. Fowai	Revolutionary United Front Party
4	Ms. Lois Kawa	Ombudsman Office
5	Mr. Ibrahim S. Sesay	Citizens Democratic Party
6	Mrs. Husainatu Jalloh	United National Peoples' Party
7	Mr. Issac Massaquoi	Sierra Leone Association of Journalists
8	Mr. Gibrilla Kamara	PUSH Salone
9	Ms. Valnora Edwin	Campaign for Good Governance
10	Mr. Umaru Fofana	National Elections Watch
11	Dr. Kandeh B. Conteh	Peace and Liberation Party

7. Members of the Land, Natural Resources and Environment Sub-Committee

No:	NAME	REPRESENTATION
1	Mr. Yoni E. Sesay	Educationist / Environmentalist
2	Mr. Eldred Collins	Revolutionary United Front Party
3	Mrs. Jamesina King	Human Rights Commission of Sierra Leone
4	Mr. Joseph H. Bangura	United Democratic Movement Party
5	Mrs. Elizabeth Mans	All Peoples Congress
6	Mr. John Oponjo Benjamin	Sierra Leone Peoples Party
7	Professor E. J. Thompson	National Commission of Democracy
8	Mr. Muniru A. Koroma	Peoples Movement for Democratic Change (PMDC) (Replaced)

9	Mr. Alimamy D. Conteh	Revolutionary United Front Party (RUFFP)
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8. Members of the Research Sub-Committee

No:	NAME	REPRESENTATION
1	Ambassador Osman Foday Yansaneh	All Peoples Congress
2	Mr. Prince Coker	Peoples Democratic Party
3	Mr. George B. Samai	Fourah Bay College
4	Mr. Alhaji Ben Kamara	Peoples Democratic Party
5	Mr. Hindolo Moiwo Gevao	Sierra Leone Peoples Party
6	Mr. Abdul Karim Kamara	Nation Union of Sierra Leone Students (NUSS) (Replaced)
7	Mr. Felix Marco Conteh	Researcher
8	Mr. Amadu Massallay	Millenium Challenge Corporation

DONORS/SPONSORS

INSTITUTION/Brief DESCRIPTION OF SUPPORT	NAME	DESIGNATION
United Nations Development Programme (UNDP) Coordinated all major Donor support, provided technical and financial management support to the Project.	Mr. Sunil Saigal,	Resident Coordinator
	Mr. David McLachlan-Karr	Resident Coordinator
	Mr. Jens Anders Toyberg-Frandzen	Executive Representative, Head of United Nations Integrated Peacebuilding Office in Sierra Leone
	Mr. Sudipto Mukerjee	Country Director
	Mr. Sana Ullah Baloch	Chief Technical Advisor
European Union	EU	Provide funding support to the project
DFID United Kingdom for International Development (UKaid)	DFID (UKaid)	Provide funding support to the Project

THE CONSTITUTION REVIEW COMMITTEE (CRC) SECRETARIAT STAFF

CATEGORY/RESPONSIBILITY	NAME	DESIGNATION
The Executive Secretary	Mr. Saa Kpulun	Executive Secretary (from August 2015 to date)
	Mr. Samuel O.J Coker	Former Executive Secretary (from May 2014 to July 2015)
	Mr. Augustine .S. Sheku	Former Executive Secretary (from July 2013 to April 2014)
Deputy Secretary	Mr. David C. Conteh	Deputy Secretary (from July 2013 to date)
Secretariat staff provided support to the Executive Secretary in the management of the commission's activities	Mr. Abubakarr Dumbuya	Accountant
	Mr. Mohamed Kallon	Procurement Manager
	Mr. Alimamy Sesay	Procurement Officer
	Mr. Mohamed Faray . Kargbo	Outreach and Communication Officer
	Mr. Hassan Kargbo	Assistant Secretary
	Mrs. Altina Syl-Turay	ICT Officer
	Mr. David Ngaiteh Kamara	Higher Executive Officer
	Mr. Julius Brima Cole	Records Officer
	Mrs. Theresa J. Ngegba	Secretary
	Mrs. Mary B. Ellie	Secretary
Mrs. Christiana John	Secretary	
Office Assistant	Mr. Bobson Moijueh	Office Assistant
	Mr. Habibu Koroma	Office Assistant
	Mr. Abu Bakarr Kargbo	Office Maintenance and Cleaning
	Mr. Michael Taylor	Generator Maintenance Technician
Audio Visual Recorder	Mr. Alim Kamara	Visual Recorder
	Mr. Henry Kargbo	Visual Recorder
	Mr. Ina Johnson	Visual Recorder
Drivers	Mr. Joseph A. Tucker	Driver
	Mr. Unisa Kamara	Driver
	Mr. Sorie Kamara	Driver
	Mr. Abdul Dumbuya	Driver
	Mr. Hassan Kargbo	Driver
	Mr. Musa Kargbo	Driver
	Mr. Morlai Samura	Driver

	Mr. Foday Kamara	Driver
	Mr. Sorie Kargbo	Driver
	Mr. Hassan Kamara	Driver
	Mr. Foday Sesay	Driver
	Mr. Gibril R. Kargbo	Driver (Deceased)
Police Officers	Mr. Joshua O. Jinnah PC 13101	Police
	Mr. Momoh M. Tholley PC 15663	Police
	Mr. Augustine Kargbo PC 15606	Police
	Ms. Christiana Lewis PC 10860	Police
	Mr. Mohamed B. Swaray PC 14028	Police
	A S. P-Moor B.A	Police
	A S P-Jen Abu Sankoh	Police
	A S P-Abu Bakarr kallon	Police
	P C 10051 Sesay M. B	Police
	Insp. Ishmael Koroma	Police
	Insp. Lavallie	Police
	P C 1344 Andrew Rhonko	Police
	P C 14106 Paul Massaquoi	Police

CATEGORY/RESPONSIBILITY	NAME	DESIGNATION
Legal Technical Associates	Mr. Dandyson Thompson	Law Officers
	Ms. Sonia S. Stanley	Law Officers
	Ms. Lucy-Mae Seiwoh	Law Reform Commission
	Mr. Allieu Vandi Koroma	Law Officers
	Mr. Denzel Dennis	Law Officers
	Mr. Gershon Lamin MCarthy	Law Officers
	Mr. Prince B. Williams	Law Officers
	Ms. Rosaline Cowan	Law Officers
	Ms. Iyamide Jamilatu Deen	Law Officers
	Ms. Onike Spencer-Coker	Law Officers
	Mr. Musa Bittar	Law Officers
	Ms. Joan Bull	Law Officers
	Mr. Prince A. Williams	Law Officers
	Ms. Habibatu Ojukutu Macauley	Law Officers
	Ms. Martina B. Egbenda	Law Officers
Ms. Kadijatu Zainab Bangura	Law Officers	

UNDP CONSULTANTS AND TECHNICAL SUPPORT STAFF

BRIEF DESCRIPTION OF SUPPORT	NAME	DESIGNATION
Chief Technical Adviser Provided Specialized support to the CRC as required.	Mr. Sanaullah Baloch	CTA-UNDP Chief Technical Adviser
	Mrs. Jane A. Gbandewah	Consultant
	Ms. Zara Mahdi	Consultant
UN Volunteers United Nation Volunteer	Mrs. Maimunatu Massaquoi	Web Specialist/ Computer Support
	Mr. Allie Josiah	Events and Workshop Specialist
	Ms. Neneh Bah	Report Analyst
	Ms. Fedelia Thompson	Graphic Designer
	Mr. Alhaji Nuru Deen	Report Writer
	Mr. Edward S. Mungu	Report Analyst
	Ms. Cecilia Vandi	Former Event Specialist
Interns	Ms. Yeanoh Kanu	Graduate Intern
	Mr. Albert Momoh	Graduate Intern
	Mr. Abdulai S. Kamara	Graduate Intern
	Mr. Franklyn Davies	Graduate Intern
	Mr. David .T. M'briwa	Graduate Intern
	Mr. Bockarie P. Sheriff	Graduate Intern
	Mr. Momoh Mansaray	Graduate Intern
	Ms. Sahar Fackih	Graduate Intern
	Ms. Fatmata Joy Jabbie	Graduate Intern
	Ms. Jimmima Turay	Graduate Intern
	Ms. Nadira Mao	Graduate Intern

INSTITUTIONS THAT SUPPORTED THE CONSTITUTION REVIEW PROCESS

LEVEL OF CONSULTATION	ORGANISATION/BRIEF DESCRIPTION OF SUPPORT	NAME	DESIGNATION/ROLE
Community and District Consultations	Office of National Security (ONS)		National Security
	National Commission for Democracy (NCD)	Dr. Abu Bakarr Kargbo	Chairman
	Political Parties Registration Commission (PPRC)	Hon. Justice Tolla M.E. Thompson	Chairman
	National Electoral Commission (NEC)	Mr. N'faalie Conteh	Chairman
	HRCSL Human Right Commission Sierra Leone	Mr. Brima Abdulai Sheriff	Chairman

22 COMMENTS FROM POLITICAL PARTIES

A CRC plenary was held on the 29th November, 2016 at CRC committee room at Miatta Conference Centre, and a motion was moved and adopted unanimously that stakeholders observations and comments on the CRC's report shall be added as an addendum to the final report. The motion reads as follows:

“The final report should be shared with all the representatives at the CRC of stakeholders in the Constitutional Review Committee (CRC), who would record their comments/observation/views on respective recommendations in the report. These observations shall be annexed as an addendum to the CRC's final report and respective representatives (those have not yet signed) shall sign the final report for presentation to the government of Sierra Leone”.

In line with this motion the political parties have submitted detailed comments on the entire report and they have signed as well giving consent to the report. These comments/observations/recommendations will be attached as an addendum and presented to the government.

The following Political Parties submitted their comments and signed the CRC Report on the 7th December, 2016.

1. PDP - Peoples Democratic Party
2. RUFP - Revolutionary United Front Party
3. UNPP - United Nation Peoples Party
4. CDP - Citizens Democratic Party
5. UDA - United Democratic Alliance
6. UDM - United Democratic Movement Party
7. PLP - Peace and Liberation Party
8. APC - All peoples Congress

COMMENTS FROM POLITICAL PARTIES

ADDENDUM



Tel: 076-406-283/078-235-588

Date: 6/12/16

The Chairman
Constitutional Review committee
Miatta Conference Hall
Brook Fields
Freetown.

**RE: POSITION STATEMENT TO THE FINAL REPORT OF THE
CONSTITUTIONAL REVIEW COMMITTEE WITH REGARDS TO THE MOTION
THAT WAS UNANIMOUSLY ADOPTED IN THE PLENARY HELD ON THE
29TH NOVEMBER 2016.**

Members of the revolutionary united Front Party have discussed and digested the final report of the constitutional review committee and agreed to the positions below.

1. Section 54 subsection (8) of the final report: loss of party membership shall not nullify from office a sitting president or vice president.

Our position state that loss of party membership shall nullify from office a sitting president or vice president and any other person that holds a national position on behalf of a political party.

2. Citizenship proposed new chapter section one (a) of the final report subject to the provisions in this constitution every citizen shall be entitled to:

a. The right, privileges and benefits of citizenship

Our position states that certain political right must be limited to only citizenship by birth of which both parents belongs to the indigenous tribes of Sierra Leone or both parents are from a black negro decent. Example, the right to become a president, vice president, Attorney General, The Army Chief of Staff, Inspector General of police, Speaker of Parliament, Chief Justice etc.


3. The executive: section 40 of the final report.

There shall be a president at the republic of Sierra Leone who shall be head of state, the chief executive of the republic and the commander –in-chief of the Armed forces.

Our position states that this section should not be amended. It should stay as the 1991 Peter Tucker report recommended. i.e. 40 section 1. There shall be a president of the republic of Sierra Leone who shall be head of state, the supreme executive authority of the republic, and the commander-in-chief of the armed forces.

The revolutionary United Front Party upon the submission of this position paper has now agreed to reinstate the signatures of our representatives that were suspended from ~~to~~ the final report of the constitutional review committee.

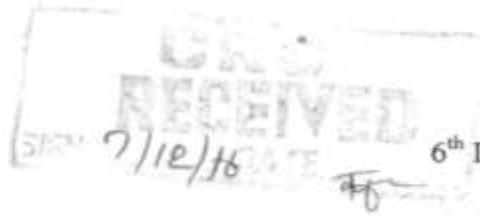
Faithfully submitted

Sign.: 
Raymond Kartewu
Acting Secretary General



UNITED DEMOCRATIC MOVEMENT
ADDRESS: 112 PADEMBA ROAD TEL: 078581255/077282308

The Chairman,
Constitutional Review Committee,
Youyi Building,
Freetown.



6th December, 2016.

Dear Sir,

Subject: The Position of United Democratic Movement on Supreme Executive Power and Loss Of Political Party Membership

We write to commend your leadership in driving the Constitutional Review process thus far and to express optimism that under your leadership the process will continue to be based on consensus decision making among the membership of the eighty man Committee.

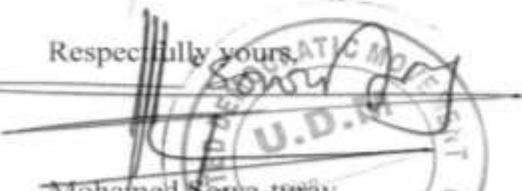
We however wish to draw your urgent attention to recent developments relating to the following two issues that need clarity for posterity.

1. **Supreme Executive Authority**, we hold that the provision relating to the supreme executive authority of the President be retained in the draft reviewed constitution. Our belief is anchored in the fact that the constitution is supreme and that that supremacy must lie in the person to whom the ultimate power for protecting the constitution lies.
2. **Loss of Party Membership**, we hold, and this is deeply entrenched in the constitution, that the election of a citizens as President, Vice President and Parliamentarians is contingent upon their membership of a political party. Conversely, it is reasonable that loss of membership of a Political Party must ultimately lead to a loss of their elective positions.

UDM has severally articulated these issues during our meetings and wish to see these views reflected.

In view of the aforementioned, we entreat your leadership to consider these issues based on the views of the majority of citizens as expressed by same during our provincial consultations.

Respectfully yours,


Mohamed Sowa-turay
Ag. Chairman and Leader
Cc: National Secretary General



COMMENTS FROM POLITICAL PARTIES



NATIONAL DEMOCRATIC ALLIANCE

Motto: "Respect for All"



5th December, 2016

The Chairman

Constitutional Review Committee (CRC)

Youyi Building

Brookfields

Freetown

Dear Sir,

RE-COMMENTS ON THE FINAL REPORT OF THE CRC

A letter requesting for comments on the final CRC report and the CRC report itself in flash drive for consideration was received on Friday, 2nd December, 2016 after midday. Time available for presentation of comments on Monday, 5th December, 2016 by 2:00pm does not facilitate a thorough perusal of such a big report.

However we took the opportunity to examine the contentious areas especially related to the executive arm of government for clarity, reliability and validity.

It is noted again that some of the concerns raised in our letter of refusal to sign for the end of the constitutional review process featured in the Constitutional review final report. In that letter, request was made for clarification of certain contradicting issues surrounding the executive as found in the Constitutional Amendment Bill, executive summary and Sub-

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executive report regarding supremacy of the president, loss of party membership ; Citizenship of the president ; and appointment of the Chief Justice.

We are now satisfied with what we saw on the report concerning loss of party membership which should be confirmed by parliament; and the appointment of the Chief Justice to be done by the President. Their justifications are cleared and were a majority view during the consultation and validation processes.

We are however aggrieved with the disparity views that exist within the executive Subcommittee report and that of the final constitutional review committee report on the issues below:

- i. Citizenship of the president: it was also the majority view of Sierra Leoneans during the consultation and validation process that the parents of the President of Sierra Leone should be of Negro descent. This is in the Sub-executive report but not captured so in the Constitutional review committee final report instead it was generalized.
- ii. Supremacy of the President- The majority view as seen in the executive sub – committee report agreed that it remains as in the 1991 constitution. This is; however, different in the constitutional Review Final Report which says “Chief Executive Authority” instead of “Supreme Executive Authority” which the people prefer.

We still need further documented evidences to substantiate these changes. We have two members of our party representing us in the CRC and are all members of the executive sub committee dealing with such contentious issues. They are true witnesses to our submissions.


Let the views of the majority be considered as sovereignty belongs to the people of Sierra Leone. A lot of good inputs have been made and we want to see them implemented.

COMMENTS FROM POLITICAL PARTIES

We still suspend our signing of the end of the process and adoption of the CRC report until our concerns are addressed.

We also will like to draw your attention to the fact that Mohamed S. Jalloh is a suspended member of our party as he was found wanting of squandering party funds and the like. He has been withdrawn from the CRC ever since. This is a process that went through the office of the Chief Justice and Attorney General. We wonder why such letters from the office of the Attorney General were not circulated as you have done to his. Any further correspondence of his being considered by your Secretariat as coming from the membership of our party shall not be taken lightly.

Looking forward to your cooperation.

Yours faithfully

Mohamed Jalloh
NATIONAL SECRETARIAT

Assistant Secretary General

Copy:

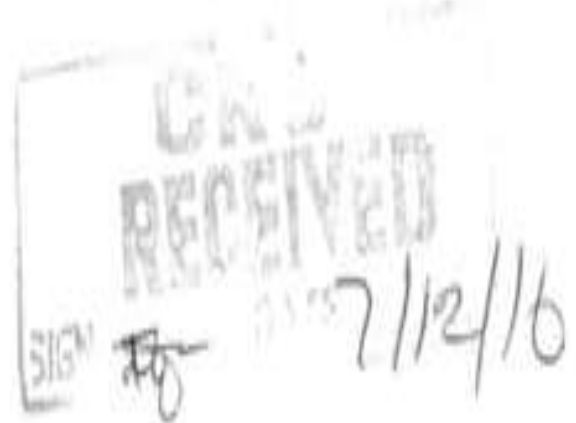
1. Hon. Attorney General & Minister of Justice
2. The Executive Secretary CRC ✓

COMMENTS FROM POLITICAL PARTIES

THE PITFALLS IN THE CRC REVIEW AND REVISION OF THE 1991 CONSTITUTION



The Trouble with the Sum and Substance of the CRC Final Report



The All Peoples Congress (APC), has read the Final Report with attention and submits a number of objections. Our objections are not exhaustive. We urge the CRC to regard our objections with gravity because the CRC recommendations if adopted will redraw the power map of our Constitution.

Accordingly, we submit the following objections:

AMENDING CHAPTER II RIGHTS

CRC Final Report, asserts that, "In an individual submission, Mr. Owen Moriba Momoh Kai Combey, a citizen of the Republic of Sierra Leone, also recommended repealing Section 14 as follows:

'I hereby propose that our new constitution must adequately provide for institutions and procedures for the judicial (third party) protection of fundamental rights of citizens and other individuals within the jurisdiction of the Republic of Sierra Leone. This would include the repeal of Section 14 of the 1991 Constitution, which provides that the "Fundamental Principles of State Policy" are not justiciable. This is a complete mockery of the State's commitment to its own avowed principles. The provisions in this Chapter shall confer legal rights that shall be enforceable in any court of law in the land, and Parliament shall also apply the principles therein in making other laws.'

Justiciability

The CRC received many submissions on the justiciability of Chapters II and III of the 1991 Constitution. The lack of justiciability in the rights and freedoms outlined in the Constitution is of serious concern because it prevents the people from holding the government accountable for violations.

APC Commentary

The APC does not accept the recommendations of the CRC to amend Section 14. The CRC appears unpersuasive in proposing this amendment of Section 14 of the 1991 Constitution. An amendment to an existing clause must improve it. This recommendation is loaded with demagoguery than compelling reasoning. The most cited expert in the CRC report – Mr. Owen Kai Moriba Momoh Combey, is not introduced anywhere in the report as an acknowledged authority on human rights or constitutionalism. Yet, the CRC was inspired by his personal views to recommend that Third Generation rights are in the same category as First Generation rights in Chapter Three in the 1991 Constitution.

The predicate to amending Chapter II or Chapter III Rights in the 1991 constitution is to understand the division of human rights into **three generations** as was initially proposed in 1979 by the [czech] jurist Karel Vasak at the International Institute of Human Rights in Strasbourg. His division follows the three great watchwords of the French Revolution: *Liberté, Egalité, Fraternité*. The 3 generations are reflected in some of the rubrics of the Charter of Fundamental Rights of the European Union.

The first generation corresponds to freedom (liberty) and entails civil and political rights that protect individuals from state power. These rights are primarily individualistic, however a few are collectively expressed, such as freedom of association, and the right to assembly. Civil and political rights include protection from proscribed discrimination, freedom of thought and conscience, freedom of speech, freedom of religion, the right to participate in civil society and politics. These Fundamental Rights are contained in Chapter III of the 1991 Constitution and are cognizable under law, hence justiciable.

Second-generation rights, those relating to equality, encompass economic, social and cultural rights. They ensure the right to be employed, the right to equal working conditions, the right to social security, the right to education, the right to cultural participation and the right to unemployment benefits. These rights are to be found in Chapter II – the so called Fundamental Principles of State Policy. They are also included in the African Charter of Rights. The second generation rights are considered non-justiciable.

The Third-generation rights, also known as solidarity rights, are collective rights dealing with the principles of brotherhood (fraternity). Generally speaking, third generation rights are loosely binding laws found in the Stockholm and Rio declarations. They cover environmental rights, rights to intergenerational equity and sustainability, the right to self-determination, the right to natural resources and collective rights. The third generation rights are considered non-justiciable.

Chapter II rights circumscribed in Section 14 as non-justiciable are aspirational principles which take their origin in the Second and Third Generations of human rights described above.

RECOMMENDATION TO AMEND SECTION 40 (1)

The APC relying on the public preference to leave this section unaltered has inspired the party to follow the best practice on the veneration of the Head of State. Following in lockstep with American framers, the APC is inspired to recommend the CRC adopt what the founders of the American republic established. Alexander Hamilton, one of the eminent framers of the U.S. Constitution throws light on what Supreme Executive entails. In Federalist Papers No. 70. He writes,

"Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy...

A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government...

The ingredients which constitute energy in the Executive are, first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers. "

Supreme Executive Authority as granted in Section 40 (1) is the mirror of Hamilton's "Energy in the Executive." Other framers of the American Constitution were in concord with Hamilton on the nature of a strong and vigorous president. They envisaged not a mere Chief Executive as James Wilson told the people of Pennsylvania:

At the Pennsylvania ratifying convention in 1787, James Wilson emphasized the advantages of a single chief executive, including greater accountability, vigor, decisiveness, and responsibility:

[T]he executive authority is one. By this means we obtain very important advantages. We may discover from history, from reason, and from experience, the security which this furnishes. The executive power is better to be trusted when it has no screen. Sir, we have a responsibility in the person of our President; we secure vigor. We well know what numerous executives are. Add to all this, that officer is placed high, and is possessed of power far from being contemptible...

And in accord with this view, in the case, *Free Enterprise Fund v. Public Company Accounting Oversight Board et al* 561 U. S. (2010), on June 28, 2010, Chief Justice John Roberts delivered the opinion of the Court, that we expect the Justices of the Supreme Court of Sierra Leone to adopt. There is said without reservation:

"The Constitution that makes the President accountable to the people for executing the laws also gives him the power to do so. That power includes, as a general matter, the authority to remove those who assist him in carrying out his duties. Without such power, the President could not be held fully accountable for discharging his own responsibilities; the buck would stop somewhere else. Such diffusion of authority "would greatly diminish the intended and necessary responsibility of the chief magistrate himself."

The CRC shores up its slippery rationale to amend Section 40 (1), not with a deft constitutional expert or authority but individuals bearing shallow position papers with wishful thinking rather than rational constitutional basis. The CRC should have subjected all experts to questioning by the Sub-committees or the plenary session on the pertinent issues. Instead, sub-committee members read position papers in abstraction. Invariably, position papers were presented to the CRC chairman and the Secretariat.

The style and titles of the President are lodged in Section 40 at clause (1) and (2) of the 1991 Constitution. The sub-committee concurs with the Validation Report, that Section 40, Clause (1), as granted in the Constitution, should remain undisturbed based on the rationale that the grant is consistent with the legislative history and intent of Parliament to style and title honoring the Head of State with reverence. The titles of veneration must be separated under a different section from the inherent presidential powers as the practice has evolved until

the enacted of the 1991 Constitution where the drafters combined the titles with presidential powers under.

The constitutional grant evolves from the Title and Style, *Supreme Head of State* in the PRESIDENTIAL STYLE AND TITLES of Act No. 7, 1971; Act No. 30, 1972; Act No. 27, 1973; Act No. 12, 1978. These Acts are consistent with the 1991 Constitution referring to the President as *Supreme Executive Authority* in accordance with the Oxford English Dictionary meaning of the adjective - *Supreme*, defines an “authority or an office, or someone holding it superior to all others.” Hence, in the executive branch, the President is supreme within that context.

The suggestion to amend the clause in favor of another term of veneration - *Chief Executive*, is curious because proponents have not indicated by justification why the constitutional history of the clause should be disturbed for its synonym. The recommendation to alter the Constitution was met with disfavor in a majority of districts save a few indeterminate and favorable indications to abandon the 1991 clause.

For more than three decades since 1971, Parliament has seen fit to revere the Head of State with honor and distinction. The title Chief Executive is synonymous with Supreme Executive Authority. The former is generic and lacks context while the latter is fashioned distinction for a Head of State.

Of the use of such Titles of Honour, Lord Blackstone writes in his *Commentaries of the Laws of England*,

“The distinction of rank and honours is necessary in every well-governed state; in order to reward such as are eminent for their services to the public, in a manner the most desirable to individuals, and yet without burthen to the community; exciting thereby an ambitious yet laudable ardor, and generous emulation in others¹.”

The recent ABA-UNDP² recommendation to the CRC in the wake of the Validation of the Abridged Report, is in accord with the earlier CRC quest to repeal the 1991 style and titles clause and adopt CHIEF EXECUTIVE instead,

¹ See, *Blackstone's Commentaries of the Laws of England*, Chapters Two and Three and Mr. Selden's *titles of honour*), for the invariable use of the terms, SUPREME EXECUTIVE AUTHORITY and CHIEF MAGISTRATE, to style the Head of State. See also, **John Selden**, English jurist and a scholar of England's ancient laws and constitution.

² See, ABA-UNDP, “Analysis of Sierra Leone's Constitutional Review Committee's Recommendations, 26 June 2016.

attempts to overturn the nationwide plea to retain the 1991 clause with the following suggestion, “One expert noted that the term “Chief Executive” in subsection 1 is in line with current practices in other African nations.”

This suggestion is not accompanied by justification in the constitutions implicitly referred to by an anonymous expert. In light of the constitutional history of the clause in Sierra Leone, this recommendation is unpersuasive because it does not enumerate the peer African countries where their constitutions are consistent in Letter and Spirit with the term Chief Executive.

Moreover, in a comparative constitution-making study in the Republic of Ghana Constitution, the notion of a “supreme executive authority,” is expressed in the following provision, “*There shall be a President of the Republic of Ghana who shall be the Head of State and Head of Government and Commander-in Chief of the Armed Forces of Ghana. (2) The President shall take precedence over all other persons in Ghana; and in descending order, the Vice- President, the Speaker of Parliament and the Chief Justice, shall take precedence over all other persons in Ghana).*”

As to the other African peer countries, there are variations of the notion of a Supreme Executive Head of State in accordance with the history and culture of the nation. For example, Professor B. O. Nwabueze, the foremost scholar on constitutionalism in Africa, says,

“There is a popular mass psychology which is always looking for a single national figure with whom to identify the government, a person who embodies in himself, the unity and power of the community in a real, and not merely in a symbolic sense. Besides, modern government requires a single directing authority which can oversee the entire administration and gear it towards the need for progress; nowhere is this necessity more pressing than in developing countries³.”

LOSS OF PARTY MEMBERSHIP

The APC does not accept the recommendations on the loss of party membership because the suggestions undermine the role of political parties in and their fundamental relationship with their members.

The intention of the framers of the 1991 constitution granted political party membership for presidential and vice presidential candidates. The fact that the

³ See also, B. O. Nwabueze, *Constitutionalism in Emergent Africa*, Associated University Press, 1973.

Constitution does not permit independent candidates is the foundation stone for building political party competition. Party membership is not a transient relationship between party and member. The relationship is based on ideology and loyalty.

Accordingly, the consequences of loss of party membership is collateral to holding the two high offices as the Supreme Court has held. The rejects any negation from that ruling and therefore does not accept the CRC recommendations.

APPOINTMENT OF JUDGES

While the APC accepts the CRC recommendation to not alter Section 135 (1), on the appointment of judges of the Superior Court of Judicature, we disregard the accompanying generalizations by the position paper of Owen Kai Momoh Combe

It is clear the President nominates and appoints judges and the Judicial and Legal Services Commission recommends qualified prospective nominees. But the CRC grudgingly recommends that Section 135 on the President's principal role in nominating and appointing judges remain as it is in the 1991 Constitution after the public rejected its recommendation to displace the President in the appointment process with the Judicial and Legal Services Commission.

Not quite affected by the public rebuff, the CRC turned to Mr. Combey's personal views on the selection of judges. In the Final Report, the CRC relies too much on the position paper of Owen Kai Moriba Combey. His views on the Constitution of Sierra Leone are misguided and not quite relevant in constitution-making. Mr. Combey shows little knowledge on the subjects he professes to interpose his opinions on. On the appointment of judges to the Superior Court of Judicature he writes in a vacuum as if appointment of judges in Sierra Leone were still in the 17th century:

"In an individual submission, Mr. Owen Kai Combey commented that: "the function of appointing members of the Superior Judicature of the Republic should be exclusively reserved for the Judicial and Legal Service Commission, while the President, just like the Monarchy in the British System of Government, only performs a ceremonial function therein. But empowering the President, who is the Head of the Executive Organ of Government, to appoint members of the third organ of government, is not only an abuse of the Principles of Separation of Powers, but also a recipe for producing a highly compromised Judiciary – as has more often than not been the case in the constitutional history of our beautiful country!"

Mr. Combey's assertion is a sweeping generalization adopted by the CRC to

COMMENTS FROM POLITICAL PARTIES

dress up feeble claims of how judges ought to be selected. He cites no examples to illustrate what appears to be demagoguery rather than the concise judicial history of Sierra Leone.

In the era which Mr. Combey invokes without authority, English judges served *durante bene placito*, in the Latin, they served at the pleasure of the king and the writs could be revoked at the whim of the Crown. At the climax of this dependence of the judiciary on the Crown in 1668 the system of appointments "during pleasure" in the last 11 years of his reign, Charles II, sacked 11 of his judges. Not to be outdone, his brother James II sacked 12 in three years. With the passage of the Act of Settlement of 1701, English judges were privileged to serve *quamdiu se bene gesserint*, that is, during good behavior. The constitution of Sierra Leone affirms this principle in Section 137:

"Subject to the provisions of this section, a Judge of the Superior Court of Judicature shall hold office during good behaviour."


This provision is the cornerstone of the independence of the judiciary. It supersedes the practice of judges serving at the pleasure of king or president as imagined by the position paper. In essence, judges in the Superior Court of Judicature of Sierra Leone do not serve at the beck and call of the President as asserted by Mr. Combey's position paper.

Also, Mr. Combey, appears not to be familiar with the COMMONWEALTH LATIMER HOUSE PRINCIPLES ON THE APPOINTMENT, TENURE AND REMOVAL OF JUDGES: A COMPENDIUM AND ANALYSIS OF BEST PRACTICE, PUBLISHED IN 2015. THIS WORK IS among a plethora of constitution-making references. The Compendium declares,

"The executive remains responsible for the formal act of appointing a judge in almost all jurisdictions. Legal frameworks should clearly set out the relationship between the prior selection process conducted by the commission and role of the executive at this final stage. Best practice would require that the commission be empowered to present the executive with a single, binding recommendation for each vacancy."

The Republic of Sierra Leone is a signatory to the Latimer House Principles.

Hence, the relevance of Mr. Combey's views on judicial appointments in the CRC report remains to be seen from his ephemeral suggestions in the position paper which was neither seen nor discussed at sub-committee level or in plenary session. Tape recordings of the CRC sessions can ascertain that such deliberations never happened!


OSMAN FODAY YANSAMBA
GENERAL SECRETARY
A.P.C - 07/12/16

CITIZENS DEMOCRATIC PARTY (C.D.P)



121 Black hall Road—Freetown
Tel:+23278 195663 / +23276715003

MOTTO:UNITED FOR A BETTER SIERRA LEONE



6th December, 2016.

The Chairman
Constitutional Review Committee
Mitta Conference Centre
Brookfields – Freetown.

Dear Sir,

**RE: POSITION PAPER OF THE CITIZENS DEMOCRATIC PARTY ON THE
FINAL RECOMMENDATIONS OF THE CONSTITUTIONAL REVIEW
COMMITTEE ON THE 1991 CONSTITUTION**

As Political Party we humbly draw your attention on the above matter for your candid consideration of the matters highlighted in subsequent pages of the Submission Paper. The core and general membership of the CDP – Sierra Leone have over the previous couple of months perceived the recommendation of the CRC on the final report of the reviewed 1991 Constitution as inconclusive and treated the whole matter with cautious optimism, especially when it was claimed that the signing of the document brings an end to the whole constitutional reviewed process.

Sir, as a Political Party, be that as it may, we are convinced that the idea of a constitution in Political term, is only a frame work of rules and principles which are intended to regulate the relationships among the diverse branches of State and between the Sate and its citizens. The rules may be written or unwritten, legal or non-legal, law or traditional conventions framed by special process for change or not. They need not be liberal democratic, a constitution make entrench a dictatorship but the principle of constitutionalism is a fundamental doctrine of liberal democracy. Therefore, Constitutionalism is referred to as a philosophical belief in Government.

Government on the other part is a body with the power to make and enforce laws to control a country, land, area, people or organisation. It is also a group of people who hold a monophony on the legitimate use of force in given territory.

Against this background, as a political party when we are exposed to all these privileges if we assumed governance of the State in future, it would be our desired intention to maintain some of the sections currently reviewed in our Constitutions.

Consequently, we as a Party would appreciate it very much, if you can make an **Annex** to the final report about our concerns before it is finally submitted to the President of the Republic of Sierra Leone.

Thank you for your cooperation.

Yours Faithfully,



Victor King
National Secretary General

c.c. Attorney General and Minister of Justice
The Executive Secretary CRC

ISSUES OF CONCERN

1. Section 40 (1): CRC – Recommendation; There shall be a President of the Republic of Sierra Leone who shall be Head of State, the Chief Executive of the Republic and the Commander-in-Chief of the Armed Forces.
 - ❖ The Citizens Democratic Party (CDP) recommends that it remains as it is in the 1991 Constitution because it is the view of majority of the people in Sierra Leone. “There shall be a President of the Republic of Sierra Leone who shall be Head of State, the Supreme Executive Authority of the Republic and Commander-in-Chief of the Armed Forces.”
 - ❖ **Reason:-** The CDP believes in any environment there should be a Central Authority to make a final decision instead of a large number of people that reduce decision making process to a crowd of people that take hasty decisions.
2. That Section 73 (1) which states: There shall be legislature of Sierra Leone which shall be known as Parliament and shall consist of the Speaker and Members of Parliament.
3. The CDP recommends that it is stays like this, “There shall be a legislature of Sierra Leone which shall be known as Parliament and shall consist of the President, the Speaker and Members of Parliament.
 - ❖ **Reason:-** To ensure that there is a healthy relationship between the Executive and the legislative organs of the State.

COMMENTS FROM POLITICAL PARTIES

United National Peoples Party (UNPP)



MOTTO: UNITY, TRUTH AND PROGRESS

54 City Road, Wellington

Freetown, Sierra Leone

Tel: 076-978036

6 December, 2016

The Chairman,
Constitutional Review Committee,
Mitta Conference (CRC) Hall,
Brookfield, Freetown.

Dear Sir,

UNPP POSITION PAPER

**RE: A PRESENTATION ON CRC ABRIDGED VERSION OF THE FIRST DRAFT
REPORT ON PROPOSALS FOR THE AMENDMENT OF 1991 CONSTITUTION
OF SIERRA LEONE**

With reference to the aforementioned subject matter, I would like to share my views from the stand point of my Political Party, the United National Peoples Party (UNPP) on the committee's recommendation on the following areas:

- The appointment of the Chief Justice and tenure of office of judges
- The Presidential term limit
- Citizenship and
- Vacancy in the office of the President

The appointment of the Chief Justice and tenure of office of Judges: we as a party have carefully considered this ambit of the constitution as paramount. In view of that therefore, it is our considered opinion that the democratic credentials of any nation are largely determined by the type of justice system in practice. The office of the Chief Justice plays a pivotal role in that direction. The CRC draft report under review recommends for the Chief Justice to be appointed by the Judicial and Legal Service Commission, subject to the approval of Parliament. The thinking behind this proposed amendment is to ensure that there is a proper separation of power between the Executive and the Judiciary. That this can only be achieved if there is

an open and impartial appointment machinery that would ensure the independence of the Judiciary.

However, in as much as we respectfully considered the said proposal to be relevant, we are of the opinion that it is in contrast to most leading Presidential and Parliamentary democracies around the world such as the United States of America, the United Kingdom, Canada, South Africa, Nigeria, Ghana etc. By way of example, in the United States of America it is the President who appoints his secretaries, the Justices of the Supreme Court and other holders of key offices. In Ghana also the appointment of the Chief Justice is done by the President with the advice of the Judicial and Legal Council. Study has shown that the recommendation made by the CRC in respect of appointment of the Chief Justice by the Judicial and Legal Service Commission is a very rare practice in the world over. There seems to be an abundant of practice where Heads of State appoint Chief Justice. In England , for example where we are borrowing our democracy, it is the Queen who would make such appointment on the advice of the Prime Minister.

In concluding under this subject matter we therefore recommend that the provisions contained in the 1991 Constitution relating to the appointment of the Chief Justice remain the same.

The next issue is one which has to do with the tenure of office of Judges of the superior court of Judicature. CRC recommends in its draft report that the age limit for judges should be increased from 65 years to 70 years. We consider this recommendation by the CRC as a step in the right direction in addressing the high shortage of experienced judges in the Bench. The committee is fully aware that society has evolved to a point that people are now exposed to opportunities in terms of better conditions of life. There are pieces of evidence to support the argument that persons who hold offices in the Bench are very active even beyond the age of 70. Let us take a practical example with the United States. In that country the president appoints federal judges and other senior justices who hold office for life. In the case of the UK, the law Lords in the House of Lords and those in the Court of Appeal hold office for up to 70 years.

In Ghana, Justices of the Court of Appeal and Supreme Court respectively can hold office for up to 70 years which is the mandatory age for retirement and at 65 it is discretionary for you to retire from the bench.

Judging from those examples, we are pleased that the CRC has recommended for the emulation of the Ghanaian model.

Presidential Term Limit

This has been a topical issue in recent times. In its draft report, the CRC recommends that the term of office of the president should remain as it is in the 1991 Constitution that is a maximum of two term limit whether or not consecutive. While we agree with this provision there is something missing which we would like the CRC to include in the revised constitution. It is our view that it would be unfair to permanently prevent persons who have diligently served the nation as president whether consecutively or otherwise from holding the same office if they can be elected after intervening years. If we are to go by what the CRC is recommending, it is therefore our considered opinion that the constitution would unduly disadvantage experienced citizens from running for political office.

Citizenship:

The proposal by the committee to create a whole new chapter titled citizenship in the revised constitution is a laudable initiative. It clearly demonstrates the high level of importance that is attached to such a concept in the revised constitution. We as a party particularly view the exclusion of terms such as race or gender in the definition of citizenship within the revised constitution as an appropriate, means of eliminating the notion of discrimination embedded in the 1991 Constitution. We therefore consider such a proposed chapter as an all embracing effort to promote gender parity.

Vacancy in the office of the president:

Under the heading, we have carefully looked at the question of whether loss of party membership shall not nullify from office a sitting president or vice president. It is but important to note that political parties serve as a breeding ground for prospective leaders. As a result of this crucial role which political parties play in any democratic dispensation, the framers of the 1991 Constitution deliberately inserted that clause to emphasize the significance of that function. A candidate is voted in as president by reason of his party ticket. Similarly, a person becomes a vice president by virtue of his appointment as a running mate for the presidential candidate. This clearly shows that they both come to office by virtue of the political party they belong.

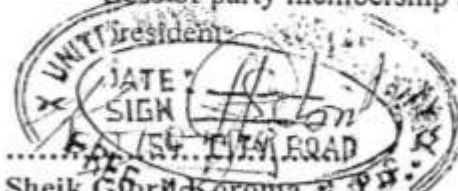
In line with that consideration, we are of the view that the recommendation made by the CRC to incorporate an additional clause to read as:

“Loss of party membership shall not nullify from office a sitting president or vice president” is not reflective of our nascent democracy. If by chance this additional clause is eventually retained in our law books, it would undoubtedly produce in the near future a crop of dictatorial leaders without the fear of any control mechanism.

It is therefore imperative that both the president and vice must belong to a political party whilst in office. The loss of such membership should automatically nullify them from office.

Summary points

- The appointment of the chief Justice should be made by the president in consultation with the Judicial and Legal Council subject to the approval of parliament.
- The age of retirement for judges in the superior court of judicature should be increased from 65 years to 70 years. Recommendation by CRC is therefore upheld.
- Presidential term limit should be two consecutive terms but with the insertion of a clause which would give the opportunity for an ex-president to run after intervening terms.
- Loss of party membership should nullify a person from the office of president or vice president.



Sheik Gibril Kayomba & P.P.
National Secretary-General
UNPP

CC. CHAIRMAN — C.R.C
CC. CHAIRMAN — UNPP



PEACE AND LIBERATION PARTY (PLP)

FREETOWN
Freetown Central Lorry Park
Texaco, Kissy

KENEMA
10 Kenkeh Street
Kenema

MAKENI
5 Baio Street
Makeni

BO
12 Peter Street
Bo

The Chairman
Constitutional Review Committee
Maitta Conference Centre
Freetown

6th December, 2016

Dear Sir,

PEACE AND LIBERATION PARTY'S CONCERNS PERTAINING TO THE SUMMARY OF RECOMMENDATIONS OF THE CONSTITUTIONAL REVIEW COMMITTEE .

- That Health, Education and Shelter should be justiciable as agreed by the people during the consultative meetings. Though transferred to another Section it should be spelt out clearly in Section 14 and not be read as in the summary.
- Supreme executive powers should rest with the President and not changed to Chief Executive. The Constitution is Supreme in relationship with the general populace including the President. The President is Supreme in relationship with the people in executing his duties. Titles which goes with his office are Supreme in Characters and will be Contradictory to remove the Supreme Executive title – Grand Commander, Fountain Head of Justice etc.
- Appointment of the Chief Justice In 40 1c Chief Justice is excluded from offices to be appointed by the President - Ambassadors, Envoys etc.
- Loss of party membership.
- Loss of party membership should mean loss of position. This should be limited to certain position example, Vice President Ministers Deputies, Ambassadors and Envoys to avoid problems in the parties and in the executions of their duties.
- In Section 52 the President must appoint a new Vice president from the political party.

Why not from a different political party, because the loss of party membership does not matter according to other school of thoughts. Imagine the persons goes to another political party, gets a membership card because he is been given right by the committee to reoccupy his position and constitution says you should belong to a political party. What will be character of the relation between those we have entrusted our resources and lives to. I suppose and you will agree, there should be good relation among people with such important responsibilities. It makes the constitution contradictory and recipe for chaos in political parties and bad result in governance. When applies to the President, the Vice President takes over. When applies to the Vice President then section 52 should be applied.

- 77 K is of the same character and will bring rift within the party as we have in the relation between the Leader of the SLPP in Parliament and other members of the party in Parliament
The word “voluntary ceases” will make Parliamentarians independent of their parties or you do away with party systems. The contradiction is that why do we need to consult in 77 L the Leader of a political party when you want to remove a member from parliament.
- On 77 O, our position is that not constituent to have the right to recall members from parliament but do it through the party because they voted for the member through the party. These are all ploy to bring rift in parties.
- On 77 1 and 6 our position is that – The Speaker should be appointed from amongst members of parliament.
- On section 73 (1) President should cease to be part of the composition of parliament. Parliamentary rules is that that none members should not sit and take part in Parliamentary proceedings. How can the President fulfill section 84 – 3 to present to parliament an address on the state of nation His membership is ceremonial, traditional and should not be removed as a member parliament.
- Citizenship – Still failed to answer the question of what category of citizen occupies strategic positions example, President, Vice President, Speaker of Parliament, Chief justice, Director of Public Prosecution, Ministers and Deputies, Head of our Security Organs, Ambassadors and Envoys. Our position and those of the people during consultations is that they should be citizens by birth with either parents being Sierra Leoneans by birth

- 102 3 - " With another country' to be added so that we do not use it to victimize people. The Special Court solved the problem already. It should be made clear so people understand.
- Lands Natural Resources and the Environment

1 C The Inclusion of free hold and lease hold is confusing. This is just the form of ownership and not the type of land. Government land and Private Lands can be acquired either free hold or lease hold.

- Natural Resources

1 3 Our position is that in collaboration with the Chiefs in the provinces. Wards are in the Chiefdoms and this section implies removing the chiefs from their traditional duties. It will create chaos.

- 6 E Combining so many ministries will be over burden.

- National Security

Part 1 2 C and D central intelligence is not necessary as another sector.

Part VI 5

You can see the emotion towards the Presidency as Commander in Chief of Armed Forces, he cannot chair meetings. But when it comes to the police and other councils of security character, the Vice President chairs. The President must chair.

Sign:



Hon. Dr. Kandeh Baba Conteh
Leader and Chairman

Copy:

Attorney General and Minister of Justice
File.

COMMENTS FROM POLITICAL PARTIES



PEOPLE'S DEMOCRATIC PARTY
PDP (SORBEH)

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SOUTH

3 LOWER JAKA
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 BO
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BANKERS

SIERRA LEONE
 COMMERCIAL
 BANK
 FREETOWN

**FOUNDED
 1991**

LEADER

GIBRILLA KAMARA
 DECEASED

ARNOLD A.SMITH
 INTERIM LEADER

The Chairman
 Constitutional Review Committee
 Miata Conference Center, Freetown.

5th December 2016.

Dear Sir,

Submission of PDP Sorbeh Position to the CRC as an Annex to the Main Constitutional Review Committee Report

With reference to an extraordinary plenary meeting of the CRC held on Tuesday 29th November, 2016, in which a motion was passed for political parties to be given the entire CRC Report and also for each political party to submit its position to the CRC to be annexed to the main report before submission to Cabinet.

First and foremost, the party received the report and the party is very grateful to CRC the secretariat.

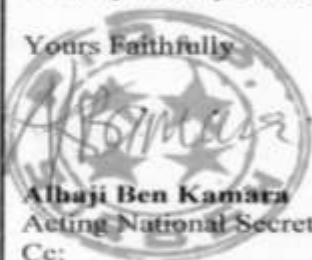
Also, after a careful look at the entire report, the party came up with the attached positions which are the overwhelming views of the people of Sierra Leone which the PDP as a party believes must be respected.

Sir, if you can recall, the PDP is always asking for the people's views to be respected and factored in the reviewed document more especially the outcome of the nationwide validation exercise and since most of the people's views are deliberated not included into the final document that is why the PDP members refused to sign and the party is ready to do the same if those views of the general public are not respected.

Lastly sir, the party members have been part of this process since its inception and therefore the party presents its position paper to the CRC and what it contains are the overwhelming views of the majority of the people nationwide. Until and unless these views are included in the final document, the PDP will not and never sign any document that concerns the outcome of the entire process

Thank you for your usual cooperation

Yours Faithfully



Alhaji Ben Kamara
 Acting National Secretary General PDP Sorbeh

Cc:

1. Executive Secretary CRC
2. Chief Technical Adviser CRC ✓
3. Attorney General and Minister of Justice.
4. National Chairman PDP Sorbeh

PDP SORBEH POSITION PAPER

The National Executive Committee of the Peoples Democratic Party (PDP Sorbeh) at a Special meeting held on Wednesday 30th November 2016 to deliberate on issues bordering the Constitutional Review Process in which some clauses of the Final Report totally contravened the popular views of majority of the people of Sierra Leone. After a careful observation of the final report and the so called amendment bill, the following key issues were identified and the following recommendations are given as recommended by the people of Sierra Leone.

Key Issues:

The Term **"Supreme Executive Authority,,** which is changed to Chief executive (section 40(1).

The PDP party executive recommend that the Term **Supreme Executive Authority** should remain as it is in the 1991 constitution as recommended by the people of Sierra Leone.

Section 40(1) which shall read, there shall be a president of the republic of sierra Leone who shall be the Head of State, the supreme executive authority of the republic and the commander-in-chief of the Armed Forces

VACANCIES IN THE OFFICE OF THE PRESIDENT AND VICE PRESIDENT

Section 49(1) Vacancy in the office of the President, which deals with loss of party Membership as a means of removing a president and vice president.

The PDP Sorbeh strongly recommends that loss of party membership shall completely nolify from office a sitting president, vice president and also a member of parliament. The party accepts that those individuals are public servants of the entire nation but it is through their political parties on whose tickets they were elected and it is their party members that gave them the mandate and they are in majority.

POWERS OF APPOINTMENT VESTED IN THE PRESIDENT

Section 70.the President may appoint in accordance with the provisions of this constitution or any other law the following persons-

a. The Chief Justice

The party recommends that the appointment of the chief justice to be done by the president by the advice of the Legal and judicial service commission as it is in the 1991 constitution and then approved by parliament.

The recommendation given in the abridged draft report of the CRC is not in line with international best practices and or modern constitutionalism like that of America, Nigeria, Kenya, South Africa, Egypt, Ghana in which the appointment of the Chief justice is done by the head of state in consultation or the advice of the Judicial and Legal service commission.

The party went on to proffer that it is completely unacceptable for the CRC to shift in the appointment of the Chief justice to the Judicial and Legal Service commission.

According to research made in several constitutions around the world, in the event of the absence of the president, made in many constitutions all over the world, it is found out that the Chief justice is the head of the judiciary, the third arm of government and should exercise the powers and some of the functions conferred on the president, vice president and the speaker.

LOCAL GOVERNMENT AND DECENTRALIZATION

Composition of Local Council Section 5(a) of the abridged report of the CRC which says:

A local council shall consist of

- (a) A general assembly---
Comprising all councilors elected from among them; and
- (b) An executive body---comprising of all chairmen of committees, core staff and deputy mayors.

After a careful look at this clause the party executive totally disagree with the recommendation given by the local government sub-committee because district chairmen and mayors are elected people in their respective districts and cities in which one of their responsibilities is to chair council meetings and for this function to be taken from them and given to somebody who is not elected for that is a complete violation of democracy.

The party recommends that

A Local council shall consist of

- (a) A general assembly-
Comprising of all councilors of the council which shall be headed by a chairman or mayor elected from their respective districts and cities of Sierra Leone

From the local government Justification of this clause, they proffer that the CRC developed the proposed wording from parts of the Ugandan and Kenyan Constitutions adopted for Sierra Leone is not adequate, First and foremost Keya don't have local government system. Kenya has county governments which is a pseudo or Quasi federation which is not practice in Sierra Leone.

TENURE OF LOCAL COUNCIL MEMBERS

Section (7) which the Local Government sub-committee recommended that:

Local council Elections should be non –Partisan

The parties also disagree with this recommendation; the party recommends that local council elections should be partisan as it happens in modern democracies like the Great Britain, America, France and even Countries in the African Continent. In West Africa, only Ghana was practicing non partisan local Council elections but that has been abolished for quite a long time in order to strengthen their multiparty democracy and to meet with international best practice.

Citizenship: In the abridge version of the CRC report, it is proposed that:

"A person is a citizen by birth if on the day of the persons birth, whether in Sierra Leone or not, either the mother or father is a citizen of Sierra Leone]"

As political parties, we totally disagree with this proposed amendment and recommends that citizenship should be limited to only native born Sierra Leoneans, whose parents are indigenes of Sierra Leone. Individuals who are born in Sierra Leone and whose parents are not indigenes should not be granted automatic citizens. However, they Should be regarded as citizens by naturalization. They should not be allowed to hold certain public offices such as, the office of the president, Vice president, ministers, head of the army, police, prisons, speaker of parliament etc.

Signed:



Alhaji Ben Kamara

Acting National Secretary General PDP Sorbeh.

