



REPORT ON THE REVIEW OF THE 2017
GOVERNMENT WHITE PAPER ON THE
CONSTITUTION OF SIERRA LEONE, 1991
(ACT NO.6 OF 1991)

DECEMBER 2021.

Contents

Introduction.....	1
CHAPTER IV - FUNDAMENTAL PRINCIPLES OF STATE POLICY.....	2
Marginal Note: Government and People	2
Marginal Note: Political Objectives	2
Marginal Note: Economic Objectives.....	3
Marginal Note: Social Objectives	3
Provision of Mandatory Healthcare.....	3
Persons with Disability	4
Social Security and Social Assistance	4
Marginal Note: Educational Objectives.....	4
Marginal Note: Obligations of the Mass Media.....	5
Marginal Note: Enhancement of National Culture.....	5
Marginal Note: Duties of the Citizen.....	5
Marginal Note: Fundamental Principles not Justiciable	6
CHAPTER V - THE RECOGNITION AND PROTECTION OF THE FUNDAMENTAL HUMAN RIGHT AND FREEDOMS OF THE INDIVIDUAL.....	7
Renaming the Chapter.....	7
Marginal Note: Fundamental Human Rights and Freedoms of the Individual	7
Marginal Note: Protection from Arbitrary Arrest or Detention.....	7
Marginal Note: Protection of Freedom of Movement	8
Marginal Note: Protection from Inhuman Treatment.....	8
Marginal Note: Protection from Deprivation of Property.....	9
Marginal Note: Protection for Privacy of Home and Other Property.....	9
Marginal Note: Provision to Secure Protection of Law.....	9
Marginal Note: Protection of Freedom of Conscience.....	10
Marginal Note: Protection of Freedom of Expression and the Press.....	10
Marginal Note: Protection of Freedom of Assembly and Association	10
Marginal Note: Protection from discrimination	10
Marginal Note: Enforcement of Protective Provisions.....	10
Marginal Note: Public Emergency	11
Additional Amendments to Chapter III.....	11
CHAPTER VI: CITIZENSHIP	12
CHAPTER VII: THE EXECUTIVE.....	13
Marginal Note: Office of President.....	13
Marginal Note: Qualifications for Office of President.....	13
Marginal Note: Election of President.....	13
Marginal Note: Incidents of Office.....	14
Marginal Note: Vacancy in Office of President	14
Marginal Note: Mental or Physical incapacity.....	14
Marginal Note: Misconduct by President	14
Marginal Note: Vice President.....	15
Marginal Note: Vacancy in the Office of Vice-President	15
Marginal Note: Establishment of Office of Attorney-General and Minister of Justice	15
Marginal Note: Solicitor-General.....	15
Marginal Note: The Director of Public Prosecutions	16
Marginal Note: Secretary to the President	16
Marginal Note: Secretary to the Cabinet.....	16
Marginal Note: Secretary to the Vice-President.....	16
Marginal Note: Office of Paramount Chief.....	16
CHAPTER VIII – REPRESENTATION OF THE PEOPLE	18
Marginal Note: Registration of Voters.....	18
Marginal Note: Electoral Commission.....	18

Theme: Political Parties Registration Commission.....	19
Marginal Note: Registration and Conduct of Political Parties	19
CHAPTER IX - THE LEGISLATURE.....	20
Marginal Note: Establishment of Parliament.....	20
Marginal Note: Members of Parliament.....	20
Theme: Introduction of Proportional Representation.....	20
Theme: Removal of Paramount Chiefs from Parliament	20
Theme: Establishment of National House of Chiefs	21
Marginal Note: Disqualifications for Membership of Parliament.....	21
Marginal Note: Tenure of Seats of Members of Parliament.....	21
Marginal Note: The Speaker.....	22
Marginal Note: Clerk of Parliament – Parliamentary Service Commission	22
Marginal Note: Sessions of Parliament.....	23
Marginal Note: Sittings of Parliament	23
Marginal Note: Unqualified Persons sitting or voting.....	23
Marginal Note: Committees of Parliament	23
Theme: Parliamentary Privileges – Avoiding Double Jeopardy	24
Marginal Note: Immunity for Publication of Proceedings	25
Marginal Note: Mode of Exercising Legislative Power.....	25
Marginal Note: Alteration of this Constitution.....	25
Marginal Note: Establishment of Office and Functions of Auditor-General	25
CHAPTER VII – THE JUDICIARY	26
Marginal Note: Establishment of the Judiciary	26
Marginal Note: Composition of the Supreme Court.....	26
Marginal Note: Jurisdiction of the Supreme Court.....	26
Marginal Note: Appeals to the Supreme Court.....	27
Marginal Note: Enforcement of the Constitution	27
Marginal Note: Composition of the Court of Appeal.....	27
Marginal Note: Jurisdiction of the Court of Appeal.....	28
Marginal Note: Composition of the High Court.....	28
Marginal Note: Jurisdiction of the High Court.....	28
Marginal Note: Supervisory Jurisdiction of the High Court.....	29
Marginal Note: Appointment of Judges.....	29
Theme: Judicial Vacancies	29
Marginal Note: Tenure of Office of Judges.....	30
Marginal Note: Remuneration of Judges.....	31
Marginal Note: Judicial and Legal Services Commission	31
Marginal Note: Appointment of Judicial and legal Officers	33
Marginal Note: Appointment of Court Officers.....	33
Marginal Note: Fees of Court, etc.	33
Theme: Alternative Dispute Resolution Mechanism	33
CHAPTER XI: LOCAL GOVERNMENT AND DECENTRALISATION	34
CHAPTER XIII: NATIONAL SECURITY	35
CHAPTER IV: THE PUBLIC SERVICE	36
CITIZENSHIP	36
LOCAL COURT.....	36
Technical Committee Members	36

Introduction.

Following the end of the non-international armed conflict in Sierra Leone, a Truth and Reconciliation Commission (TRC) was set up as part of the broader transition mechanism to restore peace and stability to the country. The TRC proffered series of recommendations aimed at strengthening the country's democratic dispensation, mainstreaming gender and protecting and promoting civil liberties in the country.

The TRC's recommendations engendered, inter alia, discussions around a constitutional review process. Thus, mindful of those recommendations, the Tejan-Kabbah-led administration set up a Constitutional Review Commission (CRC) in 2006 to review the Constitution of Sierra Leone, 1991 (Act No.6 of 1991). The CRC completed its mandate and presented the report of the review process to former President Ernest Bai Koroma in 2008.

However, the Koroma administration was of the view that the review process was not widely consultative. Therefore, his administration initiated another review process of the 1991 Constitution with 80 members drawn from all occupations including civil society organisations, non-governmental organisations, human rights groups, disability groups, women's groups, youth groups, governance institutions, political parties and Paramount Chiefs. Justice Edmond Cowan chaired this Committee with the following terms of reference:

- i. 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;
- ii. articulate the concerns of the people of Sierra Leone on amendments that may be required for a comprehensive review of the 1991 Constitution; and,
- iii. make recommendations to the Government for consideration and provide a draft Bill for possible amendments to the 1991 Constitution.

Following nation-wide consultations and submissions received in the form of position papers from individuals and interest groups, the final report of the Justice Edmond Cowan-led review process was presented to the former President Koroma on 24 January 2017. The Koroma-led government then issued a White Paper in response to the recommendations as contained in the Report.

The 2018 general elections ushered in a new political dispensation led by Brigadier (Rtd) Julius Maada Bio of the Sierra Leone People's Party. As part of his manifesto commitment, the President expressed his wish to "examine the recommendations of the Constitutional Review Commission and the accompanying White Paper with a view to giving effect to them as much as practicable". Consequently, his government approved the setting up of a Technical Committee to review the recommendations of the Justice Cowan-led Constitutional Review Committee. This review was against the backdrop of the New Direction Government policies and the Medium-Term National Development Plan, and advise Cabinet on the acceptability, adoption or otherwise of the recommendations contained in the said Report, bearing in mind the current political, social and economic realities of the country.

The Technical Committee has completed the task of reviewing the 2017 Government White Paper and has presented its findings to Government. Government notes with interest the recommendations contained in the Report of the Technical Committee and is committed to implement those that have been accepted. On that note, Government shall take practical steps immediately to implement the non-entrenched ones immediately and further commits to implement those that touch on entrenched provisions as soon as practicable. Government hereby issues this White Paper in response to the Technical Committee review.

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

CHAPTER IV - FUNDAMENTAL PRINCIPLES OF STATE POLICY

Marginal Note: Government and People

Recommendation

That the fundamental principles of Freedom, Democracy and Justice of the Republic of Sierra Leone be expanded to include "human dignity" and "equality": section 5(1).

Government's Response

Government accepts this recommendation to include "human dignity" and "equality" to section 5(1) of the 1991 Constitution.

Recommendation

That the national security of the country should be a matter of collective responsibility of all Sierra Leoneans: section 5(2) (b).

Government's Response

Government notes this recommendation but believes that section 5(2)(b) adequately sets out the organs responsible for national security. It therefore retains the said subsection accordingly.

Marginal Note: Political Objectives

Recommendation

- a. That the motto of the Republic of Sierra Leone which is "Unity, Freedom and Justice" in section 6(1) be replaced with national values of "Patriotism, Participation, Human Dignity, Equality, Unity, Freedom and Justice."

Government's Response

Government notes this recommendation but believes that section 6(1) truly represents the political objectives of our country and therefore retains the said subsection accordingly.

Recommendation

- b. That the duty of the State to promote national integration and unity and discourage discrimination, etc. in section 6(2) be amended to replace the word "discourage" with the word "prohibit", i.e. that "the State shall promote national integration and unity and prohibit discrimination....."

Government's Response

Government accepts this recommendation to replace the word "discourage" with "prohibit" as the latter places obligation on the State to take positive or proactive steps to tackle discrimination. Therefore, section 6(2) should be amended accordingly.

Recommendation

- c. That in addition to the current position that Government takes steps to eradicate all corrupt practices and the abuse of power, provision be made in the Constitution prohibiting all organs of Government and Public Officers from acting in any way that is inconsistent with the Constitution or their office and exposing themselves to situations of conflict of interest between their official responsibilities and private interests: section 6(5)

Government's Response

Government notes this recommendation but believes the current Anti-Corruption law is fully expansive

and has been highly effective in combatting corruption. Therefore, Government retains section 6(5) of the 1991 Constitution.

Marginal Note: Economic Objectives

Recommendation

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

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

Government's Response

Government notes this recommendation but believes that the Constitution should state broad principles to provide for issues recommended herein to be addressed in other legislations. Further, we now have a Ministry responsible for the environment; there is also the Environmental Protection Act and the implementation of the National Land Policy will give rise to a legislation including Land Management, Country Planning, etc. Therefore, Government retains section 7 of the 1991 Constitution.

Marginal Note: Social Objectives

Recommendation

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

Government's Response

Government accepts this recommendation to expand ideals of the State to include "human dignity". Therefore, section 8(1) should be amended accordingly to read: "The Social Order of the State shall be founded on the ideals of human dignity, freedom, equality and justice."

Provision of Mandatory Healthcare

Recommendation

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

Government's Response

Government accepts this recommendation to delete the qualifying words "having due regard to the resources of the State" in paragraphs (c) and (d) of section 8(3). Necessary structures will involve policy formulation to help Government address challenges where there are limited resources. Therefore, section 8(3)(c) and (d) be amended accordingly.

Persons with Disability

Recommendation

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

Government’s Response

Government accepts this recommendation to replace the word “disabled” with “persons living with disabilities” in line with international best practice. Therefore, section 8(3)(f) should be amended accordingly.

Social Security and Social Assistance

Recommendation

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

Government’s Response

Government notes this recommendation as Government is currently implementing a social security and safety net program by providing financial and social assistance to persons who are unable to support themselves particularly women and the aged. The National Commission for Social Action law takes care of this and so unnecessary to have a new social objective provision in the Constitution. Therefore, save for the accepted recommendations, Government retains section 8 of the 1991 Constitution.

Marginal Note: Educational Objectives

Recommendation

- a. That the responsibility of Government shall be to direct its policy towards “providing necessary structures, finance and supportive facilities for education as and when practicable” be made absolute by deleting the qualifying words “as and when practicable”: section 9(1)(c)

Government’s Response

Government accepts this recommendation to delete the qualifying words “as and when necessary”. Necessary structures will involve policy formulation to help Government address challenges where there are limited resources. Therefore, section 9(1)(c) should be amended accordingly.

Recommendation

- b. That in promoting the educational objectives of the Constitution, the charge that Government shall strive to eradicate illiteracy and shall direct its educational policy towards achieving “free secondary education as and when practicable” be made absolute by deleting the qualifying words “as and when practicable”: section 9(2)(c)

Government’s Response

Government accepts this recommendation to delete the qualifying words “as and when practicable” as Government is already implementing it in its Free Quality School Education policy. Government, however, recommends the addition of ‘quality’ to free in the paragraphs of section 9(2). Government further recommends the merging of paragraphs (b) and (c) of section 9(2) to read: “free, quality and compulsory school education at primary and secondary school levels”. Therefore, section 9(2) should be amended accordingly.

Recommendation

- c. That as part of its educational objectives, Government promotes “human rights education and conflict management”, in addition to promoting the learning of indigenous languages and the study and application of modern science, foreign languages, technology, commerce and business: section 9(3)

Government’s Response

Government accepts this recommendation but substitutes ‘human rights’ with ‘civic education’, and ‘business’ with ‘entrepreneurship’ to read “the Government shall promote the learning of indigenous languages and the study and application of modern sciences, foreign languages, technology, civic education, conflict management, commerce and entrepreneurship”. Therefore, section 9(3) should be amended accordingly.

Marginal Note: Obligations of the Mass Media

Recommendation

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

Government’s Response

Government notes this recommendation but is of the view that the fundamental freedoms set out in the Constitution are all embracing. In addition, the Freedom of Information Act, 2013 and the recent promulgation of the Independent Media Commission Act, 2020 cumulatively address the recommendation above and therefore should not be included in the Constitution. Therefore, Government retains section 11 of the 1991 Constitution.

Marginal Note: Enhancement of National Culture

Recommendation

That in enhancing national culture, Government also promotes “dress” in addition to promoting music, art, dance...: section 12(a)

Government’s Response

Government accepts this recommendation to include ‘dresses’ that promotes Sierra Leonean culture in paragraph (a) of section 12 of the 1991 Constitution. Therefore, section 12(a) should be amended accordingly.

Marginal Note: Duties of the Citizen

Recommendation

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

Government’s Response

Government accepts this recommendation to add the national currency and national pledge to the duties of a citizen in section 13(a) of the 1991 Constitution. In fact, there are provisions in the extant banking laws that support respect for the national currency. Further, Government recommends the addition of “regional” in section 13(b) of the 1991 Constitution. Therefore, section 13 should be amended accordingly.

Marginal Note: Fundamental Principles not Justiciable

Recommendation

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

Government's Response

Government notes this recommendation but believes that the fundamental principles as contained in Chapter II of the Constitution are clear and will continue to serve as a guide in the governance of the State and in law making. Therefore, Government retains section 14 of the 1991 Constitution.

CHAPTER V - THE RECOGNITION AND PROTECTION OF THE FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Renaming the Chapter

Recommendation

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

Government’s Response

Government accepts this recommendation of renaming Chapter III of the 1991 Constitution to read “The Recognition, Protection, and Promotion of Human Rights and Freedoms of the Individual” in line with its international obligations in safeguarding and promoting human rights of its citizenry.

Marginal Note: Fundamental Human Rights and Freedoms of the Individual

Recommendation

That section 15 is amended to read as follows: “The people of Sierra Leone recognise that citizens of Sierra Leone and persons present within its territory are entitled to the following inalienable rights, whatever his/her race, tribe, place of origin, political opinion, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following...”

Government’s Response

Government notes this recommendation but is of the opinion that the current section is concise and captures the fundamental tenets of human rights. Therefore, Government retains section 15 of the 1991 Constitution.

Marginal Note: Protection of Right to Life

Recommendation

The CRC has recommended that the death penalty should be abolished: section 16(1).

Government’s Response

Government accepts this recommendation in support of the Government’s belief in the sanctity of life as well as to place the State alongside other progressive countries in the world. Therefore, section 16(1) should be amended accordingly.

Marginal Note: Protection from Arbitrary Arrest or Detention

Recommendation

- a. That the age at which a person may be deprived of his personal liberty for the purpose of his education or welfare be reduced from 21 years to 18 years: section 17(1)(g).

Government’s Response

Government accepts this recommendation to reduce the age limit to eighteen years instead of 21 years in line with the age of consent in our jurisdiction. Therefore, section 17(1)(g) should be amended accordingly.

Recommendation

- b. That the periods within which a person arrested or detained for the purpose of bringing him before a Court or Tribunal or upon reasonable suspicion of his having committed or of him being about to commit a criminal offence be reduced from within ten days to within seven days from the date of arrest in cases of capital offences carrying life imprisonment and economic and environmental offences; and from within seventy-two hours of arrest to within 48 hours of his arrest in the case of other offences: section 17(3).

Government's Response

Government accepts this recommendation to amend section 17(3)(a) and (b) to reduce the detention period prior to being brought to court to seven days from ten days for heinous offences and forty-eight hours from seventy-two for other offences, respectively. Therefore, section 17(3)(a) and (b) should be amended accordingly.

Recommendation

- c. That any person who is unlawfully arrested or detained shall be entitled to compensation and public apology: section 17(4).

Government's Response

Government accepts this recommendation but replaces the word 'and' with 'and/or' to read "... entitled to compensation and/or public apology". Therefore, section 17(4) should be amended accordingly.

Marginal Note: Protection of Freedom of Movement

Recommendation

- a. That freedom of movement may be curtailed in the interest of national security: section 18(3)(a).

Government's Response

Government accepts this recommendation of curtailing freedom of movement in the interest of 'national security'; that is, national security to be added to section 18(3)(a) of 1991 Constitution. Therefore, section 18(3)(a) should be amended accordingly.

Recommendation

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

Government's Response

Government notes this recommendation but maintains that freedom of movement is not an absolute right to citizens and may be restricted in the interest of national security, defence, public safety, etc. Therefore, Government retains section 18(3) of the 1991 Constitution.

Marginal Note: Protection from Inhuman Treatment

Recommendation

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

Government's Response

Government accepts this recommendation in conformity with our human rights obligations as the right to be protected from inhumane treatment is absolute and should not be derogated from under any circumstance.

Marginal Note: Protection from Deprivation of Property

Recommendation

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

Government's Response

Government accepts this recommendation of adding national security where necessary in the interest of ‘national security’. Government further accepts the deletion of the reference “Legislature of the former Colony and Protectorate of Sierra Leone” as Sierra Leone is now a Republic and therefore the reference appears obsolete.” Therefore, save the accepted amendments, Government retains section 21 of the 1991 Constitution.

Marginal Note: Protection for Privacy of Home and Other Property

Recommendation

That the right to protection for privacy of home and other property be subject to “national security interest” among others.

Government's Response

Government accepts this recommendation to include ‘national security interest’ in section 22(2)(a). It further recommends replacing the word ‘handicapped’ in paragraph (e) with ‘persons living with disabilities’ in line with accepted recommendation in section 8(3)(f).

Government notes the recommendation, which goes to legislation for the safeguard of the right to protection, but believes that there are existing legislations that adequately provides for the protection of home, communications, etc.

Marginal Note: Provision to Secure Protection of Law

Recommendation

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

Government's Response

Government accepts this recommendation in section 23(3) of the 1991 Constitution. Therefore, section 23(3) should be amended accordingly.

Recommendation

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

Government's Response

Government notes the recommendation and is of the opinion that such matters should be dealt with in other legislations such as the Sierra Leone Correctional Services Act 2014 and the Criminal Procedure Act 1965 and not in the Constitution. Therefore, Government retains section 23(10) of the 1991 Constitution.

Marginal Note: Protection of Freedom of Conscience

Recommendation

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

Government’s Response

Government accepts this recommendation to include ‘the interest of national security’. Therefore, section 24(5)(a) should be amended accordingly.

Marginal Note: Protection of Freedom of Expression and the Press

Recommendation

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

Government’s Response

Government notes this recommendation but believes that the existing provision on the same is balanced and adequate. The enjoyment of this right should be exercised within the confines of the law, as an absolute right in this regard may be counterproductive to the peace and security of the State especially in this age of rapidly evolving new media. Therefore, Government retains section 25(1) of the 1991 Constitution.

Marginal Note: Protection of Freedom of Assembly and Association

Recommendation

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

Government’s Response

Government notes this recommendation but is of the opinion that the existing safeguards in the 1991 Constitution pertaining to the protection of freedom of assembly and association are adequate. Further, the existing labour laws provide collective bargaining for employers and employees. Therefore, Government retains section 26 of the 1991 Constitution.

Marginal Note: Protection from discrimination

Recommendation

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

Government’s Response

Government accepts this recommendation to draft a new section 27 of the 1991 Constitution to provide for gender inclusivity, protection from discrimination and promotion of the rights and empowerment of women in line with Government’s policy.

The Committee accepts this recommendation to redraft section 27 of the 1991 Constitution to provide for gender inclusivity in line with the New Direction manifesto.

Marginal Note: Enforcement of Protective Provisions

Recommendation

- a. That the current provision on enforcement of Protective Provisions in section 28 be retained.

Government's Response

The Committee accepts this recommendation and retains section 28 of the 1991 Constitution.

Recommendation

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

Government's Response

Government notes this recommendation but believes that the Judiciary is a competent body with rules of procedure that guides their practice. That a restrictive constitutional position will be cumbersome. Therefore, Government retains section 28 of the 1991 Constitution.

Marginal Note: Public Emergency

Recommendation

- a. That a new paragraph be added ensuring that there is no derogation of the fundamental human rights to life, the prohibition of torture, the principles of legality in the fields of Criminal Law, and the freedom of thought, conscience and religion during a State of emergency: section 29 (6)(i)

Government's Response

Government accepts this recommendation to add a new paragraph to section 29(6) stating in clear terms that the right to life, the prohibition of torture, the principles of legality, and the freedom of thought, conscience and religion shall not be derogated from during a State of emergency.

Recommendation

- b. That the period for which a State of Emergency is declared be reduced from 12 months to 3 months: section 29(13).

Government's Response

Government notes this recommendation and believes that the current provisions have been applied efficiently as seen during this current corona health pandemics. Any alteration to the status quo risks undermining the purport of the provision. Therefore, Government retains section 29(13) of the 1991 Constitution.

Additional Amendments to Chapter III

Recommendation

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

Government's Response

Government notes this recommendation but is of the view that such additional chapter is not necessary; the issues raised are already addressed in other legislations including the Environment Protection Act, the Disability Act and the Child Rights Act.

CHAPTER VI: CITIZENSHIP

Recommendation

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

Government's Response

Government accepts this recommendation to draft a new chapter on citizenship in the Constitution as citizenship is very vital in the government structure of the State and therefore needs to be clearly defined in the most important legislation – the Constitution.

CHAPTER VII: THE EXECUTIVE

Marginal Note: Office of President

Recommendation

- a. That the description of the President of the Republic of Sierra Leone as the “supreme executive authority” of the Republic be replaced by the words “Chief Executive”: section 40(1).

Government’s Response

Government notes this recommendation but believes that replacing the title “supreme executive authority” with chief executive” is a puerile attempt at undermining the Constitutional authority of the President. Therefore, Government retains section 40(1) of the 1991 Constitution.

Recommendation

- b. That the functions of the President contained in section 40(4) be amended to include the following:
 - i. To ensure that laws are executed
 - ii. To veto disagreeable legislation
 - iii. To present the State of the Nation in an address to Parliament
 - iv. To manage and regulate disasters and other States of Emergency

Government’s Response

Government notes this recommendation but believes that they already form part of the functions of the President in the 1991 Constitution and in other legislations. Therefore, Government retains section 40(4) of the 1991 Constitution.

Marginal Note: Qualifications for Office of President

Recommendation

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

Government’s Response

Government notes this recommendation but is of the opinion that the word “only” should be inserted in paragraph (a) between ‘citizen’ and ‘of’ to read: “is a citizen only of Sierra Leone” to prevent holders of dual or multiple citizenships from contesting the Presidency. In addition, Government proposes to amend section 41(d) to read: “... he is a person otherwise qualified to be elected a Member of Parliament, except that the disqualifications set out in paragraphs (b) and (h) of Section 76(1) of this Constitution shall not be applicable to this section”. Therefore, save for the amendment, Government retains section 41 of the 1991 Constitution.

Marginal Note: Election of President

Recommendation

- a. That Presidential, Parliamentary and Local Government elections be held on the same day.

Government’s Response

Government accepts this recommendation for Presidential, Parliamentary and Local Government elections to be held on a fixed date, preferably the second Saturday in March in the election year.

Recommendation

- b. That a fixed date for inauguration of an elected President should be specified in the Constitution so that there would be no vacuum of power: new section 43(c).

Government's Response

Government accepts this recommendation to have fixed date for inauguration, preferably on 27 April in the election year. However, a person elected to the office of President shall assume that office on the day he/she is declared by the Chief Electoral Commissioner so that there will be no power vacuum. Therefore, section 43 is amended accordingly.

Further, Government believes that the fifty-five percent threshold set for a presidential candidate to be elected has resulted in unnecessary second election with great cost to the economy, peace and security of the nation. Government proposes that a threshold of more than fifty percent of the valid votes cast should suffice for a candidate to be elected President. Therefore, section 42(2) should be amended accordingly.

Marginal Note: Incidents of Office

Recommendation

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

Government's Response

Government notes this recommendation but is of the view that there are presidential privileges that the President should enjoy including personal tax exemption. Therefore, Government retains section 48(3) of the 1991 Constitution.

Marginal Note: Vacancy in Office of President

Recommendation

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

Government's Response

Government accepts this recommendation that loss of political party membership, howsoever arising should not warrant an automatic vacancy in the office of President. Government proposes adding a subsection requiring the party under whose ticket the President was elected to send the resignation or expulsion notice to Parliament for a debate and vote to be taken, supported by two-thirds majority of all the Members of Parliament for the said President to be removed.

Marginal Note: Mental or Physical incapacity

Recommendation

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

Government's Response

Government accepts this recommendation. Therefore, section 50 of the 1991 Constitution should be amended accordingly.

Marginal Note: Misconduct by President

Recommendation

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

Government's Response

Government notes this recommendation but considers that the current provision in section 51 of the Constitution conferring the power on Members of Parliament (the representatives of the people) is adequate. Therefore, Government retains section 51 of the 1991 Constitution.

Marginal Note: Vice President

Recommendation

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

Government's Response

Government accepts this recommendation that loss of political party membership, howsoever arising should not warrant an automatic vacancy in the office of Vice President. Government proposes adding a subsection requiring the party under whose ticket the Vice President was elected to send the resignation or expulsion notice to Parliament for a debate and vote to be taken, supported by two-thirds majority of all the Members of Parliament for the said Vice President to be removed. Therefore, section 54(8) of the 1991 Constitution is amended in line with the provisions relating to the removal of the President.

Marginal Note: Vacancy in the Office of Vice-President

Recommendation

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

Government's Response

Government proposes the same provisions relating to a vacancy in the office of the President to apply to that of the Vice President. Therefore, section 55 of the 1991 Constitution should be amended in line with the provisions relating to the removal of the President.

Marginal Note: Establishment of Office of Attorney-General and Minister of Justice

Recommendation

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

Government's Response

Government accepts this recommendation to separate the office of the Attorney-General and Minister of Justice. The Attorney-General shall be the principal legal adviser to the Government but not a Minister.

The Government further proposes that the age for qualification for appointment as Attorney-General be reduced from twenty years to fifteen years and be subject to Parliamentary approval. Therefore, section 64 should be amended accordingly. That where a Minister of Justice is appointed, he or she shall have a seat in the Cabinet.

Marginal Note: Solicitor-General

Recommendation

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

Government's Response

Government notes this recommendation but is of the opinion that a Parliamentary approval of the Solicitor-General is unnecessary, as he is only the principal assistant to the Attorney-General. Therefore, the Committee retains section 65(7) of the 1991 Constitution.

Government further proposes that the age for qualification for appointment as Solicitor-General be reduced from fifteen years to twelve years. Therefore, section 65(3) should be amended accordingly.

Marginal Note: The Director of Public Prosecutions

Recommendation

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

Government’s Response

Government notes this recommendation but is of the opinion that such an increase in age is unnecessary. Therefore, the Government retains section 66(7), (8) and (10) of the 1991 Constitution.

Government further proposes that the age for qualification for appointment as Director of Public Prosecutions be reduced from fifteen years to twelve years. Therefore, section 66(3) should be amended accordingly.

Marginal Note: Secretary to the President

Recommendation

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

Government’s Response

Government notes this recommendation but believes that the current provisions in the Constitution are adequate and have worked well. Therefore, the Government retains section 67(2)(a) of the 1991 Constitution

Marginal Note: Secretary to the Cabinet

Recommendation

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

Government’s Response

Government notes this recommendation but believes that the current provisions in the Constitution are adequate and have worked well. Therefore, Government retains section 68 of the 1991 Constitution.

Marginal Note: Secretary to the Vice-President

Recommendation

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

Government’s Response

Government notes this recommendation but believes that the current provision in the Constitution ensures accountability and has worked well. Therefore, Government retains section 69(2) of the 1991 Constitution.

Marginal Note: Office of Paramount Chief

Recommendation

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

Government's Response

Government notes this recommendation but is of the opinion that the existing provisions in the Constitution and other laws governing the institution of Chieftaincy have worked well and should be retained. Therefore, Government retains section 72 of the 1991 Constitution.

CHAPTER VIII – REPRESENTATION OF THE PEOPLE

Marginal Note: Registration of Voters

Recommendation

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

Government's Response

Government accepts this recommendation and therefore retains section 31 of the 1991 Constitution

Marginal Note: Electoral Commission

Recommendation

- a. That Electoral Commissioners should reside in the four regions to make them more accessible and to decentralise the Commission's work: Section 32.

Government's Response

Government notes this recommendation but believes that the administrative structure and workings of the Electoral Commission do not lend themselves to residency of Electoral Commissioners in the regions. Government further proposes adding "National" before "Electoral Commission" to read, "National Electoral Commission".

Recommendation

- b. That the Electoral Commission comprises a Chief Electoral Commissioner who shall be the Chairperson and four other members.

Government's Response

Government notes this recommendation but is of the opinion that the existing provisions have worked well. Government is of the view that the composition of the Electoral Commission should be a Chief Electoral Commissioner and such other members as Parliament may by law prescribe.

Recommendation

- c. That section 32(3) which provides for appointment of electoral commissioners by the President after consultation with the leaders of all registered political parties and subject to the approval of Parliament be retained.

Government's Response

Government accepts this recommendation. Therefore, Government retains section 32(3) of the 1991 Constitution.

Recommendation

- d. That there should be no age limit for appointment of Electoral Commissioners: section 32(7)(b).

Government's Response

Government notes this recommendation but believes that age considerations in the Public Service must have limits or caps to make room for younger generations to aspire to higher public office. Therefore, Government retains section 32(7) of the 1991 Constitution.

Recommendation

- e. That express provision be made in the Constitution to require Commissioners to declare their assets to ensure greater transparency and credibility in relation to their office.

Government's Response

Government notes this recommendation but is of the opinion that such provision will be superfluous as the Anti-Corruption law (as amended) mandates public officers to declare their assets and liabilities upon assuming office.

Recommendation

- f. That the mandate of the Electoral Commission be expanded to include the conduct and supervision of Paramount Chieftaincy elections.

Government's Response

Government notes this recommendation but believes that the Chieftaincy Act, 2009 is expansive enough and lays bare the roles of different actors in the conduct and supervision of paramount chieftaincy elections. Therefore, Government retains section 33 of the 1991 Constitution.

Theme: Political Parties Registration Commission

Recommendation

- a. That the Political Parties Registration Commission be renamed "The Political Parties Registration and Regulatory Commission": section 34(1).

Government's Response

Government accepts this recommendation as the Commission performs regulatory functions as part of its mandate. Therefore, section 34(1) should be amended accordingly.

Recommendation

- b. That the functions of the Political Parties Registration Commission include setting candidate fees for Presidential, Parliamentary and Local Council elections in consultation with the Electoral Commission.

Government's Response

Government notes this recommendation but considers that the Political Parties Registration Commission (PPRC) should focus on its core mandates of registering and providing oversight for the operation of political parties. Therefore, Government retains section 34(4) of the 1991 Constitution.

Marginal Note: Registration and Conduct of Political Parties

Recommendation

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

Government's Response

Government accepts this recommendation in line with the Gender Equality and Women's Empowerment policy on inclusivity. Therefore, section 35(2) should be amended accordingly. Government further proposes amending section 38 of the 1991 Constitution to provide for proportional representation to achieve women's participation in public elections.

CHAPTER IX - THE LEGISLATURE

Marginal Note: Establishment of Parliament

Recommendation

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

Government's Response

Government notes this recommendation but believes that the 1991 Constitution reflects a hybrid system of government. Therefore, Government retains section 73(1) of the 1991 Constitution.

Marginal Note: Members of Parliament

Recommendation

- a. That the Constitution be amended so that Paramount Chiefs would no longer be part of the composition of Parliament; that all references to Paramount Chiefs in the composition of Parliament should be deleted; and that provision be made for introduction of proportional representation for election as Member of Parliament: section 74.

Government's Response

Government notes this recommendation but is of the view that the current composition of the Parliament enables Paramount Chiefs to participate in the legislative process. Government considers a second chamber unnecessary. Therefore, Government retains section 74 of the 1991 Constitution.

Recommendation

- b. That not less than 30% of Members of Parliament shall be women details of which should be prescribed by an Act of Parliament.

Government's Response

Government notes this recommendation but is of the opinion that this issue should be addressed in another legislation and not in the Constitution.

Theme: Introduction of Proportional Representation

Recommendation

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

Government's Response

Government accepts this recommendation of having Members of Parliament to be elected in accordance with the system of proportional representation as bye elections have been held at a great cost to the economy, peace and security of the nation. However, the threshold should be left to the Electoral Commission to work out and not stated in the Constitution.

Theme: Removal of Paramount Chiefs from Parliament

Recommendation

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

Government's Response

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

Theme: Establishment of National House of Chiefs

Recommendation

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

Government's Response

Government notes this recommendation but is of the opinion that the provisions dealing with the composition of Parliament are adequate. Therefore, creating a National House of Chiefs is unnecessary. Therefore, Government retains the prevailing provisions.

Marginal Note: Disqualifications for Membership of Parliament

Recommendation

- a. That the time limit or the period within which certain Public Officers and members of the Armed Forces of the Republic of Sierra Leone should have resigned from such office in order to qualify for election as a Member of Parliament be reduced from twelve months to six months prior to the date on which he seeks to be elected to Parliament: section 76(1)(b).

Government's Response

Government accepts this recommendation to reduce the time for public officers to resign to contest from twelve months as provided for section 76(1)(b) to six months. Therefore, section 76(1)(b) should be amended accordingly.

Recommendation

- b. That a person shall be disqualified for election as a Member of Parliament if under any law in force in Sierra Leone he is certified to be clinically lunatic or otherwise of unsound mind, or if he has been convicted or and sentenced for an offence which involves misconduct or dishonesty: section 76(1)(c) and (d)

Government's Response

Government notes this recommendation but believes that the current provision is adequate. That a person can be adjudged as such without being referred to as "clinically" lunatic. Therefore, Government retains section 76(1)(c) and (d) of the 1991 Constitution.

Further, Government proposes to delete section 76(1)(h) of the 1991 Constitution as it appears to be ambiguous.

Marginal Note: Tenure of Seats of Members of Parliament

Recommendation

The CRC recommends several amendments to section 77 relating to sub-sections k, l, n, and the addition of a recall clause as sub-section o.

That a Member of Parliament shall:

- a. vacate his seat in Parliament if he voluntarily ceases to be a Member of the political party of which he was member at the time of his election to Parliament; 77(k);

Government's Response

Government notes this recommendation but is of the opinion that the current provisions are adequate. Therefore, Government retains section 77(k) of the 1991 Constitution.

Recommendation

- b. if by his conduct in Parliament, by persistently sitting and voting with members of a different party and the Speaker is satisfied following consultation with that member's

party leader and upon sufficient evidence that the person is no longer a member of the political party on whose ticket he was elected to Parliament: 77(l);

Government's Response

Government notes this recommendation but is of the opinion that the current provisions are adequate. Therefore, Government retains section 77(l) of the 1991 Constitution.

Recommendation

- c. if he accepts office as an Ambassador or High Commissioner for Sierra Leone or any employment with an International or Regional organization: 77 (n);

Government's Response

Government notes this recommendation but is of the opinion that the current provisions are adequate. Therefore, Government retains section 77(n) of the 1991 Constitution.

Recommendation

- d. if he is recalled by his constituents before the end of his term: new sub-section- 77(o)

Government's Response

Government notes this recommendation but is of the opinion that the current provisions are adequate. Therefore, Government maintains section 77 of the 1991 Constitution.

Further, Government proposes adding subsection (1) to section 77 since there is already a subsection (2) of the same.

Marginal Note: The Speaker

Recommendation

- a. That only persons who are members of Parliament or are qualified to be elected as such and who are qualified to be appointed as Judges of the Superior Court of Judicature can be elected to such office: section 79 (1) .

Government's Response

Government accepts this recommendation of electing a Speaker of Parliament. Therefore, section 79(1) of the 1991 Constitution is amended in its original form.

Recommendation

- b. That the Speaker shall be elected by a resolution in favour of which there are cast the votes of not less than two-thirds of all the Members of Parliament: section 79(2)

Government's Response

Government notes this recommendation but believes that the current position is efficient and has been employed successfully through several lives of Parliament. Therefore, Government retains section 79(2) of the 1991 Constitution.

Marginal Note: Clerk of Parliament – Parliamentary Service Commission

Recommendation

- a. That there be established a Parliamentary Service Commission: section 82(1).

Government's Response

Government notes this recommendation but is of the opinion that the Parliamentary Service Commission was established by the Parliamentary Service Act, 2007 and considers its inclusion in the Constitution unnecessary. Therefore, Government retains section 82(1) of the 1991 Constitution.

Recommendation

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

Government's Response

Government notes this recommendation but is of the opinion that the Clerk of Parliament is appointed before the composition of the Parliamentary Service Commission. Therefore, the President cannot consult with a non-existent Commission at the time of appointment but rather with the Public Service Commission. Therefore, Government retains section 82(1) of the 1991 Constitution.

Marginal Note: Sessions of Parliament

Recommendation

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

Government's Response

Government notes this recommendation but believes that the current position in the Constitution has worked very well. Therefore, Government retains section 84(2) of the 1991 Constitution.

Marginal Note: Sittings of Parliament

Recommendation

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

Government's Response

Government notes this recommendation but is of the opinion that the authority conferred on the President under this provision has been exercised judiciously and sparingly; therefore considers the recommendation redundant. Therefore, Government retains section 86(1) of the 1991 Constitution.

Marginal Note: Unqualified Persons sitting or voting

Recommendation

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

Government's Response

Government notes this recommendation but believes such a situation will not occur, and even where it does, the criminal law regime will take care of such situation. Therefore, Government proposes to delete section 92 of the 1991 Constitution.

Marginal Note: Committees of Parliament

Recommendation

- a. That in addition to Standing Committees, Members of Parliament, be empowered to appoint "Sessional, Special and Ad-hoc Committees": section 93(1)

Government's Response

Government notes this recommendation but is of the view that the current provision that sets out the different Committees and such other Committees as the rules of procedure may prescribe and

section 93(1)(h), give effect to the recommendation and as such render it unnecessary. Therefore, Government retains section 93(1) and (2) of the 1991 Constitution.

Recommendation

- b. That a Committee's power to investigate and enquire into the activities or administration of Ministries and Departments of Government should also cover the activities or administration of Agencies of Government: section 93(3).

Government's Response

Government accepts this recommendation pertaining to section 93(3) of the 1991 Constitution. Therefore, section 93(3) should be amended accordingly.

Theme: Parliamentary Privileges – Avoiding Double Jeopardy

Recommendation

- a. That section 99(3) which requires that a Member of Parliament who makes a statement defamatory of any person renders an apology at the Bar of Parliament be deleted.

Government's Response

Government notes this recommendation but believes the current provision affords adequate safeguards as to what should obtain in the event of defamation by a Member of Parliament. Therefore, Government retains section 99(3) of the 1991 Constitution.

Recommendation

- b. That section 99(4) which provides that the person who refuses to render an apology after making a statement defamatory against any person be suspended by Parliament be deleted.

Government's Response

Government notes this recommendation but is of the opinion that the procedure in the current subsection has worked efficiently. Therefore, Government retains section 99(4) of the 1991 Constitution.

Recommendation

- c. That section 99(5) which requires a person who has made a contemporaneous report of proceedings in Parliament including a report of a defamatory statement made against any person by a Member of Parliament publishes the apology referred to in section 99(3) with the same prominence as when he published the first report, be deleted.

Government's Response

Government notes this recommendation but maintains that the current provision is adequate. Therefore, Government retains section 99(5) of the 1991 Constitution.

Marginal Note: Immunity for Publication of Proceedings

Recommendation

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

Government's Response

Government accepts this recommendation to delete "or otherwise in want of good faith" in section 103 of the 1991 Constitution as "maliciously" implies "in want of good faith". Therefore, section 103

should be amended accordingly.

Marginal Note: Mode of Exercising Legislative Power

Recommendation

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

Government's Response

Government notes this recommendation but is of the opinion that section 23 has adequate safeguards against the making of retroactive laws. Therefore, Government retains section 106(5) of the 1991 Constitution.

Marginal Note: Alteration of this Constitution

Recommendation

- a. That a bill for an Act of Parliament to alter the Constitution be supported by the votes of not less than two-thirds of all the Members of Parliament: Section 108(2)(b).

Government's Response

Government notes this recommendation but believes that a change to the status quo will undermine the efficiency of Parliament. Therefore, Government retains section 108(2)(b) of the 1991 Constitution.

Recommendation

- b. That the issues at a referendum to enact a new Constitution or to alter an entrenched provision of the Constitution should be clearly presented to the public by ensuring that there is sufficient time for review.

Government's Response

Government notes this recommendation but is of the opinion that the current provision deals with the conduct after review and not the conduct before or during review. Further, that issues arising from any referendum and the referendum itself should be dealt with by the Electoral Commission. Therefore, Government retains section 108(5) of the 1991 Constitution.

Marginal Note: Establishment of Office and Functions of Auditor-General

Recommendation

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

Government's Response

Government notes this recommendation but believes the practice has worked well in the past. Therefore, Government retains section 119 of the 1991 Constitution.

CHAPTER VII – THE JUDICIARY

Marginal Note: Establishment of the Judiciary

Recommendation

- a. That the establishment of the Judiciary of which the Chief Justice is the head under section 120(1) should include provision that the Chief Justice is responsible for administrative, financial and supervisory aspect of the Office of the Chief Justice.

Government's Response

Government notes this recommendation but is of the considered view that the Chief Justice is responsible for all the functions canvassed - administrative, financial and supervisory and therefore considers it is unnecessary for the same to be included in the Constitution. Therefore, Government retains section 120(1) of the 1991 Constitution.

Recommendation

- b. That the reference to other inferior Courts in section 120(4) be changed to "subordinate": section 120(4).

Government's Response

Government accepts this recommendation to replace the term 'inferior' in section 120(4) of the 1991 Constitution with the term "subordinate" and also "traditional" to "local". Therefore, section 120(4) should be amended accordingly.

Recommendation

- c. That the reference to a "Judge of the Superior Court of Judicature" in section 120(9) be amended to read a Justice or Judge of the Superior Court of Judicature.

Government's Response

Government notes this recommendation but is of the considered view that such amendment is unnecessary. Therefore, Government retains section 120(9) of the 1991 Constitution.

Marginal Note: Composition of the Supreme Court

Recommendation

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

Government's Response

Government accepts this recommendation to increase the number of Supreme Court Justices to "... not less than seven other Justice of the Supreme Court...". Therefore, section 121(1)(b) of the 1991 Constitution should be amended accordingly.

Marginal Note: Jurisdiction of the Supreme Court

Recommendation

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

Government's Response

Government notes this recommendation but believes the current proviso is adequate and does not warrant the proposed amended. Therefore, Government retains section 122(1) of the 1991 Constitution.

Marginal Note: Appeals to the Supreme Court

Recommendation

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

Government's Response

Government notes this recommendation but believes the current provision includes appeals from a judgment of a court martial, which has similar jurisdiction to that of the High Court of Justice. Therefore, Government retains section 123(1) of the 1991 Constitution.

Marginal Note: Enforcement of the Constitution

Recommendation

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

Government's Response

Government notes this recommendation but retains section 127(4) of the 1991 Constitution

Marginal Note: Composition of the Court of Appeal

Recommendation

- a. The CRC recommends that the number of Justices in the Court of Appeal be increased to not less than nine: section 128 (1).

Government's Response

Government accepts this recommendation to increase the number of Justices in the Court of Appeal to "... not less than nine ...". Therefore, section 128(1) of the 1991 Constitution should be amended accordingly.

Recommendation

- b. That the Court of Appeal shall be duly constituted by any three Justices thereof and when so constituted the most senior of such Justices shall preside; or, if a Justice of the Supreme Court is a member of the panel, such Justice of the Supreme Court shall preside: section 128(2).

Government's Response

Government notes this recommendation but believes that the current provision regarding the presiding in the Court of Appeal is adequate and should be maintained. Therefore, the Government retains section 128(2) of the 1991 Constitution.

Recommendation

- c. That the Chief Justice shall by Statutory Instrument create such Divisions of the Court of Appeal as she/he may consider necessary: section 128(4)

Government's Response

Government accepts this recommendation for the Chief Justice, instead of Parliament, to create divisions of the Court of Appeal as may be necessary. Therefore, section 128(4) of the 1991 Constitution should be amended accordingly.

Recommendation

- d. presided over by the most senior of the Justices of the Court of Appeal constituting the Court; or, if a Justice of the Supreme Court is a member of that panel, the said Justice of the Supreme Court: section 128(4)(c)

Government's Response

Government notes this recommendation but is of the opinion that the tenets of democracy and transparency be preserved. Therefore, Government retains section 128(4)(c) of the 1991 Constitution.
Marginal Note: Jurisdiction of the Court of Appeal

Recommendation

Section 129 (2): addition of the Court Martial

Government's Response

Government accepts this recommendation. Therefore, section 129(2) of the 1991 Constitution should be amended accordingly.

Marginal Note: Composition of the High Court

Recommendation

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

Government's Response

Government accepts this recommendation to increase the number of Justices in the High Court to "... not less than fifteen ...". Therefore, section 131(1) of the 1991 Constitution should be amended accordingly.

Marginal Note: Jurisdiction of the High Court

Recommendation

- a. That the section 132 (1) be amended so that the word "original" is deleted.

Government's Response

Government notes this recommendation but believes that the deletion is unnecessary as the import of the word stems from practice. Therefore, Government retains section 132(1) in the 1991 Constitution.

Recommendation

- b. The High Court of Justice shall have jurisdiction to determine any matter relating to industrial and labour disputes and administrative complaints as Parliament shall by any enactment, provide: section 132(2).

Government's Response

Government notes this recommendation but believes the current provision is adequate. Therefore, Government retains section 132(2) of the 1991 Constitution.

Recommendation

- c. the purposes of hearing and determining an appeal within its jurisdiction and the amendment, execution or the enforcement of any judgment or order made on any such appeal, and for the purposes of any other authority expressly or by necessary implication given to the High Court of Justice by this Constitution or any other law, the High Court of Justice shall have all the powers, authority and jurisdiction vested in the Court or Tribunal from which the appeal is brought: section 132 (4)

Government's Response

Government accepts this recommendation. Therefore, section 132(4) in the 1991 Constitution should be amended.

Marginal Note: Supervisory Jurisdiction of the High Court

Recommendation

That section 134 should be amended by changing “inferior” to “subordinate”

Government's Response

Government accepts this recommendation to change the word ‘inferior’ to ‘subordinate’ in section 134 of the 1991 Constitution. Further, Government proposes to change the word ‘traditional’ to ‘local’ in the same. Therefore, section 134 should be amended accordingly.

Marginal Note: Appointment of Judges

Recommendation

That section 135 (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.

Government's Response

Government notes this recommendation but believes the current provision is adequate and should be maintained. Therefore, Government retains section 135(4) of the 1991 Constitution.

Government further proposes that the age requirement for appointment as a Judge of the Superior Court of Judicature in section 135(3) be amended as follows:

- (a) the Supreme Court, for not less than fifteen years;
- (b) the Court of Appeal, for not less than twelve years;
- (c) the High Court of Justice, for not less than ten years

This is in line with best practice in other common law jurisdictions in Africa.

Theme: Judicial Vacancies

Recommendation

- a. That section 136 (4) be amended to include the words “...subject to the approval of Parliament”.

Government's Response

Government notes this recommendation but believes the current provision is adequate and should be maintained. Therefore, Government retains section 136(4) of the 1991 Constitution

Recommendation

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

Government's Response

Government notes this recommendation but is of the view that the current provision is adequate as it gives the Justice whose appointment has expired or is being revoked sufficient time to dispose of

cases he was dealing with. Therefore, Government retains section 136(6) of the 1991 Constitution.

Marginal Note: Tenure of Office of Judges

Recommendation

- a. That sections 137(1) and 137(2) be amended to include the word 'Justice'.

Government's Response

Government notes this recommendation but believes that the prevailing provisions should be maintained. Therefore, Government retains sections 137(1) and 137(2) of the 1991 Constitution.

Recommendation

- b. That a Judge of the Superior Court of Judicature shall vacate that office on attaining the age of seventy years: section 137(2).

Government's Response

Government notes this recommendation but believes the current age requirement applies to other public officers and should be maintained. Therefore, Government retains sections 137(2) of the 1991 Constitution.

Recommendation

- c. Notwithstanding that she/he has attained the age at which he is required by the provisions of this section to vacate his/her office, a person holding the office of a Justice or a Judge of the Superior Court of Judicature may continue in office after attaining that age, for a period not exceeding six months, to enable him/her to deliver judgment or do any other thing in relation to proceedings that were commenced before him/her previously thereto: section 137(3).

Government's Response

Government notes this recommendation but is of the opinion that the current provision be maintained. Therefore, Government retains section 137(3) of the 1991 Constitution.

Recommendation

- d. Subject to the provisions of this section, a Justice or a Judge of the Superior Court of Judicature may be removed from office only for inability to perform the functions of his/her office, whether arising from infirmity of body or mind, or, for stated misconduct, or, for gross incompetence and shall not be so removed save in accordance with the provisions of this section: section 137(4).

Government's Response

Government notes this recommendation but believes that the current provision be maintained. Therefore, Government retains section 137(4) of the 1991 Constitution. However, the phrase "for statement misconduct" should be changed to "for stated misconduct".

Recommendation

- e. Where the question of removing a Justice or a Judge of the Superior Court of Judicature from office has been referred to a tribunal under subsection (5), the President shall suspend the Judge from performing the functions of his/her office, and any such suspension may at any time be revoked by the President, and shall in any case cease to have effect if the tribunal recommends to the President that the Judge shall not be removed from office: section 137 (6).

Government's Response

Government notes this recommendation but believes that the current provision be maintained. Therefore, Government retains section 137(6) of the 1991 Constitution.

Recommendation

- f. Justice or a Judge of the Superior Court of Judicature shall be removed from office only by the President: section 137(7).

Government's Response

Government notes this recommendation but believes that the current provision be maintained. Therefore, Government retains section 137(7) of the 1991 Constitution.

Recommendation

- g. That section 137 (9) which provides that "...where the question of removing the Chief Justice from office has been referred to a Tribunal under sub section 8, the President may by warrant under his hand suspend the Chief Justice from performing the functions of his office..." be amended by substituting "may" for "shall".

Government's Response

Government notes this recommendation but believes that the current provision be maintained. Therefore, Government retains section 137(9) of the 1991 Constitution.

Recommendation

- h. That section 137 (10) which provides inter alia that "the Chief Justice shall be removed from office by the President..." be amended by stating that "...the Chief Justice shall be removed only by the President..."

Government's Response

Government notes this recommendation but believes that the current provision be maintained. Therefore, Government retains section 137(10) of the 1991 Constitution.

Marginal Note: Remuneration of Judges

Recommendation

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

Government's Response

Government notes this recommendation but believes that the current wording in the 1991 Constitution preserves public trust and prevents possible conflicts of interest. Therefore, Government retains section 138(4) of the 1991 Constitution.

Marginal Note: Judicial and Legal Services Commission

Recommendation

- a. Firstly, that section 140(1) which establishes the JLSC be amended by the addition of a proviso to make the JLSC fully functional with funding from the consolidated fund. Secondly, that the membership of the JLSC provided for under section 140(1) be expanded to include two lay representatives, a Judge from the Supreme Court and the High Court, a representative from the Human Resource Management Office and the Financial Secretary.

Government's Response

Government accepts this recommendation to make the JLSC fully functional but considers the expansion of the membership to include only the Financial Secretary. Therefore, section 140(1) of the 1991 Constitution should be amended accordingly.

Recommendation

- b. That the word "Chairman" be replaced with the word "Chairperson": section 140(1)(a).

Government's Response

Government notes this recommendation but considers it unnecessary. Therefore, Government retains section 140(1)(a) of the 1991 Constitution.

Recommendation

- c. That the composition of the Judicial and Legal Service Commission under the 1991 Constitution be amended to include: the most Senior Justice of the Supreme Court, the most Senior Judge of the High Court, two practising Counsel instead of one, the Director-General of Human Resource Management Office or other public officer charged with managing the public service establishment and the Financial Secretary: section 140(1)(b)-(f).

Government's Response

Government accepts this recommendation only to the extent of including the Financial Secretary as a member of the Judicial and Legal Service Commission. Therefore, Government retains section 140(1) (a)-(f) of the 1991 Constitution, with the addition of new sub paragraph to provide for the inclusion of the Financial Secretary.

Recommendation

- d. Due regard is to be had with respect to the references in this section taking cognisance of the proposed amendments to section 140(1)(b)-(f) above: section 140(3).

Government's Response

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

Recommendation

- e. That this section be amended to reflect situations wherein a Justice of the Supreme Court/Court of Appeal or Judge of the High Court vacates his membership of the Judicial and Legal Service Commission. In such situations the next most senior Justice or Judge of the Court in question can replace him: section 140(3)(a).

Government's Response

Government notes this recommendation but believes that the current provision is adequate. Therefore, Government retains section 140(3)(a) of the 1991 Constitution.

Recommendation

- f. That "gross incompetence" be inserted after "misconduct" as an additional grounds for removal of Counsel of not less than ten years standing and the two non-legal person on the JLSC: section 140(3)(b).

Government's Response

Government notes this recommendation but is of the opinion that such a person can be removed under the current provision. Therefore, Government retains section 140(3)(a) and (b) of the 1991 Constitution.

Marginal Note: Appointment of Judicial and legal Officers

Recommendation

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

Government's Response

Government notes this recommendation but is of the opinion that the current provision is adequate. Therefore, Government retains section 141(1) of the 1991 Constitution.

Marginal Note: Appointment of Court Officers

Recommendation

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

Government's Response

Government notes this recommendation and is of the opinion that the current provision is adequate. Therefore, Government retains section 142(2) of the 1991 Constitution.

Marginal Note: Fees of Court, etc.

Recommendation

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

Government's Response

Government notes this recommendation but believes that the current provision is adequate. Therefore, Government retains section 143 of the 1991 Constitution.

Theme: Alternative Dispute Resolution Mechanism

Recommendation

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

Government's Response

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

CHAPTER XI: LOCAL GOVERNMENT AND DECENTRALISATION

Sierra Leone shall have a Local government and decentralisation system that should be part of its Governance architecture. The local governance and decentralisation system shall be well structured, resourced (financially, logistically and personnel wise) to ensure and promote community development, efficient and effective service delivery at the local level.

To this end, and to secure and protect it, the local governance system shall be provided for as an entrenched clause in the new constitution.

Argument: On the basis of the centrality of Local government and decentralisation to the overall national aspiration of Sierra Leone to facilitate inclusivity, participation, improved service delivery and Local economic development, Government should consider taking it forward.

CHAPTER XIII: NATIONAL SECURITY

Argument: National security is crucial for the survival and sustenance of the State of Sierra Leone like for any other country. There is need to ensure that National security issues are clearly defined in the new Constitution.

A new chapter dedicated to defining the structure, principles, coordination, financing, coordination and safeguarding shall be provided in the new Constitution.

CHAPTER IV: THE PUBLIC SERVICE

Arguments: The Public service provides the catalyst for the translation of policies, legislations and related tools into programmes for the facilitation of State management. It is imperative that any new Constitution makes provision for the clear definition of what should be Sierra Leone's Public Service going into the future.

The revised Constitution should contain a new chapter on the public service specifying the Public service institutions and agencies 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.

CITIZENSHIP

The revised Constitution should contain a chapter on citizenship detailing how citizenship can be acquired (by birth, naturalisation, marriage or adoption) as well as addressing concerns over dual citizenship with relevant safeguards to protect issues of national loyalty arising from dual citizenship and the circumstances in which it may be revoked.

LOCAL COURT

It is being recommended by the Cabinet subcommittee on the Constitutional Review that Local Courts be provided with a structure under the Ministry of Justice to enhance its efficient and effective operations.

Technical Committee Members

1. Anthony Y. Brewah – Attorney-General and Minister of Justice
2. Jacob Jusu Saffa – Minister of Finance
3. Dr. Francis Kaikai – Minister of Planning and Economic Development
4. Dr. David M. Sengeh – Minister of Basic and Senior Secondary Education
5. Foday Yumkella – Minister of Political Affairs
6. Umaru Napoleon Koroma – Deputy Minister of Justice
7. Mohamed Lamin Tarawalley – Solicitor-General
8. Dandyson Thompson – First Parliamentary Counsel
9. Martina Kroma (Ms) – Chairperson, Law Reform Commission
10. Dr. Emmanuel Gaima – Governance Advisor, Office of The President
11. Allieu Vandi Koroma – Office of Attorney-General and Minister of Justice
12. Musa Mewa – Legal Practitioner

Printed by
Government Printing Department
New England Ville, Freetown