

REPORT OF THE COMMISSION TO REVIEW

THE CONSTITUTION OF SIERRA LEONE, 1991



JANAUARY,
2008

TABLE OF CONTENTS

Introduction

Amendments recommended

Chapter 1	-	The Republic of Sierra Leone
Chapter II	-	Fundamental Principles of State Policy
Chapter III	-	Citizenship
Chapter IV	-	The Recognition and Protection of Human Rights and Freedoms of the individual
Chapter V	-	The Representation of the People
Chapter VI	-	The Executive
Chapter VII	-	The Legislature
Chapter VIII	-	The Judiciary
Chapter IX	-	The Ombudsman
Chapter X	-	Human Rights Commission
Chapter XI	-	Local Government
Chapter XII	-	Commissions of Inquiry
Chapter XIII	-	The Public Service Commission
Chapter XIV	-	The Republic of Sierra Leone Armed Forces
Chapter XV	-	Prisons Service Council
Chapter XVI	-	Extractive Industries Transparency Commission
Chapter XVII	-	Independent Forces Complaints Commission
Chapter XVIII	-	Non-Governmental Organizations (NGOs) Regulatory Board

INTRODUCTION

Government Notice No.6, Vol. CXXXVIII of the Sierra Leone Gazette No. 2 of **Thursday, 11th January 2007**, published the establishment and membership of a Commission for the review of the 1991 Constitution with the following Terms of Reference:

“To review the Sierra Leone Constitution of 1991 with a view to recommending amendments that might bring it up-to-date with the economic, social and political developments that have taken place nationally and internationally since 1991”.

2. The Commission was also asked to take into consideration the following among others:
 - ❖ “The experience gained since 1996 in the implementation of the 1991 Constitution;
 - ❖ Omissions and lacuna in the 1991 Constitution which affect its operation as a democratic Constitution;
 - ❖ Improvement on certain provisions of the Constitution that may enhance democratic governance; and
 - ❖ Whether the fundamental principles of State Policy should be justifiable.”

3. The under-mentioned persons were appointed to represent the following organizations and institutions:

Dr. Peter L. Tucker
CHAIRMAN

ALL PEOPLES CONGRESS PARTY

Mr. William J. Smith

Mr. Osman F. Yansaneh

ALL POLITICAL PARTIES ASSOCIATION

Madam Isata D. Banugra	-	PMDC
Mr. Mahmoud Ahmed Koroma	-	PDP
Mr. Sulaiman Lionel Thomas	-	NDA
Mr. Samuel Gbessay Kanu (Deceased)	-	RUFP
Mr. Osman B. Conteh	-	UNPP

CAMPAIGN FOR GOOD GOVERNANCE

Ms. Valnora Edwin

CIVIL SOCIETY MOVEMENT – SIERRA LEONE

Mr. Festus Ewaaka Minah

COALITION OF CIVIL SOCIETY AND HUMAN RIGHTS ACTIVISTS

Mr. Charles Mambu

COUNCIL OF PARAMOUNT CHIEFS

Alhaji P.C. I.B. Kamara-Koroma

P.C. Dr. J. Sinnah-Yovonie Kangova II

P.C. Alhaji Yembah Mansaray III

FIFTY/FIFTY GROUP OF SIERRA LEONE

Mrs. Harriett Turay

INTER-RELIGIOUS COUNCIL OF SIERRA LEONE

Alhaji Dr. A.B. Karim

Rev. L.B. Rogers-Wright

LAW OFFICERS' DEPARTMENT

Tunde Cole Esq.

O.V. Robbin-Mason Esq.

LAW REFORM COMMISSION

Hon. Justice N.C. Browne-Marke

E.E.C. Shears-Moses Esq.

LOCAL COUNCIL

Dr. Wusu Sannoh

Mr. David Woobay

NATIONAL COMMISSION FOR DEMOCRACY

Mr. George Coleridge-Taylor

NATIONAL UNION OF SIERRA LEONE STUDENTS

Mr. Umaru Koroma

NJALA UNIVERSITY

Professor A.M. Alghali

OFFICE OF THE OMBUDSMAN

Francis Gabbidon Esq.

PRESIDENT'S NOMINEES

Mr. Onesimus Babatunde Walker

Mr. Josef O. Carpenter

SIERRA LEONE ASSOCIATION OF JOURNALISTS

Alhaji Ibrahim Ben Kargbo

SIERRA LEONE ASSOCIATION OF NON-GOVERNMENTAL ORGANIZATIONS

Mr. Aiah Foday-Khabenje

SIERRA LEONE CHAMBER OF COMMERCE, INDUSTRY AND AGRICULTURE

Alhaji Musa King

SIERRA LEONE LABOUR CONGRESS

Mr. Mohamed A. Deen

SIERRA LEONE MARKET WOMEN'S ASSOCIATION

Ms. Marie Bangura

SIERRA LEONE PEOPLE'S PARTY

Mr. Anthony Y. Brewah

Hon. Dr. Bernadette Lahai

SIERRA LEONE TEACHERS UNION

Mr. Abdulai B. Koroma

Mr. Davidson A. Kuyateh

THE GOVERNMENT PRINTER

Mr. B.J. Temple

THE JUDICIARY

Hon. Justice M.E. Tolla Thompson

Hon. Justice Salimatu Koroma

THE REPUBLIC OF SIERRA LEONE ARMED FORCES

LT. COL. I.M. Koroma

THE SIERRA LEONE BAR ASSOCIATION

Nasiru D. Tejan-Cole Esq.

Yada Williams Esq.

THE SIERRA LEONE POLICE

Superintendent M.B. Kamara

THE UNIVERSITY OF SIERRA LEONE

Eke Halloway Esq.

SECRETARY

Mr. S.A.T. Tamu

4. The Secretariat was assisted by two Research Assistants of the Law Reform Commission, i.e. Mr. Drucil Taylor and Ms. Viola Johnson and a Legal Counsel of the National Public Procurement Authority, Mr. Farid Alghali.

The Administrative Staff of the Commission included an Accountant, Mr. Sahr M.K. James, two Computer Typists, Mrs. Cecilia Paton-Cole and Mrs. Georgiana Johnson. The support staff included three messengers, Messrs Foray Swarray, Olick Parker and Alfred Banugra and two drivers. Messrs Abu Koroma and Foday Bangura. The Commission was housed at the Law Reform Commission's Office, 3A Wellington Street, by the kind permission of the Law Reform Commission.

5. The Commission was formally launched on the **27th of January 2007**. Meetings were held on Tuesdays and Thursday 2 p.m. – 5 p.m. and on Saturdays, 10 a.m. – 1 p.m. The meetings were held in private in order to encourage Commissioners to express their views freely. The quorum for the meetings was fixed at twelve, which allowed the Commission to commence its work without any delay. However, actual attendance at meetings was always far above that number. Every member of the Commission was encouraged to speak on any topic and was given as much time as was necessary to do so. Decisions were taken by consensus.

6. The Commission started by having radio discussions, a Press Conference and Press Release of its terms of reference and inviting the public to submit to its secretariat their views and comments. The following were among those who responded immediately:
7. Dr. Abdulai O. Conteh, Chief Justice of Belize.
8. Mr. O.B. Walker
9. The Sierra Leone Association of Journalists (SLAJ) also submitted a paper entitled "**A Position Statement on Media Law Reform.**"
10. Mr. Benedict Sannoh, Chief, Human Rights and Rule of Law Section, United Nations Integrated office in Sierra Leone (UNIOSIL) delivered a Paper entitled "**The human Rights provisions of the 1991 Constitution and the Way Forward**".
11. The Commission thoroughly discussed the Constitution, section by section, taking the above submissions into account, and made references to several Constitutions in Africa and the developed world. Frequent references were made to the Constitutions of the United Kingdom and the United States of America, as well as the Constitutions of Ghana, South Africa and Nigeria. However, the proposed amendments were based mainly on practical experiences gained during the last seventeen (17) years and the need to fill any lacuna to improve upon some of the provisions so as to make them functional.
12. The Commission also discussed and agreed to recommend the inclusion of the following provisions which are not in the 1991 Constitution: a Second Chamber of Parliament, the Prisons Service Council; Independent Forces Complaints Commission; Parliamentary Service Commission; Extractive industries transparency Commission, Citizenship and the Non-Governmental Organizations Regulatory Board.
13. A Preliminary Report which formed the basis of a nation-wide consultation was produced in **March, 2007**.
14. The Preliminary Report was introduced to the public at a Press Conference held at the British Council on **April 15, 2007**. The Press Conference was attended by members of both the electronic and print media as well as members of the diplomatic corps, the

United Nations integrated Office in Sierra Leone (UNIOSIL), the Sierra Leone Court Monitoring Programme and interested individuals. The Chairman and Commissioners briefed the Press on the proposed amendments and clarified issues of concern.

15. Thereafter, the Commission held consultative meetings in the provincial headquarters of Bo, Kenema and Makeni as well as in Freetown in April 2007, to get the views of people in the Southern, Eastern and Northern regions and the Western Area on the Report. The meetings were organized by the Secretariat of the Commission with the assistance of personnel from the Law Reform Commission and the provincial administration of each of the provinces.
16. The Secretariat ensured that each regional meeting was attended by representative from all the districts that make up the region, including Paramount Chiefs, Mayors, Principals of Secondary Schools, Councillors, representatives of political parties, religious bodies and civil society organizations. The meetings were free and frank and any one who wished to speak on any issue was given the chance to do so. Discussions sometimes lasted well into the evening, beyond the scheduled time. At each regional capital the Commission organized radio discussions on the evening before the meeting.
17. The Commission also held consultative meetings with representatives of all the registered political parties, including the Sierra Leone Peoples Party (SLPP), the All People Congress (APC), the Peoples Movement for Democratic Change (PMDC), the National Democratic Alliance (NDA), Peoples Democratic Party (PDP), Peoples Liberation Party (PLP), United National Peoples Party (UNDP) and the Revolutionary United Front Party (RUFP), at State House on **Thursday, May 17, 2007**. The discussions were interesting and fruitful.
18. On **June 5, 2007**, the Commission met with staff and students of Fourah Bay College (FBC), at which lecturers and students were briefed on the proposed amendments and issues of concern were clarified. The Commission wanted to meet with students and lecturers of other institutions of higher learning, including Njala University, Institute of Public Administration and Management (IPAM), College of Medicine and Allied Health Sciences (COMAHS), Milton Margai College of Education and Technology (MMCET) and

the other constituent colleges of the University of Sierra Leone in **June**, 2007, but unfortunately, they were on examinations.

19. The Report is produced in two parts. Part 1 contains the introduction, a summary of the comments and recommendations of the consultative meetings and Part 2, the final amendments recommended to the Government by the Commission.

THE CONSULTATIONS AND REPRESENTATIONS

20. As already stated above, the Commission held countrywide consultations and received a wide range of representations and memoranda during its deliberations.

In Bo, Southern region, the proposals that drew the most comments were the Senate and the Citizenship proposals. There was a vocal minority who argued that Paramount Chiefs should have no seat in Senate and that naturalised citizens should not have the right to vote or be voted for in any elections for political office. In Kenema, the discussions were wide-ranging and positive and there was no rejection of any of the proposals. However, there was some concern that the citizenship provision might confer upon naturalised citizens the right to contest elections for Parliament or the presidency. In Makeni, there were positive and very helpful. However, there was some concern over the alleged violations of the freedom of movement of persons who were not members of some secret societies.

On the whole, the participants in the provinces and the Western Area did not reject any of the proposed amendments. Notwithstanding, concerns were raised relating to rights and privileged provided for naturalized citizens, the death penalty, the composition, method of selection and functions of the Second Chamber and the remuneration and retirement age of judges.

ORAL AND WRITTEN REPRESENTATIONS

- 21 As already mentioned above, the Commission received a submission from Dr. Abdulai O. Conteh, Chief Justice of Belize, on the justifiability of the Principles of State Policy, the position of Paramount Chiefs in the Constitution, Members of Parliament as Ministers, the need for parliamentary approval of all Ministers and the qualifications and Membership of Parliament.
- 22 The Office of the President also submitted a Paper written by Mr. O.B. Walker on Protection from Discrimination, Registration of Voters, Ministers and Deputy Ministers of Government, Establishment of the Office of Attorney-General and Minister of Justice, the need for a Second Chamber, Qualifications for Membership of Parliament, Disqualifications for Membership of Parliament, the Speaker, the Ombudsman and the Interpretation of the Constitution.
- 23 After the consultative meetings the Commission received written comments from a variety of sources, including the following:
Dr. Nemata Eshun Baiden, Dr. Nana Pratt and Mrs. Isha Josiah on behalf of the 50/50 group and the Representatives of the Women of Sierra Leone presented a Position Paper in which they argued strongly for the inclusion in the constitution of a mandatory provision for at least 30% representation of Women in Parliament and in all decision-making bodies of the state. They buttressed their argument with references to the Convention for the Elimination of all Forms of Discrimination against Women, and other international conventions supporting affirmative action in favour of women, and cited a number of Constitutions in Africa, which they claimed, had similar provisions.
- 24 Mrs. Jamestina King, Chairperson, Human Rights Commission, Sierra Leone, presented a Paper entitled: **“Submission of the Human Rights Commission of Sierra Leone on the Preliminary Report of the Constitution Review Commission”**.
- 25 Messrs Steven E. Momoh, Vice President and Sullivan M.S. Khallon, General Secretary of the Indigenous Photographers’ Union made a presentation on behalf of their union.

- 26 The presentation on behalf of the National Electoral Commission (NEC) was done by Mrs. Victoria Stewart-Jolley, Legal Adviser of NEC, Alhaji A.S. Jarr, Electoral Commissioner and Mohamed M. Conteh, Chief of Procedures and Training Unit.
- 27 The Commission received two submissions from the Sierra Leone Court Monitoring Programme. The first one was mainly about the retirement age of judges of the Superior Courts, whilst the second submission dealt with issues relating to Citizenship, the Death Penalty, Liberty of Person, Corporal Punishment, Treatment of Prisoners, State of Emergency and functions of the National Electoral Commission.
- 28 We, the Commission, seriously considered all the comments and recommendations made in the interventions referred to above. Many of them we had already discussed and taken appropriate action. For example, we had agreed to recommend an updated list of recognized human rights, repealed and replaced Section 27 with a new and modernised provision of human rights. We redefined discrimination in compliance with the various conventions on human rights, CEADAW, and the recommendations of the Truth and Reconciliation Commission (TRC), thereby repealing all the discriminatory gender provisions of that section. We have also recommended affirmative action in favour of women and the disabled.
- 29 Again, some of the recommendations pressed upon us for inclusion in the Constitution were already part of the laws of Sierra Leone, and we saw no good reason for elevating them into the constitution. Examples of these are the right to remain silent, bail, the treatment of prisoners and other matters of procedure in the courts. Additionally, our preliminary Report already had proposals for legal aid. Both the TRC and UNIOSIL recommended the addition of "human dignity" to the list of human rights. This is already encapsulated in the prohibition of degrading treatment. On the whole we found these interventions most helpful and are grateful to those who made them. However, we were not able to agree or implement some of their proposals. The most important of these are:

29.1 **The Public Order Act**

The representative of SLAJ on the Commission presented a position paper on this subject. We explained that this was a single Act of Parliament, which could not be amended or repealed directly by the constitution. However, since the argument was that there are provisions of that legislation which are a violation of human rights, the matter should best be pursued in the Supreme Court.

29.2 **The Death Penalty**

UNIOSIL, the Human Rights Commission and others repeatedly drew our attention to the recommendations of the Truth and Reconciliation Commission (TRC) for the total abolition of the death penalty. One Commonwealth diplomat in private conversations with the Chairman also argued strongly for abolition.

The abolition of the death penalty is a controversial topic the world over, not excluding Sierra Leone. We have also been made aware of the recent resolution of the United Nations calling for the abolition of the death penalty. We are sure that the countries which still have the death penalty on their statute books will require some time to review their position and sensitise their people before attempting to translate that resolution into domestic law. We are similarly recommending to the Government and Parliament a biennial review of the death penalty, with a view to its repeal. In the meantime, we have recommended a repeal of the death penalty in all cases of treason not involving murder.

29.3 **The Demand for a 30% Quota in Parliament for Women**

We did not encounter this demand in any of our consultative meetings. As already stated above, it was strongly argued before us in Freetown by the Women's group. The conventions and the Constitutions cited by the Group were:

The African Charter on Human and People's Right (ACHPR) and on the Rights of Women, the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). The 1995 Fourth UN Conference on Women in Beijing, the International Convention on Civil and Political Rights, Inter-Parliamentary Union and the

TRC Report; the Constitutions of Liberia, Rwanda and Uganda. We examined these sources and found that none of them provides for a mandatory 30% quota of women in Parliament. However, the Uganda constitution provides that Parliament shall consist of at least one woman representative from each District and one third of the members of each local council shall be women. The Uganda Parliament is non-party.

The Rwanda provision requires all political parties to ensure that at least 30% of their candidates for all local and national elections are women and that Government shall ensure equality between women and men by ensuring that women are granted at least 30% of posts in decision-making organs.

All the authorities cited by the Women's groups make a clear distinction between representation in Parliament and representation "in decision-making organs". In the latter, some suggest a quota of at least 30% for women. This is clearly a goal towards which decision-makers are encouraged to strive. None of the signatories have made it a mandatory provision of their constitutions. We see no reason why we should recommend a quota system in our multi-party constitution. As the 50/50 Group stated in one of their documents presented to us: "Democracy is representation of the people by the people for the people." In this country that representation in Parliament is selected by all registered voters in a secret ballot and no distinction is made between men and women.

All the Convention demand affirmative action in favour of women. We, the Commission, support this and strongly recommend greater educational opportunities for women so as to prepare and enhance them for a major participation in politics and public offices. In this regard, special provision should be made for the empowerment of women in the hinterland of the provinces, in education, business other development. As Dr. Fama Joka Bangura, a former distinguished woman diplomat remarked in a recent article, "...at the moment, 30% representation will be limited to a very small proportion of the number of women in the country."

We believe that in the area of Parliament a beginning could be made by making it mandatory for ten women to be selected by women's groups to be members of the proposed Senate, which is not yet an elected legislative body.

29.4 **The 55% Requirement**

Section 42 (2) (e) of the current Constitution provides that **“no person shall be elected President of Sierra Leone unless at the Presidential election he has polled no less than fifty-five percent of the valid votes in his favour.”**

No representation was made to us regarding this provision. However, as it became a major topic of discussion during the recent presidential elections, we decided to review it. We found that requirement was influenced by two major factors;

1. Ours is a unitary Constitution in which all executive power is vested in the President, unlike a federal Constitution where power is distributed among the states and the federal government. The person who wields so much power, it was felt, needs to have the confidence of more than half of the voters in order to enhance his authority and acceptance by the whole population.
2. Our elections are still heavily influenced by regional loyalties and there is a strong argument in favour of ensuring that no one or two regions could elect a President. Anyone, who is familiar with the politics of Sierra Leone, knows that such an election would stratify the regional and tribal divisions of Sierra Leone and render government of the whole country almost impossible.

An alternative formula suggested in 1991 was that the candidate who wins a simple majority of the votes will be the winner, if he also polls at least 25% of the votes in his favour in the Western Area and in each of the three other regions.

We decided to retain the present 55% provision.

PART TWO

AMENDMENTS RECOMMENDED

30 The Commission proposed one hundred and thirty-six amendments (136), and fifteen (15) of which are “entrenched clauses”. These are produced and explained in this Part. The Sections of the Constitution which are not included in this part have not been amended.

CHAPTER 1 – THE REPUBLIC OF SIERRA LEONE

31 Chapter One of the current Constitutions is about the declaration of the Republic of Sierra Leone, the Public Seal, the National Anthem and the National Flag. It makes no mention of the supremacy of the Constitution and the sovereignty of the people. To highlight these issues and to emphasis the important of the Constitution and the power of the people of Sierra Leone, Chapter One is to be amended by adding two new Sections:

- 1. The Constitution shall be the Supreme law of Sierra Leone, and**
- 2. Sovereignty belongs to the people of Sierra Leone from whom Government through this Constitution, derives all its power, authority and legitimacy.**

CHAPTER 11 – FUNDAMENTAL PRINCIPLES OF STATE POLICY

32 This Chapter is to be amended by the addition of items of state responsibility which were considered important both by the Commission and some of those who made representations on the amendment of some of the existing list. We, the Commission, after extensive discussions, decided that these principles should not be made justifiable. They are codes of conduct for the Executive, the Legislature, the Judiciary and the Public. The following amendments are recommended:

33 **Sections 8 (3) (d)** of the 1991 Constitution reads:

The State shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons, having due regard to the resources of the State.

Proposed amendment: by the deletion of the words “having due regard to the resources of the State”

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

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

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

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

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

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

36 **Section 12 (a)** of the 1991 Constitution reads:

The Government shall promote Sierra Leonean culture such as music, art, dance, science, philosophy, education and traditional medicine which is compatible with national development;

Proposed amendment: by the inclusion of “**dress**” as one of the Sierra Leonean cultures Government should promote.

37 **Section 13 (a)** of the 1991 Constitution reads:

Every citizen shall:

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

Proposed amendment: (13) (a) by the inclusion of the **“National Pledge”** and the **“National currency”** as those which every citizen should respect.

Section 13: by the addition of paragraphs K and L which reads:

13 (k) satisfy all tax obligations;

13 (l) protect and safeguard the environment.

CHAPTER III – CITIZENSHIP – A NEW CHAPTER

- 38 There is no provision in the current Constitution for Citizenship of Sierra Leone and we decided that as in most Constitutions, our Constitution should give a clear and authoritative provision which would determine who the citizens of Sierra Leone are and how to acquire citizenship, without reference to racial or gender criteria.
- 39 Since drafting this chapter, we have learnt that Parliament is planning to enact a new citizenship law, that will be free of racial or sex discrimination. We recommend that this chapter of the Constitution shall provide that no citizenship law shall contain any provision, requirement or condition which is discriminatory on grounds of race, colour or gender.

CHAPTER IV

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

This is Chapter III in the current Constitution

40 In the Commission's terms of reference, emphasis was laid on Chapter III of the existing Constitution, which provides for the protection of Human Rights. We were asked to strengthen and update the rights recognized and protected in this chapter. In the execution of this mandate, we carefully considered all the relevant international Conventions to which Sierra Leone is a signatory, the recommendation of the TRC, which we were repeatedly reminded by Mr. Sannoh of UNIOSIL, the Human Rights Commission and the Women's Group and others who made representations to us. Commissioners were convinced of the need for these changes. Therefore, we agreed to make the following drastic amendments:

The heading of CHAPTER III of the 1991 Constitution reads:

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

The rationale is that all human rights are fundamental and in all international documents these rights are referred to simply as human rights.

41 Section 15 (a) of the 1991 Constitution reads:
Whereas every person in Sierra Leone is entitled to the fundamental human rights and freedoms of the individual, that is to say, has the right, whatever his race, tribe, place of origin, political opinion, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following life, liberty, security of person, the enjoyment of property, and the protection of law;

Proposed amendment: By the addition of the following:

the right to passport; the right of protection of environment; the right to education and dignity.

42 Section 16 (1) of the 1991 Constitution reads:

(1) No person shall be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the laws of Sierra Leone, of which he has been convicted.

Proposed amendment

Add the following new subsection 3:

- (b) the death penalty should be abolished in all cases of treason or other crimes of a political nature which does not directly cause the death of another person(s), and replaced by life imprisonment.**
- (c) that Parliament shall review the death penalty every two (2) years with a view to its abolition.**

43 **Section 17 (1) (g)** of the 1991 Constitution reads:

No person shall be deprived of his personal liberty except as may be authorised by law in any of the following cases, that is to say in the case of a person who has not attained the age of twenty-one years, for the purpose of his education or welfare.

Proposed amendment:

By the deletion of the word “twenty-one” to be replaced by the word “**eighteen**”

44 **Section 17 (2) (a)** of the 1991 Constitution reads:

Any person who is arrested or detained shall be informed in writing or in a language that he understands at the time of his arrest, and in any event not later than twenty-four hours, of the facts and grounds for his arrest or detention.

Proposed amendment:

By the deletion of the word “**and in any event not later than twenty-four hours, of the facts**”.

45 **Section 17 (2) (b)** of the 1991 Constitution reads:

Any person who is arrested or detained shall be informed immediately at the time of his arrest of his right of access to a legal practitioner or any person of his choice, and shall be permitted at his own expense to instruct without delay a legal practitioner of his own choice and to communicate with him confidentially.

Proposed amendment:

By the deletion of the words "**at his own expense.**"

46 **Section 17 (3)** of the 1991 Constitution reads:

Any person who is arrested or detained in such a case as is mentioned in paragraph (e) or (f) of subsection (1) and who is not released shall be brought before a court of law:

- (a) within ten days from the date of arrest in cases of capital offences, offences carrying life imprisonment and economic and environmental offences; and
- (b) within seventy-two hours of his arrest in case of other offences;

Proposed amendment:

- (a) by the deletion of "**ten**" to be replaced by **seven (7)**
- (b) by the deletion of "**seventy-two**" to be replaced by **forty-eight (48)**.

47 **Section 17 (4)** of the 1991 Constitution reads:

Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person.

Proposed amendment:

Any person who is unlawfully arrested or detained shall be entitled to compensation **and public apology from the appropriate authority or person; in this subsection "the appropriate authority or person" means appropriate authority or person specified by law.**

48 **Section 18 (1)** of the 1991 Constitution reads:

No person shall be deprived of his freedom of movement, and for the purpose of this section the said freedom means the right to move freely throughout Sierra Leone, the right to enter or leave Sierra Leone, and immunity from expulsion from Sierra Leone.

Proposed amendment:

By the inclusion of the words **“and every citizen has the right to a passport.”**

49 **Section 18 subsections 4 (a) & (b)** of the 1991 Constitution reads:

(a) if any person whose freedom of movement has been restricted by virtue only of such a provision as is referred to in paragraph (a) of subsection (3) so requests at any time during the period of that restriction not earlier than thirty days after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal, established by law, comprising not more than three persons from amongst persons of not less than fifteen years' standing entitled to practice in Sierra Leone as legal practitioners;

(b) Any tribunal has been set up under paragraph (a), the Chairman of that tribunal shall be appointed by the Chief Justice, and the two other members of the tribunal shall be nominated by the Sierra Leone Bar Association.

Proposed amendment:

(a) If any person whose freedom of movement has been restricted by virtue only of such a provision as is referred to in paragraph (a) of subsection (3) so requests at any time during the period of that restriction not earlier than thirty (30) days after he last made such a request **to the Human Rights Commission, who shall set up an independent and impartial tribunal.**

(b) If any tribunal has been set up under paragraph (a), the Chairman of that tribunal shall be appointed by the Human Rights Commission and the two other members, **one of whom shall be appointed by the Sierra Leone Bar Association and the other,**

who shall be a non-Lawyer, shall be appointed by the Human Rights Commission.

50 **Section 18 subsection (5)** of the 1991 Constitution reads:

On any review by a tribunal in pursuance of subsection (4) of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity of expediency of continuing that restriction to the authority by whom it was ordered, but unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with such recommendations.

Proposed amendment:

By the deletion of the word "not".

51 **Section 21 (1) (c)** of the 1991 Constitution reads:

No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say provision is made by law applicable to that taking of possession or acquisition:-

(i) for the prompt payment of adequate compensation; and

(ii) securing to any person having an interest in or right over the property, a right of access to the court or other impartial and independent authority for the determination of his interest or right, the legality of the taking of possession or right, and the amount of any compensation to which he is entitled and for the purpose of obtaining prompt payment of that compensation.

Proposed amendment:

By the addition of:

(iii) provided that after the passing of this revised Constitution into law – Parliament shall legislate for the establishment of a Lands Compensation Tribunal charged with the responsibility of adjudicating and determining adequate compensation to persons whose property has been compulsorily acquired by the Government.

52 **Section 21 (5)** of the 1991 Constitution reads:

Where any such property as is referred to in subsection (4) is not used in the public interest or for the public purposes for which it was taken or acquired, the person who was the owner immediately before the compulsory taking or acquisition, as the case may be, shall be given the first option of acquiring that property, in which event he shall be required to refund the whole or such part of the compensation as may be agreed upon between the parties thereto; and in the absence of any such agreement such amount as shall be determined by the High Court.

Proposed amendment:

By the deletion of the words “the High Court” to be replaced by the words “**the Lands Compensation Tribunal**”.

53 **Section 22 (2) (d)** of the 1991 Constitution reads:

Nothing contained in or done under authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that is reasonably required for the purpose of executing any judgement or order of a court.

Proposed amendment:

By the inclusion of the words “**search warrants**”

54 **Proposed new provision:**

Everyone has the right:

- (a) to an environment that is not harmful to his health or well-being; and**
- (b) to have the environment protected, for the benefit and future generations through reasonable legislative and other measures that:-**
 - i) prevent pollution and ecological degradation;**
 - ii) promote conservation; and**

iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

55 **Section 23 (3)** of the 1991 Constitution reads:

All proceedings of every court and proceedings relating to the determination of the existence or the extent of civil rights or obligations before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public:

Provided that the court or other authority may, to such an extent as it may consider necessary or expedient in circumstances where publicity would prejudice the interest of justice or interlocutory civil proceedings or to such extent as it may be empowered or required by law so to do in the interest of defence, public safety, public order, public morality, the welfare of person under the age of twenty-one (21) years or the protection of the private lives of persons concerned in the proceedings, exclude from its proceedings, persons other than the parties thereto and their legal representatives.

Proposed amendment:

By the deletion of "**twenty-one**" to be replaced by "**eighteen**".

56 **Section 23 (10)** of the 1991 Constitution reads:

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of any provisions of this section, other than subsections (7) and (8), to the extent that the law in question authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists before or during that period of public emergency.

Proposed Amendment:

Repeal this section; it is too wide and unnecessary.

57 **Section 25 (1)** of the 1991 Constitution reads:

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purpose of this section the said freedom includes the

freedom to hold opinions and to receive and impart ideas and information without interference, from interference with his correspondence, freedom to own, establish and operate any medium for the dissemination of information, ideas and opinions, and academic freedom in institutions of learning provided that no person other than the Government or any person or body authorised by the President shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

Proposed amendment:

By the deletion of the word "President" to be replaced by the words "**the independent Media Commission or its successor-in-office, created by Act of Parliament.**"

58 **Section 25 subsections 2 (a) (i)** of the 1991 Constitution reads:

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which reasonably required in the interests of defence, public safety, public order, public morality or public health;

Proposed amendment:

By the inclusion of the words "**in the detection and/or prevention of crimes.**"

Further amendments were made by adding two new subsections to **Sections 25** which shall now become **subsections (2) and (3)** and the existing provisos now become **Section 25 (4) (a) (i), 25 (4) (a) (ii) and Section 25 (4) (b).**

2. Everyone has the right to access to

(a) any information held by the State

(b) any information that is held by another person and that is required for the exercise or protection of any rights;

3. National legislation must be enacted to give effect to his right, with the necessary safeguards and may provide for reasonable measures to alleviate the administrative and financial burden on the State.

59 **New Section 26**

(a) Every Trade Union, employers' organisations and employers has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining.

(b) National Legislation may recognize union security of tenure contained in collective agreements.

60 **Section 27** of the 1991 Constitution reads:

Subject to the provisions of subsections (4), (5) and (7), no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

(3) In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons to another such description.

(4) Subsection (1) shall not apply to any law so far as that law makes provision-

- (a) for the appropriation of revenues or other funds of Sierra Leone or for the imposition of taxation (including the levying of fees for the grant of licenses); or
- (b) with respect to persons who are not citizens of Sierra Leone; or
- (c) with respect to persons who acquire citizenship of Sierra Leone by registration or by naturalisation, or by resolution of parliament; or
- (d) with respect to adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law; or
- (e) for the application in the case of members of a particular race or tribe or customary law with respect to that matter which is applicable in the case of other persons; or

- (f) for authorising the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency; or
 - (g) whereby persons of any such description as mentioned in subsection (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society; or
 - (h) for the limitation of citizenship or relating to national registration or to the collection of demographic statistics.
- (5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it makes provision with respect to qualifications of service as a public officer or as a member of a defence force or for the service of a local government authority or a body corporate established directly by any law or of membership of Parliament.
- (6) Subsection (2) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provisions of law as is referred to in subsection (4) or (5).
- (7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) may be subjected to any restriction of the rights and freedoms guaranteed by Sections 18, 22, 24, 25 and 26 being such a restriction as is authorised by subsection (3) of Section 18, subsection (2) of Section 22, subsection (5) of Section 24, subsection (2) of Section 25 or subsection (2) of Section 26, as the case may be. (8) The exercise of any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person under or by this Constitution or any other law shall not be enquired into by an Court on the grounds that it contravenes the provision of subsection (2).

Proposed amendment:

Section 27 (1) is to be repealed and replaced by the following:

Subject to the provisions of subsections 4, 6 & 7, no law shall make any provision which limits or derogates from any of the human rights provision in chapter three (III) or discriminates against any person in the use and enjoyment of those rights.

Sections 27 (2)

Subject to the provisions of subsections 4,6 & 7, no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any office or authority in the public or private sector.

Section 27 (3)

(a) A person discriminates against another in any circumstances relevant for the purposes of the rights recognized and protected in Chapter 4 if no grounds of race, tribe, sex, religion, place of birth, opinion, colour and disability he treats him less favourably than he treats or would treat another;

(b) as soon as practicable after this Constitution comes into effect, Parliament shall enact legislation to eliminate discrimination and promote equality of opportunity in employment, education, housing and social services;

Section 27 (4)

Subsections 1 & 2 shall not apply to any law so far as that law makes provisions:

(a) for the appropriation of revenues or other funds of Sierra Leone or for the imposition of taxation (including the levying of fees for the grant of licenses);

or

(b) with respect to persons who are not citizens of Sierra Leone; or

(c) whereby persons of any such description as mentioned in subsection (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special

circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society; or

(d) for the limitation of citizenship or relating to national registration or to the collection of demographic statistics; or

(e) with respect to members' only social organizations; or

(f) for the taking by the Government of affirmative action to remedy or ameliorate the effects of past discrimination against any of the groups listed in Section 27 (3);

Section 27 (5)

(a) Anyone of the following persons has a right to complain that his right under Chapter 3 of this Constitution has been, is being or is about to be violated:

anyone acting in his own interest;

anyone acting on behalf of another person who cannot act in his own name;

anyone acting as a member of, or in the interest of, a group or class or persons;

anyone acting in the public interest; and

an association acting in the interest of its members.

(b) Subject to the provisions of subsections (4), (6) & (7),. If any person alleges that any of the provisions of Sections 16 to 27 (inclusive) has been, is being or is likely to be contravened in relation to him by any person (or, in the case of a person who is detained if any person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person, (or that other person), may apply to the Human Rights Commission for redress.

Provided that any aggrieved party may appeal to the Court of Appeal and ultimately to the Supreme Court from the decision of the Human Rights Commission.

61 **Section 28** of the 1991 Constitution reads:

Subject to the provisions of subsection (4), if any person alleges that any of the provisions of Section 16-27 (inclusive) has been, is being or is likely to be contravened in relation to him by any person (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person, (or that other person), may apply by motion to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction-

(a) to hear and determine any application made by any person in pursuance of subsection (1); and

(b) to determine any question arising in the case of any person which is referred to in pursuance of subsection (3), and may make such order, issue such writs, and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of any of the provisions of the said Sections 16 – 27 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) if in any proceedings in any court other than the Supreme Court, any question arises as to the contravention of any of the provisions of Sections 16 – 27 inclusive, that court may, and shall if any party to the proceedings so requests refer the question to the Supreme Court.

(4) (a) The Rules of Court Committee may make rules with respect to the practice and procedure of the Supreme Court for the purpose of this section;

(b) Parliament may confer upon the Supreme Court such powers in addition to those conferred by this section as may appear to Parliament to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by this section.

(5) Parliament shall make provision –

(a) for the rendering of financial assistance to any indigent citizen of Sierra Leone where his right under this Chapter has been infringed, or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim, and

(b) for ensuring that allegations of infringements of such rights are substantial and the requirement or need for financial or legal aid is real.

(6) The Supreme Court –

(a) consisting of not less than five Justices of the Supreme Court shall consider every question referred to it under this Chapter for a decision, and, having heard arguments by or on behalf of the parties by Counsel, shall pronounce its decision on such question in open court as soon as may be and in any case not later than thirty days after the date of such reference;

(b) shall for the purposes of this Chapter, give its decision by a majority of the Justices of that Court and such decision shall be pronounced by the Chief Justice or any other of the Justices as the Court shall direct.

Proposed amendment:

Section 28 was re-arranged and now reads as follows:

1. If in any proceedings in any court other than the Supreme Court, any question arises as to the contravention of any of the provisions of Sections 16 – 27 inclusive, that court may, and shall if any party to the proceedings so request, refer the question to the Supreme Court.

(a) The Rules of Court Committee may make rules with respect to the practice and procedure of the Supreme Court for the purposes of this section;

(b) Parliament may confer upon the Supreme Court such powers in addition to those conferred by this section as may appear to Parliament to be necessary and desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by this section.

2. Parliament shall make provisions –

(a) for the rendering of financial assistance to an indigent citizen of Sierra Leone where his right under this Chapter has been infringed, or with a view to enabling him to engage the services of a legal practitioner to prosecute his claims;

(b) for ensuring that allegation of infringements of such rights are substantial and the requirement or need for financial or legal aid is real.

3. The Supreme Court –

(a) consisting of not less than five Justices of the Supreme Court shall consider every question referred to it under this Chapter for decisions, and, having heard arguments by or on behalf of the parties by Counsel, shall pronounce its decision on such question in open court as soon as may be and in any case not later than thirty days after the date of such reference.

62 **Section 29** of the current Constitution should be amended by the addition of a new subsection 6 (k) as follows:

Where a state of emergency exists, the President will not derogate from the recognized international requirements pertaining to certain human rights which have been identified in Article 4 (2) of the United Nations International Covenant on Civil and Political Rights as non derogate under any circumstances, such as the right to life, the prohibition of torture, the principles of legality in the field of criminal law, and the freedom of thought, conscience and religion.

CHAPTER V – THE REPRESENTATION OF THE PEOPLE

63. **Section 32 (4) (b)** of the 1991 Constitution reads:

A person shall not be qualified to hold office as a member of the Electoral Commission if he is a Minister, a Deputy Minister, a Member of Parliament, or a public officer, or if he has attained the age of sixty-five years.

Proposed amendment: by the deletion of “**if he has attained the age of sixty-five years**”.

Section 32 (7) (b) of the 1991 Constitution reads:

Subject to the provisions of this section, a member of the Electoral Commission shall vacate his office on attaining the age of sixty-five years.

Proposed amendment:

By the deletion of Section 32 (7) (b).

64. **Section 32 (8)** of the 1991 Constitution reads:

A member of the Electoral Commission may be removed from office by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour.

Proposed amendment:

By the deletion of the words “**or any other cause**” and by the addition of the words “**in consultation with the leaders of all registered political parties**”.

65. **Section 34 (1)** of the 1991 Constitution reads:

There shall be a Political Parties Registration Commission which shall consist of four members appointed by the President, namely –

(a) the Chairman of the Commission, who shall be a person who has held Judicial office or is qualified to be appointed a Judge of the Superior or is qualified to be appointed a

Judge of the Superior Court of Judicature nominated by the Judicial and Legal Service Commission;

(b) the Chief Electoral Commissioner;

(c) a legal practitioner nominated by the Sierra Leone Bar Association; and

(d) a member nominated by the Sierra Leone Labour Congress.

Proposed amendment:

By extending the membership of Political Parties Registration Commission to five, one of whom shall be nominated by Women's Civil Society Organizations, thereby adding a **new subsection (e)** which reads:

"and a member nominated by women's civil society organizations."

66. **Section 43 (4)** of the 1991 Constitution reads:

The Commission shall be responsible for the registration of all political parties and for that purpose may make such regulations as may be necessary for the discharge of its responsibilities under this Constitution;

Provided that the first registration of political parties after the coming into force of this Constitution shall be undertaken by the Electoral Commission.

Proposed amendment:

By the deletion of the proviso to **Section 34 (4)**.

67 **Section 38** of the 1991 Constitution is to be amended by adding a **new subsection (9)** which read as follows:

No person shall vote or be voted for in any public election referred to in this Section or elsewhere unless he or she is an elector whose name is on a register of electors under the Franchise and Electoral Act, 1961, or under any Act of Parliament amending or replacing that Act.

68 The Amendment Act No. 15 of 2001 to **Section 38** of the 1991 Constitution is hereby repealed as the Commission is of the view that the circumstances which gave rise to the amendment no longer exist.

CHAPTER VI – THE EXECUTIVE

69. The proviso to **Section 40 (4)** of the 1991 Constitution reads:
Provided that any Treaty, Agreement or Convention executed by or under the authority of the President which relates to any matter within the legislative competence of Parliament, or which in any way alters the law of Sierra Leone or imposes any charge on, or authorizes any expenditure out of, the Consolidated Fund or any other fund of Sierra Leone, and any declaration of war made by the President shall be subject to ratification by Parliament –
- (i) by an enactment of Parliament; or
 - (ii) by a resolution supported by the votes of not less than one-half of the Members of Parliament.

Proposed Amendment:

By the deletion of the words “**within the legislative competence of Parliament**” and the addition of a **new No (iii)**:

(iii) or by referendum where the Agreement alters or seeks to alter an entrenched provision of the Constitution.

70. **Sections 49 (1)** of the 1991 Constitution reads:
The Office of President shall become vacant –
- (a) on the expiration of any of the terms prescribed in subsection (1) of Section 46 of this Constitution; or
 - (b) where the incumbent dies or resigns or retires from that office;
or
 - (c) where the incumbent ceases to hold that office in pursuance of Section 50 or 51 of this Constitution.

Proposed amendment:

By the addition of a new subsection 49 (1) (d) to read as follows:

(d) if he voluntarily ceases to be a member of the political party of which he was a member at the time of his election to office.

71. **Section 55** of the 1991 Constitution reads

The office of the Vice President shall become vacant –

- (a) on the expiration of the term of Office of the President; or
- (b) if the Vice-President resigns or retires from office or dies; or
- (c) if the Vice-President is removed from office in accordance with the provisions of Section 50 or 51 of this Constitution; or
- (d) upon the assumption by the Vice-President to the office of President under subsection (4) of Section 49.

Proposed amendment:

By the addition of a **new subsection 55 (e)** to read as follows:

(e) if he voluntarily ceases to be a member of the political party or which he was a member at the time of his election to office.

72. **Section 56 (1)** of the 1991 Constitution reads:

There shall be, in addition to the office of Vice President, such other offices of Ministers and Deputy Ministers as may be established by the President:

Provided that no Member of Parliament shall be appointed a Minister or Deputy Minister.

Proposed amendment:

By the deletion of the word “appointed” to be replaced by the words “**nominated to be**”.

73. **Section 64** of the 1991 Constitution reads:

- (1) There shall be an Attorney-General & Minister of Justice who shall be the principal legal adviser to the Government and a Minister;
- (2) The Attorney-General & Minister of Justice shall be appointed by the President from among persons qualified to hold office as a Justice of the Supreme Court and shall have a seat in the Cabinet;

(3) All offences prosecuted in the name of the Republic of Sierra Leone shall be at the suit of the Attorney-General & Minister of Justice or some other person authorised by him in accordance with any law governing the same;

(4) The Attorney-General & Minister of Justice shall have audience in all courts in Sierra Leone except local courts.

Proposed amendment:

(1) by the deletion of the words "Attorney-General & Minister of Justice" to be replaced by the word "**Attorney-General**",

(2) the Office of Attorney-General shall be a public office which shall be filled in the same way as that of the Solicitor-General, i.e. he shall be appointed by the President on the advice of the Judicial and Legal Service Commission, with approval of Parliament, and he shall before assuming the functions of his Office, take and subscribe the oath as set out in the Third Schedule of the Constitution,

(3) the holder of the Office of the Attorney-General must be a Sierra Leonean, and

(4) if a President so desires, he can appoint a Minister of Justice, whose portfolio shall include the courts, the Prisons and the Probation service for administrative and political purposes.

The rationale for this proposal is that there should be transparency in the administration of justice and non-interference by the Executive in the domain of the Judiciary.

74. **Section 65 (2)** of the 1991 Constitution reads:

The Solicitor-General shall be appointed by the President on the advice of the Judicial and Legal Service Commission and he shall, before assuming the functions of his office take and subscribe to the oath as set out in the Third Schedule to this Constitution.

Proposed amendment:

By the inclusion of the words "**and subject to the approval of Parliament**" between the words "**Commission**" and "**and**"

75 **Section 67 (2)** of the 1991 Constitution reads:

The functions of the Secretary to the President shall include –

- (a) acting as the principal adviser to the President on Public Service matters;
- (b) the administration and management of the Office of the President, of which he shall also be Vote Controller;
- (c) the performance of all other functions assigned to him from time to time by the President.

Proposed amendment:

By the deletion of **subsection 67 (2) (a)**.

76. **Section 68 (3)** of the 1991 Constitution reads:

The functions of the Secretary to the Cabinet shall include-

- (a) having charge of the Cabinet Secretariat;
- (b) responsibility for arranging the business for, and keeping the minutes of, the Cabinet, and for conveying the decisions of the Cabinet to the appropriate person or authority, in accordance with such instructions as may be given to him by the President;
- (c) co-ordinating and supervising the work of all administrative heads of ministries and departments in the Public Service;
- (d) such other functions as the President may from time to time determine.

Proposed amendment:

The functions of the Secretary to the Cabinet shall include:

- (a) acting as the Principal Adviser to the President on Public Service matters;
- (b) having charge of the Cabinet Secretariat;
- (c) responsibility for arranging the business for, and keeping the minutes of, the Cabinet, and for conveying the decisions of the Cabinet to the appropriate person or authority, in accordance with such instructions as may be given to him by the President;
- (d) co-ordinating and supervising the work of all administrative head of ministries and departments in the Public Service;
- (e) such other functions as the President may from time to time determine.

77. **Section 70** of the 1991 Constitution reads:

The President may appoint, in accordance with the provisions of this Constitution or any other law the following persons-

- (a) the Chief Justice;
- (b) any Justice of the Supreme Court, Court of Appeal, or Judge of the High Court;
- (c) the Auditor-General;
- (d) the sole Commissioner or the Chairman and other Members of any Commission established by this Constitution;
- (e) the Chairman and other Members of the governing body of any corporation established by an Act of Parliament, a statutory instrument, or out of public funds.

Proposed amendment:

By insertion of the words "**subject to the approval of Parliament,**" between the words "appoint" and "in".

In all cases, this approval is required only for first appointments to the above offices.

78. **Section 72 (4)** of the 1991 Constitution reads:

A Paramount Chief may be removed from office by the President for any gross misconduct in the performance of the functions of his office if after a public inquiry conducted under the Chairmanship, of a Judge of the High Court or a Justice of Appeal or a Justice of the Supreme Court, the Commission of Inquiry makes an adverse finding against the Paramount Chief, and the President is of the opinion that it is in the public interest that the Paramount Chief should be removed.

Section 72 (5) of the 1991 Constitution reads:

Subject to the provisions of this Constitution and in furtherance of the provisions of this section, Parliament shall make laws for the qualifications, elections, powers, functions, removals and other matters connected with Chieftaincy.

Proposed amendment;

Section 72 (4) and (5) to be repealed and replaced by the following new provisions:

(a) Election of Paramount Chiefs

The Chiefdom Councillors shall, whenever the office becomes vacant by death or otherwise elect a Paramount Chief, having regard to native law and customs to be in charge of the chiefdom. The Ministry of Local Government or the supervising Ministry shall be responsible for the conduct and supervision of the elections of all Paramount Chiefs.

Qualifications

All Aspirants who are direct descendants of recognized and established Paramount Chieftaincy Ruling Houses in existence at the time of Independence in 1961.

Disqualifications

No person shall be qualified for election as a Paramount Chief if:

- (a) He is or was a ward of a Paramount Chief
- (b) If he is a Regent Chief
- (c) He has been convicted and sentenced for an offence which involves fraud, dishonesty, or rape unless has been granted the presidential pardon or five years after he serves the sentence.

Duties

- a) Every Paramount Chief shall supervise the collection of local and other taxes within the area over which he or she has jurisdiction.
- b) Every Paramount Chief shall maintain order and good government in the area over which he or she exercises jurisdiction.
- c) Every Paramount Chief shall use his best ability to prevent the Commission of offences within the area over which he or she exercises jurisdiction.

- d) Every Paramount Chiefs is the guardian of the tradition and culture of his chiefdom.

Powers of Paramount Chiefs

Every Paramount Chief in Council may make bye-laws as may be deemed expedient for promoting the peace, good order and welfare of the people within his chiefdom.

Removal/Deposition of Paramount Chiefs

A Paramount Chief may be removed from office by the President for any gross misconduct in the performance of the functions of his office if after a public inquiry conducted under the Chairmanship of a Judge of the High Court or a justice of the Appeal Court or a Justice of the Supreme Court, the Commission of inquiry makes an adverse finding against the Paramount Chief, and the President is of the opinion that it is in the public interest that the Paramount Chief should be removed.

The report of the Commission of Enquiry shall, for the purposes of this Constitution, be deemed to be a judgement of the High Court of Justice and accordingly an appeal shall lie as of right from the Commission to the Court of Appeal, and if thereafter the President is of the opinion that it is in the public interest that the Paramount Chief should be removed, it should be done accordingly.

CHAPTER VII – THE LEGISLATURE

GENERAL PRINCIPLES OF THE COMMISSION'S PROPOSED AMENDMENTS

79. The purpose of the Commission in its appraisal of the provisions of Chapter VI – Legislature – for possible changes is to frame a blueprint of its vision of an efficient and effective institution.

In this vision, Parliament, served by a Parliamentary Service Commission, will be autonomous. The Members of Parliament shall not be Ministers. They shall also not be delegates, but representatives of the people free to serve as their abilities and consciences direct.

80. **Section 73 (1)** of the 1991 Constitution reads:

There shall be a legislature of Sierra Leone which shall be known as Parliament, and shall consist of the President, the Speaker and Members of Parliament.

Proposed amendment:

There shall be a Parliament consisting of:

The Senate

The House of Representatives (whose members shall be referred to as Members of Parliament) and

The Speaker.

RATIONALE: to accommodate the Senate as a component part of the legislature in line with other Republican constitutions.

81. **Section 74 (1)** of the 1991 Constitution reads:

Members of Parliament shall comprise the following:

(a) one Member of Parliament for each District who shall, subject to the provisions of this Constitution, be elected in such manner as may be prescribed by or under any law from among the person who, under any law, are for the time being Paramount Chiefs;

(b) such number of Members as Parliament may prescribe who, subject to the provisions of this Constitution, shall be elected in such manner as may be prescribed by or under any law.

Proposed amendment:

Members of the House of Representatives shall consist entirely of members elected by popular ballot.

82. QUALIFICATIONS FOR MEMBERSHIP OF PARLIAMENT

Section 75 of the 1991 Constitution reads:

Subject to the provisions of Section 76, any person who (a) is a citizen of Sierra Leone (otherwise than by naturalisation);

Proposed amendment:

By the deletion of the words in bracket "**otherwise than by naturalisation**".

Section 75 (b) of the 1991 Constitution reads:

(b) any person who has attained the age of twenty-one years; and

Proposed amendment:

By the deletion of "**twenty-one**" to be replaced by "**eighteen**"

Section 75 (c) of the 1991 Constitution reads:

(c) is an elector whose name is on a register of electors under the Franchise and Electoral Registration act, 1961, or under any Act of Parliament amending or replacing that Act.

Proposed amendment:

By the deletion of **Section 75 (c)**

The proviso to **Section 75** of the 1991 Constitution reads:

Provided that a person who becomes a citizen of Sierra Leone by registration by law shall not be qualified for election as such a Member of Parliament or of any Local Authority unless he shall have resided continuously in Sierra Leone for twenty-five years after such registration or shall have served in the Civil or Regular Armed Services of Sierra Leone for a continuous period of twenty-five years.

Proposed amendment:

The proviso to **Section 75** was amended by deletion.

83. **DISQUALIFICATIONS FOR MEMBERSHIP OF PARLIAMENT**

Section 76 (1) of the 1991 Constitution reads:

(1) No person shall be qualified for election as a Member of Parliament –

(a) if he is a naturalized citizen of Sierra Leone or is a citizen of a country other than Sierra Leone having become such a citizen voluntarily or is under a declaration of allegiance to such a country;

Or

(b) if he is a member of any Commission established under this Constitution, or a member of the Armed Forces of the Republic, or a public officer, or an employee of a Public Corporation established by an act of Parliament, or has been such a member, officer or employee within twelve months prior to the date on which he seeks to be elected to Parliament; or

(c) if under any law in force in Sierra Leone he is adjudged to be a lunatic or otherwise declared to be of unsound mind; or

(d) if he has been convicted and sentenced for an offence which involves fraud or dishonesty; or

(e) if he is under a sentence of death imposed on him by any court; or

(f) if in the case of the election of such member as is referred to in paragraph (b) of subsection (1) of Section 64, he is for the time being a Paramount Chief under any law: or

(g) if being a person possessed of professional qualifications, he is disqualified (otherwise than at his own request) from practising his profession in Sierra Leone by order of any competent authority made in respect of him personally within the immediately preceding five years of an election held in pursuance of section 87; or

(h) if he is for the time being the President, the Vice President, a Minister or a Deputy Minister under the provisions of this Constitution.

Proposed amendment:

By repealing Section 76 (1) (a), (d), (e), (f), (g) and (h).

Section 76 (1) (b)

By the deletion of “**twelve**” to be replaced by “**three.**”

84. **Section 76 (4)** of the 1991 Constitution reads:

A person shall not be disqualified for election as a Member of Parliament under paragraph (b) of subsection (1) by reason only that he holds the office of member of a chiefdom Council, member of a Local Court or member of any body corporate established by or under any of the following laws, that is to say, the Freetown Municipality Act, the Chiefdom Councils Act, the Rural Area Act, the District Councils Act, the Sherbro Urban District Council Act, the Bo Town Council Act, and the Townships Act or any law amending or replacing any of those laws.

Proposed amendment:

The Commission recommended the re-drafting of Section 76 (4) in line with the provisions of the Local Government Act.

85. **Section 77 (1) (k)** of the 1991 Constitution reads:

A Member of Parliament shall vacate his seat in Parliament if he ceases to be a member of the political party of which he was a member at the time of his election to parliament and he so informs the Speaker, or the Speaker is so informed by the Leader of that political party.

Proposed amendment:

By the inclusion of the word “**voluntarily**” between the words “**he**” and “**ceases**”.

86. **Section 77 (1) (L)** of the 1991 Constitution reads:

A Member of Parliament shall vacate his seat in Parliament if by his conduct in Parliament by sitting and voting with members of a different party, the Speaker is satisfied after consultation with the Leader of that Member’s party that the Member is no longer a member of the political party under whose symbol he was elected to Parliament.

Proposed amendment:

Repeal Section 77 (1) (L)

87. **Section 77(1) (n)** of the 1991 Constitution reads:

A Member of Parliament shall vacate his seat in Parliament if he accepts office as Ambassador or High Commissioner for Sierra Leone or any position with an international or Regional Organization.

Proposed amendment:

By the deletion of the word **“position”** to be replaced by the word **“employment”**.

88. **Section 77 (2)** of the 1991 Constitution reads:

Any Member of Parliament who has been adjudged to be a lunatic, declared to be of unsound mind, or sentenced to death or imprisonment, may appeal against the decision in accordance with any law provided that the decision shall not have effect until the matter has been finally determined.

Proposed amendment:

Any member of Parliament who has been adjudged to be a lunatic, declared to be of unsound mind, or sentenced to death or imprisonment, **or declared a bankrupt under any law and has not been discharged**, may appeal against the decision in accordance with any law provided that the decision shall not have effect until the matter has been finally determined.

89. **Section 79 (1)** of the 1991 Constitution reads:

The Speaker of Parliament shall be elected by the Members of Parliament from among person who are Members of Parliament or are qualified to be appointed Judges of the Superior Court of Judicature or have held such office:

Provided that a person shall be eligible for election as Speaker of Parliament notwithstanding that such person is a Public Officer or a Judge of the High Court, a Justice of the Court of Appeal or a Justice of the Supreme Court, and such person, if elected, shall retire from the Public Service on the day of his election with full benefits.

Proposed amendment:

The Speaker of the House of Representatives shall be elected from among:

- (a) persons who are Members of the House of Representatives, or**
- (b) persons who are qualified to be elected as such, and**
- (c) who are qualified to be appointed Judge of the Superior Court of Judicature or have held such office.**

Provided that a person shall be eligible for election as Speaker of the House of Representatives notwithstanding that such person is a Public Officer or a Judge of the High Court, a Justice of the Court of Appeal or a Justice of the Supreme Court, and such person, if elected, shall retire from the Public Service on the day of his election with full benefits.

90. **Section 79 (2)** of the 1991 Constitution reads:

The Speaker shall be elected by a resolution in favour of which there are cast the votes of not less than two-thirds of the Members of Parliament: provided that if three successive resolutions proposing the election of a Speaker fail to receive the votes of two thirds of the Members of Parliament, the Speaker shall be elected by a resolution passed by a simple majority of all the Members of Parliament.

Proposed amendment:

Whenever the word “**not less than two-thirds of the Members of Parliament**” is needed for a parliamentary resolution to be approved, it should read: “**not less than two- thirds of all the Members of Parliament**”.

91. **Section 79 (4) (d)** of the 1991 Constitution reads:

The Speaker shall vacate his office if he is removed from office by a resolution of Parliament supported by the votes of not less than two-thirds of the Members of Parliament.

Proposed amendment: as in **Section 79 (2)**

92. **Section 93 (1) (c)** of the 1991 Constitution reads:

At the beginning of each session of Parliament, but in any case not later than twenty-one days thereafter, there shall be appointed from among its members the following Standing Committees, that is to say – the Committee on Appointments and Public Service.

Proposed amendment:

By the inclusion of the word “**Joint**” between the words “**the**” and “**Committee**”.

RESPONSIBILITIES, PRIVILEGES AND IMMUNITIES

93. **Section 97 (c)** of the 1991 Constitution reads:

The responsibilities of the Members of Parliament shall include the following –

(a) all members of Parliament shall maintain the dignity and image of Parliament both during the sittings in Parliament as well as in their acts and activities outside Parliament;

(b) all members of Parliament shall regard themselves as representatives of the people of Sierra Leone and desist from any conduct by which they seek improperly to enrich themselves or alienate themselves from the people.

Proposed amendment:

To be formulated by the draftsman, restricting sitting Members of Parliament, as well as companies run for their benefit, from bidding for award of Government contracts.

94. **Section 100** of the 1991 Constitution reads:

No civil or criminal process issuing from any court or place out of Parliament shall be served on or executed in relation to the Speaker or a Member or the Clerk of Parliament while he is on his way to attending or returning from any proceedings of Parliament.

Proposed amendment:

No civil or criminal process issuing from any court or place out of Parliament shall be served on or executed in relation to the Speaker or a Member or the Clerk of Parliament **or Minister of Government or Deputy Minister while he is at work or** on his way to attending or returning from any proceedings of Parliament **or Ministerial Office.**

95. **Section 106 (4)** of the 1991 Constitution reads:

When a Bill has been duly passed and is signed by the President in accordance with the provisions of this Constitution it shall become law and the President shall thereupon cause it to be published in the Gazette as law.

Proposed amendment:

By the deletion of the word **“President”** to be replaced by the words **“the clerk of Parliament”**.

96. **Section 106 (7)** of the 1991 Constitution reads:

Where a Bill has been passed by Parliament but the President refuses to sign it, the President shall within fourteen days of the presentation of the Bill for his signature cause the unsigned Bill to be returned to Parliament giving reasons for his refusal.

Proposed amendment:

By deletion of the word **“fourteen”** to be replaced by the words **“twenty-eight”**.

97. **Section 106 (8)** of the 1991 Constitution reads:

Where a Bill is returned to Parliament pursuant to subsection (7) and that Bill is thereafter passed by the votes or not less than two-thirds of the Members of Parliament, it shall immediately become law and the Speaker shall thereupon cause it to be published in the Gazette.

Proposed amendment:

Where a Bill is returned **or not returned** to Parliament pursuant to subsection (7) and that Bill is thereafter passed by the votes of not less than two-thirds of **all** the Members of Parliament, it shall immediately become law and the Speaker shall thereupon cause it to be published in the Gazette.

THE SENATE

RATIONALE:

98. **To involve in the legislative process persons of proven ability and record of valuable service to the nation.**
99. **To remove from the House of Representatives persons who are not elected by popular ballot in a public election.**
100. **To provide for a cooling off period when controversial legislation is being passed by Parliament.**
101. **To involve persons with the experience and knowledge to participate in the work of the Appointments Committee of Parliament.**
102. In this review of the Constitution, we have again considered the position of Paramount Chiefs in Parliament and come to the conclusion that it is undesirable and unusual in a modern democracy to have a group of members who are elected by a narrowly based electoral college. Therefore, in our view, the Paramount Chief block in Parliament should be removed.

However, Paramount Chiefs play a vital role in the administration of Sierra Leone and generally represent the people. It would be both unwise and undesirable to deprive them of political participation in the national political system. A Senate is in our view, the place where they should be, because of their elevated status in their communities and it enables them to participate in the legislative process without being aligned to any political party.

It is not Paramount Chiefs alone whose participation in national politics would be beneficial to Sierra Leone. There are large numbers of people who are not in Parliament or the Public Service and whose knowledge and experience we believe, would be most valuable in the process of good governance in this country. Such people would not normally contest parliamentary elections for obvious reasons.

Another consideration is that Sierra Leone is a small country but by no means homogenous. This is manifested in the cultural and structural diversity of the state and the duality of political and administrative structures. For example, traditional courts function side by side with modern courts; traditional forms of marriage operate side by side with western forms of marriage, different systems of land tenure, etc. There is also the fact that there are vocal and quite important minority groups in this country who may not be demographically important enough to win representation in the legislature at popular elections but important enough to warrant some form of participation in the governance of this country.

COMPOSITION AND FUNCTIONS OF THE SENATE

103. The Senate shall consist of forty-four members and shall comprise the following:
- (a)** Twelve Paramount Chiefs representing their Districts;
 - (b)** A former Mayor of the Municipality of Freetown;
 - (c)** Six persons to be appointed by the President in consultation with the House of Representatives from among persons nominated by recognized Professional Associations and four to be nominated by Civil Society Organizations, appointed by the President, in consultation with the House of Representatives;
 - (d)** The following persons shall be appointed by the President in consultation with the House of Representatives:
 - i. one of the persons who have held the office of President of the Republic of Sierra Leone;
 - ii. one of the persons who have held the office of Vice President of the Republic of Sierra Leone;
 - iii. one of the persons who have held the office of Chief Justice;
 - iv. one of the persons who have held the Office of Speaker of Parliament/House of Representatives;
 - v. one of the persons who have held the office of Vice Chancellor.
 - vi. one of the persons who have held the office of Governor of the Bank of Sierra Leone;

- vii. one of the persons who have held the office of Commander of the Armed Forces;
 - viii. one of the persons who have held the office of Inspector-General of Police;
 - ix. one of the persons who have held a high-ranking public office;
 - x. two persons who are high-ranking clerics in the Inter-religious Council of Sierra Leone, one representing the Muslims community and the other Christian community.
- (e)** Ten persons appointed by Women Organizations from among women of proven eminence and merit, who have distinguished themselves in businesses or politics or in their professions, and have made significant contributions to the development of the nation.
- (f)** The Senate shall elect:
- i. The President of the Senate; and
 - ii. The Deputy President of the Senate
- (g)** The President of the Senate shall preside at every meeting of the Senate and in his absence the Deputy President.
- (h)** In the absence of both the President and the Deputy, a member of the Senate elected by the Senators shall preside at meetings.
- (i)** The quorum for meetings shall be one-fourth of all the members of the Senate.
- (j)** The Senate shall meet for the dispatch of business at least six times in a year at such time and place as the President may determine.
- (k)** The Senate shall also meet if requested by:
- i. the House of Representatives, and
 - ii. not less than one-third of all the members of the Senate.
- (l)** The Senate shall hold its meetings in public but may hold it in camera whenever it considers it appropriate.
- (m)** A question for decision by the Senate shall not be proposed for determination unless there are present in the Senate more than one-half of all the members of the Senate.
- (n)** Except as otherwise provided for in this Constitution, the question proposed shall be determined by the majority of the members present and voting.

- (o) The Senate may at any time appoint any committee it considers appropriate, and assign to it any matter or investigation which the Senate may determine.
- (p) The Senate may commission experts and consultants to advise it or to assist in dealing with any specific issue on such terms and conditions as it may determine.
- (q) Subject to the provisions of the Revised Constitution, the Senate may regulate its own procedure.
- (r) The Senate shall perform such other functions as may be assigned to it by the Constitution or any other law not inconsistent with this Constitution.
- (s) Members of the Senate shall enjoy the same immunities extended to Members of Parliament.

104. The Senate shall have the power to:

- (a) review all Bills passed by the House of Representatives within a month and forward them to the House of Representatives with their comments;
- (b) consider and approve or otherwise, matters referred to it by the House of Representatives;
- (c) consider and approve or otherwise, in a joint committee of both houses, in respect of any appointment which is required by this Constitution or any other law relating to the same to be made with their approval or on their advice, which decision shall be given not later than thirty days after the receipt of the request from the President or other authority.
- (d) Proposed amendments and initiate Bills for the Consideration of the House of Representatives.

Tenure of Office: Six years subject to renewal for not more than one term.

Finances: Sitting fees and other allowances shall be determined by the Executive and paid from the Consolidated Fund.

The Senate shall be serviced by the Parliamentary Service Commission.

105.

PARLIAMENTARY SERVICE COMMISSION

- 1. A Commission which shall be known as the Parliamentary Service Commission shall be established under this Constitution.**
- 2. The Commission shall consist of –**
 - a) the Speaker, who shall be the Chairman; and**
 - b) fourteen other members of the House of Representatives and the Senate in the proportion of 8:6.**
- 3. The Clerk of Parliament shall be Secretary to the Commission.**
- 4. The Chairman and other members of the Commission shall hold office for the duration of the Parliament in which they are elected or appointed.**
- 5. Parliament shall enact legislation to determine the functions of the Commission, the appointment and conditions of service of the Commission and any other matter necessary for the smooth operation of the Commission.**

ALTERATION OF THIS CONSTITUTION

106. **Section 108 (2) (b)** of the 1991 Constitution reads:

A Bill for an Act of Parliament under this section shall not be passed by Parliamentary unless the Bill is supported on the second and third readings by the votes of not less than two-thirds of the Members of Parliament.

Proposed amendment: as in **Section 79 (2)**

107. **ESTABLISHMENT OF OFFICE AND FUNCTIONS OF AUDITOR-GENERAL**

Section 119 (1) of the 1991 Constitution reads:

There shall be an Auditor-General for Sierra Leone whose office shall be a public office, and who shall be appointed by the President after consultation with the Public Service Commission and subject to the approval of Parliament.

Proposed amendment:

There shall be an Auditor-General for Sierra Leone whose office shall be a public office, and who shall be appointed by the President after consultation with **the Civil Service Commission and the Audit Service Commission**, and subject to the approval of Parliament.

108. **Section 119 (14)** of the 1991 Constitution reads:

Whenever the office of the Auditor-General is vacant or the holder of the office is for any reason unable to perform the functions of his office, the President may, in consultation with the Public Service Commission, appoint a person to act in the office and any person so appointed shall, subject to the provisions of the section relating to the removal of the Auditor-General, continue to act until his appointment is revoked by the President.

Proposed amendment:

By the deletion of the words "**Public Service Commission**" to be replaced by the words "**Civil Service Commission and the Audit Service Commission**".

CHAPTER VIII – THE JUDICIARY

109. **Section 120 (1)** of the 1991 Constitution reads:

The Judicial power of Sierra Leone shall be vested in the Judiciary of which the Chief Justice shall be the Head.

Proposed amendment:

The Judicial power of Sierra Leone shall be vested in the Judiciary of which the Chief Justice shall be the Head **and shall be responsible for the administration and supervision thereof.**

110. **Sections 121 (1) (b)** in the 1991 Constitution reads:

The Supreme Court shall consist of not less than four other Justices of the Supreme Court.

Proposed amendment:

Section 121 (b)

By the deletion of the word "**four**" to be replaced by the word "**seven**".

111. **Section 122 (1)** of the 1991 Constitution reads:

(1) The Supreme Court shall be the final court of appeal in and for Sierra Leone and shall have such appellate and other jurisdiction as may be conferred upon it by this Constitution or any other law:

Provided that notwithstanding any law to the contrary, the President may refer any Petition in which he has to give a final decision to the Supreme Court for a judicial opinion.

112. In discussing this section it was agreed that a mechanism be put in place which will enable the **Speaker of Parliament** to refer matters or petitions to the Supreme Court for judicial opinion or ruling as the case may be. It was decided that this suggestion be fused in **Section 122** which deals with the jurisdiction of the Supreme Court.

113. **Section 123 (1) (b)** of the 1991 Constitution reads:

An appeal shall lie from a judgement, decree or order of the Court of Appeal to the Supreme Court as of right, in any criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a Judgement, decree or order of the High Court of Justice in the exercise of its original jurisdiction.

Proposed amendment:

By the deletion of the word "**in the exercise of its original jurisdiction**" and the insertion of the words "**or Court Martial**".

114. **Section 123 (1) (c)** of the 1991 Constitution reads:

An appeal shall lie from a judgement, decree or order of the Court of Appeal to the Supreme Court with leave of the Court of Appeal in any criminal cause or matter, where the Court of Appeal is satisfied that the case involves a substantial question of law or is of public importance.

Proposed amendment: to be deleted in its entirety.

115. **Section 127 (1)** of the 1991 Constitution reads:

A person, who alleges that an enactment or anything contained in or done under the authority of that or any other enactment is inconsistent, may at any time bring an action in the Supreme Court for a declaration to that effect.

Proposed amendment:

By the deletion of the words "**a person**" to be replaced by the words "**any citizen of Sierra Leone or person resident therein**".

116. **Section 127 (4)** of the 1991 Constitution reads:

Failure to obey or to carry out the terms of an order or direction made or given under subsection (1) shall constitute a crime under this Constitution.

Proposed amendment: to be deleted in its entirety.

117. **Section 128 (1) (b)** of the 1991 Constitution reads:

The Court of Appeal shall consist of not less than seven Justices of the Court of Appeal.

Proposed amendment:

The Court of Appeal shall consist of not less than **nine** Justices of the Court of Appeal.

118. **Section 136 (2)** of the 1991 Constitution reads:

Where the office of a Judge of the High Court is vacant or for any reason a Judge thereof is unable to perform the functions of his office or if the Chief Justice advises the President that the state or business in the High Court of Justice so requires, the President may, acting in accordance with the advice of the Judicial and Legal Service Commission, appoint a person who has held office as, or a person qualified for appointment as a Judge of the Superior Court of Judicature to act as a Judge of the High Court of Justice, notwithstanding the fact that he has already attained the retiring age prescribed by Section 137.

Proposed amendment:

By the insertion of the words "**subject to the approval of Parliament**", between the words "**a person**" and "**who**" and by deletion of the words "**notwithstanding the fact that he has already attained the retiring age prescribed by Section 137**".

119. **Section 136 (4)** of the 1991 Constitution reads:

Where the office of a Justice of the Supreme Court or of the Court of Appeal is vacant or for any reason a Justice thereof is unable to perform the functions of his office or if the Chief Justice advises the President that the state or business in the Supreme Court or in the Court of Appeal, as the case may be, so requires, the President may, acting in accordance with the advice of the Judicial and Legal Service Commission, appoint a person, who has held office as, or a person qualified for appointment as, a Judge of the Superior Court of Judicature to act as a justice of the Supreme Court or of the Court of Appeal, as the case may be, not withstanding the fact that he has already attained the retiring age prescribed by Section 137.

Proposed amendment:

By the insertion of the words “**subject to the approval of Parliament**”, between the words “**a person**” and “**who**” and by deletion of the words “**notwithstanding the fact that he has already attained the retiring age prescribed by Section 137**”.

120. **Section 136 (6)** of the 1991 Constitution reads:

Notwithstanding the expiration of the period of his appointment, or the revocation of his appointment, a Judge appointed pursuant to the provisions of subsection (2) or (4) of this section, may thereafter continue to act, for a period not exceeding three months, to enable him to deliver judgement or do any other thing in relation to proceedings that were commenced before him previously thereto.

Proposed amendment:

By the deletion of the word “**three**” to be replaced by the word “**six**”.

121. **Section 137 (2) (b)** of the 1991 Constitution reads:

A person holding office as a Judge of the Superior Court of Judicature shall vacate that office on attaining the age of sixty-five years.

Proposed amendment:

By the deletion of the word “**sixty-five**” to be replaced by the word “**seventy**”.

122. **Section 137 (3)** of the 1991 Constitution reads:

Notwithstanding that he has attained the age at which he is required by the provisions of this section to vacate his office, a person holding the office of a Judge of the Superior Court of Judicature may continue in office after attaining that age, for a period not exceeding three months, to enable him to deliver judgement or to do any other thing in relation to proceedings that were commenced before him previously thereto.

Proposed amendment:

By the deletion of the word “**three**” to be replaced by the word “**six**”.

123. **Section 138 (4)** of the 1991 Constitution reads:

A Judge of the Superior Court of Judicature shall not while he continues in office, hold any other office of profit or emolument, whether by way of allowances or otherwise whether private or public, and either directly or indirectly.

Proposed amendment:

A Judge of the Superior Court of Judicature may **undertake any job for remuneration if approval is obtained from the Chief Justice, subject to appeal to the judicial and Legal Service Commission in cases of disapprovals.**

124. **Section 140 (1)** of the 1991 Constitution reads:

There shall be established a Judicial and Legal Service Commission which shall advise the Chief Justice in the performance of his administrative functions and perform such other functions as provided in this Constitution or by any other law, which shall consist of:

- (a) the Chief Justice, who shall be the Chairman;
- (b) the most Senior Justice of the Court of Appeal;
- © the Solicitor-General;
- (d) one practicing Counsel of not less than ten years standing nominated by the Sierra Leone Bar Association and appointed by the President;
- (e) the Chairman of the Public Service Commission;
- (f) two other persons, not being legal practitioners, to be appointed by the President, subject to the approval of Parliament.

Proposed amendment:

By creating a new **subsection (g)** which reads:

(g) A Judge of the High Court of Justice.

LOCAL COURT SERVICE COMMITTEE

125. The Commission saw the need for the establishment of a Local Court Service Committee on each province, with the responsibility of being the Principal Adviser to the Chief Justice on issues relating to appointments, transfers, promotions, dismissals and general discipline of members, officers and servants of Local Courts. The proposed draft now reads:

- Local Courts Service Committee**
- (1) There shall be established in each Province, a Local Courts Service Committee, which shall advise the Chief Justice on appointments, transfers, promotions, dismissals and general discipline of members, officers and servants of Local Courts.
- (2) A Local Courts Service Committee shall consist of –
- (a) the resident Judge of the Province who shall be the Chairman;
 - (b) a Paramount Chief representing the Council of Chiefs of the Province;
 - © a representative of the Attorney-General;
 - (d) a representative of the Ministry responsible for local Government;
 - (e) the Provincial Secretary; and
 - (f) a person having experience in the administration of Local Courts.
- (3) The members of each Local Court Service Committee shall be appointed by the President, after due regard to the need for the participation of women.
- (4) A member of a Local Courts Service Committee appointed pursuant to paragraphs (b), (c), (d) and (f) of subsection (2);
- (a) shall hold office for a period of three years and thereafter shall be eligible for re-appointment for not more that one more term:

- (b) may be removed from office by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct; and;
- © shall not be removed from office except in accordance with the provisions of this subsection.

(5) A member of a local Courts Service Committee shall, before assuming the functions of his office, take and subscribe before the President the oath as set out in the Third Schedule to this Constitution.

**Appointment
Of members,**

- (6) (1) The appointments of Chairmen, Vice-Chairmen and other members of Local Courts, Clerks, Bailiffs and other officers and servants of Local Courts shall be made by the Chief Justice, acting on the advice of the relevant Local Courts Service Committee.
- (2) Every candidate for appointment for any of the positions in subsection (2) shall be required to produce a reference from the Paramount Chief or Chieftain Council of the Chieftain where he is seeking the appointment.
- (3) The Chief Justice may by statutory instrument prescribe the terms and conditions of service of members, officers and servants, of Local Courts and of every Local Court Service Committee established by this Constitution.

126. **Section 143** of the 1991 Constitution reads:

Any fees, fines or other moneys taken by the Courts shall form part of the Consolidated Fund.

Proposed amendment:

Any fines taken by the Courts shall form part of the Consolidated Fund.

CHAPTER IX – THE OMBUDSMAN

127. **Section 146** of the 1991 Constitution reads:

(1) Subject to the provisions of this Constitution, Parliament shall, not later than twelve months from the commencement of this Constitution, or so soon thereafter as Parliament may determine, by an Act of Parliament establish the office of Ombudsman.

(2) The Act of Parliament shall define the functions and duties of the Ombudsman which shall include the investigation of any action taken or omitted to be taken by or on behalf of –

(a) any department or Ministry of Government;

(b) any statutory corporation or institutions of higher learning or education, set up entirely or partly out of public funds;

© any member of the Public Service, being an action taken or omitted to be taken in the exercises of the administrative functions of that department, ministry, statutory corporation, institution or person.

128. The Commission observed that Section 146, dealing with the Office of the Ombudsman, should be redrafted to convey the fact that the office has already been established and the necessary Act has been enacted by Parliament.

CHAPTER X – HUMAN RIGHTS COMMISSION

129. The Human Rights Commission is hereby established in this Constitution.

Immediately after the revised Constitution comes into effect, Parliament shall pass a legislation setting out the composition and functions of the Human Rights Commission.

No member of the Human Rights Commission shall be removed from office without the approval of two-thirds of the votes of all the Members of Parliament in favour of the removal.

CHAPTER XI – LOCAL GOVERNMENT

130. The Commission also recommended the addition of a new **Section 73** which shall now read;

Local Government, through democratically elected Local Councils is hereby recognised and established. Its composition, functions and administration shall be determined from time to time by Parliament.

CHAPTER XII – COMMISSIONS OF INQUIRY

131. The Commission observed, with great concern that functions given to institutions by the Constitution are not carried out. Even though **Section 150** of the Constitution empowers the Rules of Court Committee to make rules regulating the practice and procedure of Commissions of Inquiry, it has failed to do so.

CHAPTER X111 – THE PUBLIC SERVICE COMMISSION

132. **Section 151 (5) (a) (b)** of the 1991 Constitution reads:

The office of a member of the Public Service Commission, unless he sooner resigns or dies, shall become vacant –

(a) at the expiration of a period of five years from the date of his appointment or such shorter period not being less than three years as may be specified at the time of his appointment.

(b) if any circumstances arise that if he were not a member of the Commission would cause him to be disqualified for appointment as such:

Proposed amendment:

The office of a member of the Civil Service Commission, unless he sooner resigns or dies, shall become vacant –

- a) at the expiration of four years, renewable only once, and**
- b) the Chairman, at the expiration of five years, renewable only once.**

CHAPTER XIV – THE REPUBLIC OF SIERRA LEONE ARMED FORCES

133. **Section 165 (2)** of the 1991 Constitution reads:

The principal function of the Armed Forces shall be to guard and secure the Republic of Sierra Leone and preserve the safety and territorial integrity of the State, to participate in its development, to safeguard the people's achievements and to protect this Constitution.

134. **Section 165 (2)** was amended by deleting the phrases "to participate in its development" and "to protect this Constitution".

Proposed amendment:

The principal function of the Armed Forces shall be to guard and secure the Republic of Sierra Leone and preserve the safety and territorial integrity of the state and to safeguard the people's achievements.

135. **Section 168 (1)** of the 1991 Constitution reads:

The President, acting on the advice of the Defence Council, shall appoint the Chief of Defence Staff of the Armed Forces.

Proposed amendment:

The President, acting on the advice of the Defence Council, shall appoint the Chief of Defence Staff of the Armed Forces, **subject to the approval of Parliament.**

136. **Section 169 (2)** of the 1991 Constitution states that,

The Defence Council may, with the prior approval of the President, make regulations for the performance of its functions under the Constitution or any other law and for the effective and efficient administration of the Armed Forces.

Proposed amendment:

By the deletion of the word "**may**" to be replaced by the word "**shall**".

CHAPTER XV – THE PRISONS SERVICE COUNCIL

137. The Prison Service is an important component of the justice system and should be brought in line with the others by having its own service council. We believe that this will not only give a boost to the service but also go a long way towards improving its performance and conditions of service.

- Prisons Service** 01. (a) There shall be a Prisons Service of Sierra Leone
- (b) The Prisons Service shall be equipped and maintained to perform its traditional role efficiently.
- Prisons Service Council** 02. There shall be established a Prisons Service Council which shall consist of:-
- consist of:-
- (a) the Vice President, who shall be Chairman;
- (b) the Minister responsible for Internal Affairs;
- (c) the Director-General of the Prisons Service;
- (d) a Medical practitioner nominated by the Sierra Leone Medical and Dental Associations;
- (e) a Lawyer nominated by the Sierra Leone Bar Association;
- (f) the Attorney-General or his representative;
- (g) the Minister or a representative of the Ministry of Social Welfare, Gender and Children's Affairs;
- (h) two representatives from the inter-Religious Council;
- (i) the Government Psychiatrist;
- (j) one member appointed by the President
- (k) the Chairman of the Civil Service Commission;
- (l) a representative of the National Human Rights Commission; and
- (m) a person with adequate background in counselling and social work.
- The Director General** 03. (a) The Director-General of the Prisons Service shall, subject to the provisions of this article and to the control and direction of the Prisons Service Council, be responsible for the operational control and the administration of the

Prisons Service.

Appointment to the Prisons Service 04. (a) Subject to the provisions of this Constitution, the power to appoint persons to hold or to act in an office in the Prisons Service shall vest in the President, acting in accordance with the advice of the Prisons Service Council.

(b) The President may, subject to such conditions as he thinks fit, delegates some of his functions under this article by directions in writing to the Prisons Service Council or to a Committee or a Member of the Council.

Functions of the Prisons Council 05. (a) The Prisons Service Council shall advise the President on matters of policy relating to the organization and maintenance of the Prisons Service, prisons budgeting and finance, administration and the promotion of officers above the rank of Assistant Director of Prisons.

(b) The Prisons Service Council may, with the prior approval of the President, by Constitutional instrument, make regulations for the performance of its functions under this Constitution or any other law and for the effective and efficient administration of Prisons and Prisons service.

(c) Regulations made under clause (2) of this article shall include provisions relating to –

- (i) the control and administration of Prisons and Prisons Service;
- (ii) the rank of officers and men of the Prisons Service, the members of each rank and the use of uniforms by the member;
- (iii) the conditions of service including those relating to enrolment, salaries, pensions, gratuities and other allowances of officers and men;

- (iv) the authority and powers of command of the officers and men of the Prisons Service;
- (v) the delegation to other persons of powers to discipline persons and the conditions subject to which delegations may be made;
- (vi) the parole system and the periodic review of the conditions of prisoners and all other persons in legal custody at intervals of not more than one year;
- (vii) the conditions under which persons may be admitted into prisons;
- (viii) the making of reports of unjustified treatment of, and cruelty to, prisoners and persons in legal custody and the manner in which the reports should be dealt with;
- (ix) the appointment and composition of welfare committees for prisons and discharged prisoners and other persons released from legal custody;
- (x) ready access by lawyers to prisoners and other persons in legal custody; and
- (xi) such measures, generally, to ensure humane treatment and welfare of prisoners and other persons in legal custody, including the provision of literature and writing materials.

**Regional
Prisons
Committees**

06. There shall be established for each region a Regional Prisons Committee which shall consist of:
- (a) the Resident Minister appointed for the region, who shall be Chairman;
 - (b) the most senior member of the Prisons Service in the region;
 - (c) a representative of the Attorney-General;
 - (d) a lawyer practising in the region nominated by the Sierra Leone Bar Association;

- (e) the Regional Director of Health Services;
 - (f) a medical practitioner in the region nominated by the Sierra Leone Medical and Dental Association;
 - (g) the Regional Director of Social Welfare;
 - (h) two representatives of such religious bodies as the Regional Minister may deem fit to appoint;
 - (i) one Paramount Chief appointed from the region; and
 - (j) the Regional Police Commander.
07. (2) A Regional Prisons Committee shall advise the Prisons Service Council and the Director-General of the Prisons Service on any matter relating to the administration of prisons and of the Prisons Service in the region.

CHAPTER XVI

EXTRACTIVE INDUSTRIES TRANSPARENCY COMMISSION (EITC)

138. The Commission recommended the establishment of an Extractive Industries Transparency Commission aimed at ensuring that the country derives maximum benefit from its extractive industries and similar entities. The text of the Commission reads:

Subject to the provisions of this Constitution, Parliament shall, not later than twelve (12) months from the commencement of this Constitution, enact legislation to establish the Extractive industries Transparency Commission (EITC).

The Act shall determine the composition and functions of the Commission, which shall include the following:

- (a) to ensure due process and transparency in the payments made by extractive industries and other entities to the Sierra Leone Government and its agencies;
- (b) to ensure accountability in the revenue receipts of the Sierra Leone Government from extractive industries and other entities;
- © to eliminate all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the Sierra Leone Government from extractive industries and other entities; and
- (d) to ensure the provision of adequate funds for the regeneration and restoration of the environment.

CHAPTER XVII – INDEPENDENT FORCES COMPLAINTS COMMISSION

139. The Commission saw the need for Government to create an Independent Forces Complaints Commission comprising mostly of civilians, who would look into all complaints against the Police and the Armed Forces. The Commission believed that such an institution would encourage affected persons to lodge complaints against the Police and the Armed Forces.

CHAPTER XVIII
NON-GOVERNMENTAL ORGANIZATIONS (NGOS) REGULATORY BOARD

140. The Constitution hereby established a Regulatory Board for Non-Governmental Organizations (NGO).

Establishment

Immediately following the commencement of this Constitution the President shall by Constitutional instrument appoint a Regulatory Board with the approval of Parliament, for all NGOs who receive all or some of their funds from abroad or from Government.

Composition

The Board shall comprise of:

- a) a Chairman
- b) a Board member representing the Western Region
- c) a " representing the Northern Region
- d) a " representing the Southern Region
- e) a " representing the Eastern Region
- f) a " representing the Consumer Protection Society
- g) a " representing Civil Society Organizations
- h) a " representing Youth Organizations
- i) a Registrar, and
- j) a Secretariat

Name and Reporting System

It shall be called the Non-Governmental Organizations Regulatory Board, and it shall report its findings to Parliament quarterly.

Tenure of Office	The tenure of office of Board members shall be three years, which shall be renewable.
Functions	<p>The functions of the Board shall be directed at all NGOs including Human Rights Groups, Women's Organizations, Environmental Movements, Farmers Organizations, Youth Organizations and the Media.</p> <p>Such functions shall include registration of the aforementioned institutions; the provision of support, information and advice about best practices related to improving accountability and governance to the said institutions; collection and provision of information on the said institutions to the public, as well as monitoring and assisting them to ensure compliance.</p>
Funding	The Board shall be funded from the Consolidated Fund and from the registration fees. The emoluments received by member of the Board shall be agreed upon between the Board and the Ministry of Finance.

AMENDMENT OF FIRST SCHEDULE

141. For uniformity the Commission agreed that the designation “**Provincial**” and “**Western Area**” used to describe administrative divisions in the Republic of Sierra Leone be changed to regions. Thus the territorial divisions shall be referred to as **Western, Northern, Southern and Eastern Regions**.

142. SIGNED:

Dr. Peter L. Tucker (CHAIRMAN)

COMMISSIONERS

P.C. Alhaji Yembah Mansaray III

Alhaji Dr. A.B. Karim

Professor A.M. Alghali

Mr. Aiah Foday-Khabenje

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Mr. Mohamed A. Deen

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Hon. Justice M.E. Tolla Thompson

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Mr. Samuel Gbessay Kanu (DECEASED)
Mr. Sulaiman Lionel Thomas
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Mr. Umaru Koroma
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Mr. S.A.T. Tamu (**SECRETARY**)