



## **Institute for Legal Research and Advocacy for Justice (ILRAJ)**

### **Position Paper**

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



### **A. INTRODUCTION**

1. On Thursday, January 13, 2022, the Government of Sierra Leone published its review of the 2017 White Paper issued by the previous Government on the recommendations of the Justice Cowan-led Constitutional Review Committee (CRC).
2. ILRAJ welcomes the Government White Paper and notes that it is a significant improvement from the one issued by the previous Government.
3. The Government's Report reviewed the White Paper examined by the previous Government and reviewed the recommendations of the Constitutional Review Committee.
4. In this position paper, we will review the position in the Report and make suggestions and recommendations on how they can be improved. Our review is by no means exhaustive. It will be supplemented with other advocacy tools we will publish in the future.



## **B. FUNDAMENTAL PRINCIPLES OF STATE POLICY**

5. We note that under this heading, the Government accepted the following CRC's recommendations to wit: to incorporate principles of human dignity and equality into the fundamental principles of state policy in Chapter 2 of the 1991 constitution, to direct its policy towards ensuring adequate medical and health facilities for all persons without qualifying it to "regard to the resources of the state," to prohibit discrimination, to provide free quality education, to include civic education and entrepreneurship among the state's educational objectives, to promote national culture, citizens to respect the national currency and national pledge.
6. We welcome the acceptance of these recommendations by the Government.

### **Non-Justiciability**

7. We are disappointed that the Government decided to retain section 14 of the 1991 Constitution, which ensures that the rights conferred in Chapter 2 of the Constitution, such as the right to health, education, etc. are not legal rights, and citizens cannot take legal action if Government fails to provide them. This seriously limits citizens' rights to seek redress and make these rights merely aspirational. Where there is a violation of the economic, social and cultural rights, there is no mechanism for redress.
8. ILRAJ is of the humble view that rights stated in Chapter 2 of the 1991 Constitution should be enforceable. The CRC mentioned that these rights are enforceable in other African countries such as Kenya, South Africa and Uganda. Making them enforceable will ensure that we comply with our international obligations. In some instances, in its report Government states that it will follow best practices in other countries. We must not be selective and cite international best practices only when it suits our decision.
9. It is important to rehash the rationale given by the CRC regarding 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 one's 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."

10. It is also essential to note that the CRC stated that 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 that there should be a provision to help citizens enforce their rights through the formal legal system.
11. ILRAJ strongly urges the Government to reconsider its position on the issue of justiciability of the rights under chapter 2 of the 1991 Constitution of Sierra Leone.

#### [Acting Inconsistent with the Constitution](#)

12. The Government rejected the recommendation of the CRC to expand the provisions of section 6(5) of the 1991 Constitution by making provision "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."
13. The reason for the Government's rejection of this recommendation is that it believes the current anti-Corruption law is fully expansive and has been highly effective in combatting corruption.



14. While the latter part of the rationale remains debatable, what is not is that the recommendation of the CRC goes beyond the anti-corruption law. It reiterates the duty and responsibility of all Government and public officers to ensure they do not act in a manner that is inconsistent with the Constitution. The Constitution deals with a host of other matters, including but not limited to anti-corruption.

#### Universal Healthcare

15. We are delighted that Government accepted the recommendation of the CRC so that sections 8 (3) (c) and (d) of the 1991 Constitution will now read as follows:

- (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;

16. If this provision is made justiciable and resources are allocated to health care service delivery, it will go a long way to ensuring that we improve our infant and maternal mortality ratio, Sierra Leone moves up in the UN Human Development Index and achieve goal 3 of the Sustainable Development Goal.

#### Human Right Education

17. Government proposes to amend section 9(3) of the 1991 Constitution as follows "the Government shall promote the learning of indigenous languages and the study and application of modern sciences, foreign languages, technology, civic education, conflict management, commerce and entrepreneurship."
18. The Government specifically deleted the phrase "human rights" as recommended by the CRC.
19. The CRC specifically included the promotion of human rights because it said it '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." 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."



20. ILRAJ welcomes the Government's inclusion of civic education but is disappointed by the deletion of the phrase "human rights." We believe that civic education and human rights complement each other and will go well together.

#### Information, Communication and the Media

21. The Government decided not to amend section 11 of the 1991 Constitution and not to include 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.
22. The Government notes in its Report that the Freedom of Information Act, 2013 and the Independent Media Commission Act, 2020 cumulatively address these issues and should therefore not be addressed in the Constitution.
23. With the greatest respect to the Government, the Constitution is the supreme authority and law of our country, and it takes precedence over all other laws and legislation. Because there is detailed legislation dealing with the media does not mean freedom of the press and its independence cannot be dealt with in the Constitution. It is important to guarantee and secure these rights in the grundnorm of the Republic. A breach of these rights in the Constitution could be taken directly to the highest court of the land, i.e., the Supreme Court.
24. ILRAJ urges the Government to reconsider its position on this issue and include this new chapter in the Constitution.

#### National Culture

25. We wholeheartedly welcome the amendment of Section 12(a) of the Constitution to include 'dresses' that promote Sierra Leonean culture and commend the President for regularly promoting Sierra Leonean attire.

### **C. THE RECOGNITION AND PROTECTION OF THE FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS OF THE INDIVIDUAL**

26. We note that under this heading, the following recommendations were accepted: To rename Chapter 3 The Recognition, Protection and Promotion of Human Rights and Freedoms of the individual, to abolish the Death Penalty, to reduce detention periods from ten days to seven days in cases of capital offences and from seventy-two hours to forty-eight hours in the case of other offences, to compensate and/or apologize to persons unlawfully arrested and detained, to subject the protection of fundamental rights to National Security, Protection from



torture and inhuman treatment to be absolutely guaranteed, to draft a New Section 27, Not to derogate from fundamental human rights to life, the prohibition of torture, the principles of legality, freedom of thought conscience and religion during a state of emergency, to have a dedicated chapter in the Constitution dealing with citizenship.

### Death Penalty

27. We strongly commend Government for accepting the CRC's recommendation to abolish the death penalty.

### Arrest without Charge

28. We welcome Government's decision 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."

29. We are concerned that the term "heinous offences" was not defined. To prevent abuse, we urge Government to define this term so that it is clear and unambiguous that it is restricted in scope and limited only to offences such as treason and armed robbery.

### Protection from Inhuman Treatment

30. We are delighted that the Government accepted the CRC's recommendation to delete the provision in the proviso, which legitimised a law or any law authorising the infliction of any kind of punishment that was lawful immediately before the entry into force of the Constitution be abolished.

### What is National Security?

31. ILRAJ notes that "national security" is used to clawback many of the rights granted under this chapter of the Constitution, including protection of freedom of movement and protection from deprivation of property.

32. ILRAJ notes the importance of national security. It is and should not be absolute. Government must clearly define the scope of "national security" so that it is not relied upon to curtail human rights. The right balance between human rights and national security should always be struck. "A government's over-invocation of national security concerns can seriously undermine the main institutional safeguards against government abuse: independence of the courts, the rule of law, legislative oversight, media freedom, and open government."

33. ILRAJ is disappointed that Government was equivocal in its Report about including a new chapter in the Constitution. It stated that "National security is crucial for the survival and sustenance of the State of Sierra Leone like for any other country. There is a 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."

34. It failed to say whether the new chapter in the Constitution will be the same as proposed by the CRC.
35. ILRAJ urges the Government to adopt the recommendation of the CRC to inter alia state that the "national security" of Sierra Leone should 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;
36. ILRAJ further urges the Government to ensure that the new chapter is in tandem with international standards and complies with inter alia the Global Principles on National Security and the Right to Information (Tshwane Principles).

#### Public Emergency

37. ILRAJ welcomes that clear and categorical statement that there will be "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."

#### Gender Discriminatory Provision

38. ILRAJ welcomes the Government's acceptance of the 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 the Government's policy.
39. ILRAJ urges the Government to accept the draft new section submitted by the CRC, which includes the following provisions:

"(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 right to equal treatment, including the right 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."

#### New Chapters

40. We urge the Government to review its decision not to add new chapters relating to the right to the environment, the right of the aged, persons with disability and the rights of the child in the Constitution. We reiterate our view that the Constitution is the supreme of land and these rights are very important to be included in the Constitution.

#### D. CITIZENSHIP

41. We are delighted that Government accepted the 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."
42. In its submission to the CRC, the then opposition Sierra Leone Peoples' Party (SLPP) 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.**" (emphasis ours).
43. Now in Government, we urge them to ensure that the new chapter adopts the recommendations of the CRC, which included removing all references to race concerning the criteria of acquisition of citizenship.



44. In addition, we also call for sections 75 & 76 of the Constitution to be replaced "to enable citizens by naturalization to hold Public Office and Elected offices, except that of the presidency," for Citizenship by birth to 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 and for citizenship by marriage to be granted if a person has been married to a citizen for at least five years."

## **E. THE EXECUTIVE**

45. We note that the CRC recommendations accepted under this heading are: to hold presidential, parliamentary and local government elections on the same day, to have a fixed date for the inauguration of an elected president, loss of party membership is not an automatic cause for the removal from office of a sitting President or Vice President, That the board constituted to enquire into the mental and physical capacity of the President to discharge his constitutional duties should report to the Speaker within 90 days, separation of the office of the AG from the Minister of Justice.

### **Supreme Executive Authority**

46. ILRAJ is disappointed that the Government believes that replacing the phrase "supreme executive authority" with "chief executive" is a puerile attempt at undermining the President's constitutional authority.
47. In its manifesto, the SLPP stated, "A presidency that is powerful beyond the limits of democratic governance is dangerous for any democracy. Sierra Leone can ill afford an elected autocrat in our presidency...The last 10 years of APC rule has left Sierra Leoneans stunned by the unlimited and unbridled use of "Executive Power." State governance has been treated by President Ernest Bai Koroma as if there are no constitutional injunctions or limitations under the 1991 Constitution." The SLPP committed to avoiding the reckless use of supreme executive authority and so-called orders from above.
48. The interpretation given to the phrase by the Supreme Court in *Alhaji Samuel Sam Sumana vs. Attorney-General and Minister of Justice and Victor Bockarie Foh* has created chaos and given the impression that the President can override any law, including the Constitution using supreme executive authority. The phrase is vague and has been cited in instances of excessive abuse, and if this is not addressed, it will be abused in the future. Therefore, we think that the recommendations to use "chief executive" instead of supreme executive authority are not puerile. In a country where democracy and the rule of law prevail, the people and the Constitution should be supreme.



### Qualification of the Attorney General, Solicitor General and Director of Public Prosecutions

49. When referring to the minimum number of years of entitlement to practice for these offices, the Report talks about the age for qualification. We consider this a minor omission.
50. The Government in its Report is proposing that the minimum number of years of entitlement to practice for qualification for appointment as DPP and Solicitor General be reduced from fifteen years to twelve years, respectively. They similarly recommended that to be appointed Attorney-General, the minimum number of years should be reduced from twenty years to fifteen years.
51. These recommendations were not included in the CRC report. While Government has a right to introduce and make new recommendations, we are concerned that no clear rationale was provided in the Report.
52. We welcome the separation of the office of Attorney-General from that of Minister of Justice and the recommendation that appointment of the Attorney-General be subjected to parliamentary approval.

### **F. THE LEGISLATURE**

53. We note that the recommendations accepted under this heading are: that members of parliament shall be elected in accordance with a system of proportional representation, public officers to resign from office six months before vying for Parliamentary seats, Speaker shall be qualified to be appointed as a Judge, Parliamentary Committees to have additional powers to investigate and enquire into the activities or administration of agencies of Government.

#### The President is a Parliamentarian

54. We note with utmost disappointment that the recommendation that the President should cease to be part of the composition of Parliament was rejected by the Government. It is worth reminding that this was not just a mere recommendation in the CRC. It emanated from the TRC, the Peter Tucker Commission report, expert opinion and the overwhelming views of the people of Sierra Leone.
55. We agree with the CRC that section 73(1) of the Constitution of Sierra Leone should be amended to read as follows: "There shall be a legislature of Sierra Leone which shall be known as Parliament, and shall consist of the Speaker and Members of Parliament."

#### Women's Political Representation



56. The Government accepted the recommendation that thirty percent of the participants in public elections, i.e., Presidential, Parliamentary and Local Council elections, should be women. The Government further proposes amending section 38 of the 1991 Constitution to provide for proportional representation to achieve women's participation in public elections.
57. This is inconsistent with the provisions of the draft Gender Equality and Women's Empowerment (GEWE) Bill, which speaks to a 30 percent minimum representation of women rather than participation which is clearly different.
58. We note with concern the Government's response to the recommendation "that not less than 30 percent of parliament shall be women details of which should be prescribed by an Act of Parliament." Unfortunately, the Government believes that "this issue should be addressed in another legislation and not in the constitution."
59. Moreover, in its position paper to the CRC, the SLPP "went on to state that the Constitution should guarantee a 30 percent 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."
60. ILRAJ urges the Government to include strong provisions about a minimum of thirty percent women's representation to prevent any further legal challenge to the GEWE law and policy.

#### Section 77(1)

61. In its Report, the Government rejected the CRC's proposed recommendations for amendments to sub-sections (k), (l) and (n) and also dismissed the proposed new subsection (o) of section 77(1).
62. We consider this a missed opportunity by the Government to strengthen our democracy and accountability of members of Parliament to their constituents.
63. We urge the Government to reconsider its stance and amend the said sub-sections by adding the phrases indicated in bold and by adding the new sub-section (o).

(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 may be recalled.**

#### Proportional Representation

64. The Government accepted the recommendation of the CRC for members of parliament to be elected by proportional representation.
65. ILRAJ notes that all types of voting systems have advantages and limitations. No matter which method is selected, there will be shortcomings.
66. Although there was public disaffection after the proportional representation system was used in the 1996 elections, what is often lost in the debate is that there are many types of proportional representation. The party list system is not the only version.
67. We must be willing to consider other options and not just limit ourselves to one type of proportional representation.

#### **G. THE JUDICIARY**

68. We note that under this heading, the recommendations accepted are: to increase the number of Supreme Court Judges, Court of Appeal and High court, the power of the Chief Justice by statutory instrument to create divisions of the court of appeal as he may consider necessary, the addition of court-martial to section 129 (2), to expand the composition of the JLSC albeit to include only the Financial Secretary, to change references to court as "inferior" and "traditional" to "subordinate" and "local."

#### Appointment of Judges

69. We note that Government rejected the proposed amendment to section 135(4) of the Constitution of Sierra Leone.



70. ILRAJ strongly believes that the procedure for the appointment of judges must be open and transparent. Vacancies must be advertised to provide equal access to all, there must be an open interview process which includes public participation and appointment by the President and approval by Parliament must be only the candidates that have gone through this process. The procedure is currently being used in Kenya and we believe we should adopt the same.

#### Judicial Vacancies

71. The Government's rejection of the CRC proposal to amend section 136 (4) by including the words "...subject to the approval of Parliament" is disappointing.

72. By rejecting this recommendation, a back door has been provided for Judges to be appointed without the approval of Parliament. We do not believe this was the intention of the original drafters of the 1991 Constitution and Government should not miss this opportunity to close that back door.

#### Composition of the JLSC

73. We note the Government's acceptance to expand the scope of the JLSC by the addition only of the Financial Secretary. We are disappointed that Government did not adhere to the concerns and recommendations to make the Commission more independent by increasing its membership.

74. At the CRC, the Human Rights Commission of Sierra Leone 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. Similarly, 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." We associate ourselves with these statements.

#### **H. CONCLUSION**

75. We urge Government to ensure that the chapters relating to Local Government & Decentralization and the Public Service should be in line with the recommendations as drafted by the CRC in its Report. We are worried that the holistic recommendations made by the CRC in respect of these additional chapters were not thoroughly reviewed.



76. We further observe that the White Paper is silent on the other chapters recommended by the CRC. The recommended chapters relating to the National Development Planning Commission and Commissions and Independent Offices were not addressed by the Government in the white paper.
77. It is also unfortunate that there was only one woman in the 12 members technical committee that worked on the Government's Report. We urge the Government to do better to ensure gender equality and that women are empowered in all bodies it sets up.
78. In framing a new Constitution, we urge Government to think about posterity as constitution building is long-term and is not confined to the period when a constitution is written.
79. Government must do its utmost to ensure that the outcomes and recommendations are legitimate and broadly accepted.
80. We trust Government will take our comments in good faith. We look forward to the public consultations and deliberations and the roadmap for implementing these recommendations as some of the amendments are entrenched provisions in the Constitution.

Signed on behalf of ILRAJ by Basita Michael (Mrs).  
January 27, 2022.

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