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SCSL-2003-01-7

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(1718 - 1872)

**THE SPECIAL COURT FOR SIERRA LEONE
FREETOWN - SIERRA LEONE**

CASE NO. SCSL-03-1

IN THE APPEALS CHAMBER

Before: Judge Geoffrey Robertson, QC President
Judge Emmanuel O. Ayoola
Judge Gelaga King
Judge Renate Winter
Judge.....

Registrar: Mr. Robin Vincent

Date filed: 28th October 2003

THE PROSECUTOR

Against

**CHARLES GHANKAY TAYLOR also known as
CHARLES GHANKAY MACARTHUR DAPKANA TAYLOR - APPLICANT**

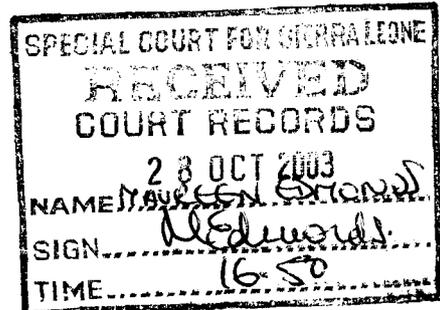
**APPLICANT'S LIST OF AUTHORITIES,
CASES AND ADDED APPENDIX**

Office of the Prosecutor:

Mr. Desmond de Silva, QC, Deputy Prosecutor
Mr. Walter Marcus-Jones, Senior Appellate Counsel
Mr. Christopher Staker, Senior Appellate Counsel
Mr. Abdul Tejan-Cole, Appellate Counsel

Applicant's Counsel:

Terence Michael Terry



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FREETOWN – SIERRA LEONE**

CASE NO. SCSL-03-1

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Against

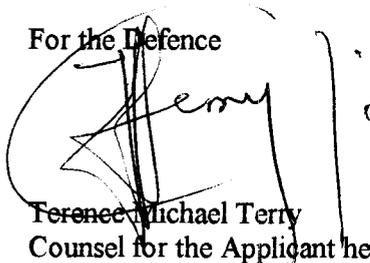
**CHARLES GHANKAY TAYLOR also known as
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**APPLICANT'S LIST OF AUTHORITIES,
CASES AND ADDED APPENDIX**

The Applicant files herewith his list of Authorities, cases and added Appendix.

Freetown, 28th October, 2003

For the Defence



Terence Michael Terry
Counsel for the Applicant herein

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- (1) Zouzouko Degui v. The State – In the Supreme Court of Sierra Leone Court of Appeal’s Reference (No.1 of 1981) - Judgment delivered on the 23rd day of June, 1981 by Justice Samuel Beccles Davies, Justice of the Supreme Court at Pages 88 to 108.
- (2) Wellington Distilleries v. Electrodia P. Clarkson (Constitutional Reference) Supreme Court MISC.APP. NO.4/81 – Judgment delivered on the 8th day of April, 1982 by Justice O.B.R. Tejan, Justice of the Supreme Court at Pages 23 to 30.
- (3) The State v. Adel Osman and others (1988) Law Report of the Commonwealth (Const.) Supreme Court of Sierra Leone - Kutubu, C.J. Beccles Davies and Warne, J.J.S.C., Turay and Adophy, J.J.A. 13th April, 1988 at Pages 212 to 225.
- (4) The State v. The Hon. Mr. Justice M.O. Tejan-Deen – Supreme Court MISC.APP. 6/2000 - Judgment delivered on the 18th day of January, 2001 by Justice H.M. Joko-Smart, Justice of the Supreme Court at Pages 1 to 11.
- (5) Ahmed Tejan Kabba v. Firetex Company (SL) Ltd., - Court of Appeal CIV.APP. 76/95 – Ruling delivered on the 18th day of June, 1996 by Justice G. Gelaga-King, J.A. Justice A.B. Timbo, J.A. and Justice N.D. Alhadi J.A. at Pages 1 to 7.
- (6) The 1991 Constitution of Sierra Leone Act No. 6 of 1991.
- (7) Charter of the United Nations, Chapter VII – Action with respect to threats to the Peace, Breaches of the Peace and Acts of Aggression.

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- (8) Crimes against Humanity – The struggle for Global Justice by Geoffrey Robertson Q.C. in particular Page 5 starting from Lines 23 to 34.

LIST OF ADDED APPENDIX

- (1) Letter dated 23rd October, 2003 written by the Applicant's Counsel Terence Michael Terry addressed to Mr. Robin Vincent, Registrar of the Special Court for Sierra Leone.
- (2) Letter dated 27th October, 2003 written by Mr. Robin Vincent, Registrar of the Special Court for Sierra Leone addressed to the Applicant's Counsel Terence Michael Terry.
- (3) Press Release entitled Special Court for Sierra Leone, office of the Prosecutor for immediate release 17th October, 2003 statement by David M. Crane, The Prosecutor, Special Court for Sierra Leone – Peace efforts in Liberia remain in doubt so long Taylor is free.
- (4) Letter dated 10th July 2003 written by Kabral Blay-Amihere, the Ghanaian High Commissioner to Sierra Leone addressed to the Editor of Peep Magazine, Freetown.

IN THE SUPREME COURT OF SIERRA LEONE
COURT OF APPEAL'S REFERENCE (No. 1 of 1981)

THE JUDGES:

- The Hon. Mr. Justice E. Livesey Luke - Chief Justice
- The Hon. Mr. Justice C.A. Harding - J.S.C.
- The Hon. Mr. Justice O.B.R. Tejan - J.S.C.
- The Hon. Mrs. Justice A. Awunor-Renner - J.S.C.
- The Hon. Mr. Justice S. Beccles Davies - J.S.C.

THE PARTIES:

- Zouzouko Degui - Appellant (In the Court below)
- A n d
- The State - Respondent (In the Court below)

Terry for Zouzouko Degui

Tejan-Cole for The State

READING DELIVERED THIS 23rd DAY OF JUNE, 1981

JUS, J.S.C.: - Monsieur Zouzouko Degui is the Master of the Liberian fishing vessel 'SAINT JEAN NO. 695'. He was found fishing within the territorial waters of Sierra Leone. He was arrested and charged for contravening Section 3(2)(b) of the Fisheries Act Cap. 195 as repealed and replaced by Section 1 of Fisheries (Amendment) Act, 1977. He was arraigned before the High Court. He pleaded guilty to the offence. The trial judge imposed a fine of Le300,000.00 with an alternative of six months imprisonment.

He appealed against his conviction and sentence. Ground 2 of the grounds of appeal argued before the Court of Appeal was stated in the following terms -

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"2 The learned trial judge lacked jurisdiction to try the appellant on the indictment before him in that the offence charged in that indictment was instituted without the consent of and without the certificate of the Attorney General as required by law."

The Court of Appeal having heard the arguments by Counsel for the appellant and the Director of Public Prosecutions, who appeared for the respondent, ordered that further hearing of the appeal be stayed and that the points raised on the issue be referred to this Court for determination. The Court of Appeal had acted under Section 104 sub-sections (1)(a) and (2) of the Constitution of Sierra Leone 1978 (to which I shall hereafter refer as "the Constitution"). The provisions state -

"104. (1) The Supreme Court shall save as otherwise provided in Sections 18 and 101 of this Constitution have original jurisdiction, to the exclusion of all other Courts -

(a) in all matters relating to the enforcement or interpretation of any provision of this Constitution.

(b)

(2) Where any question relating to any matter or question as is referred to in the preceding sub-section arises in any proceedings in any Court, other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination;

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and the Court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court."

Each party submitted questions on which the reference to this Court was based.

The questions submitted on behalf of M. Degui were

- "1. Whether or not the powers to be exercised by the Attorney-General by virtue of Section 53(1) of the Criminal Procedure Act, Act No.32 of 1965 can in law and in fact be exercised by the holder of the office of Director of Public Prosecutions having regard to the fact that the Law Officers Act, Act No.6 of 1965 and the Laws Adaptation Act, Act No.29 of 1972 remained unaltered either expressly OR impliedly by the Constitution Act No.12 of 1978?
2. Whether or not there is under the Laws of Sierra Leone the office of Attorney-General? If so are the powers vested in him by virtue of Section 53(1) of the Criminal Procedure Act 1965 Act No.32 of 1965 exercisable by him to the exclusion of the Director of Public Prosecutions to enable him to exercise the powers vested in the Attorney-General under Section 53(1) of the Criminal Procedure Act No.32 of 1965?

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3. Whether or not Section 144(2) of the Criminal Procedure Act No.32 of 1965 requires an application and an order granting a trial by a Judge alone before commencement of a trial under this Section? If so, can such an application for trial by judge alone be properly and legally made by the Director of Public Prosecutions having regard to the wording of Section 144(2) and the Director of Public Prosecution's powers under the 1978 Constitution Act No.12 of 1978?
 4. Whether or not in the light of Section 97 of the 1978 Constitution and the appointment of a Director of Public Prosecutions, there is a necessary implication that the powers of the Attorney-General under the Criminal Procedure Act, Act No.32 of 1965 or any other enactment relating to the conduct of criminal cases are exercisable by the Director of Public Prosecutions without a special or general direction from the Attorney-General and Minister of Justice? In other words whether or not in the enactments referred to the word "Attorney-General" is inter-changeable with the words "Director of Public Prosecutions"?

5. Whether or not the questions raised in 1, 2 and 3 supra go to jurisdiction? If so, what is the effect at law having regard to the powers of the Attorney-General and the Minister of Justice and the Director of Public Prosecutions under the 1978 Constitution Act No.12 of 1978.

The following questions were posed by the Director of Public Prosecutions -

"1. Having regard to the constitutional development of responsibility for public prosecutions in Sierra Leone resulting in the enactment of the Constitution of Sierra Leone Act No.12 of 1978 and particularly Section 97(4) therefore (sic) and in the absence of any general or special direction as required by Section 97(7) thereof.

(a) Must the Director of Public Prosecutions obtain the consent of the Attorney-General and Minister of Justice for the institution of criminal proceedings against a non-citizen for the offence committed within the territorial sea under the Criminal Procedure Act No.32 of 1965;

(b) Is the Director of Public Prosecutions included in the proviso to sub-section 7 of Section 97 of the Constitution thus requiring him to obtain the consent of the Attorney-General and Minister of Justice under Section 53 of the Criminal Procedure Act 1965;

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(c) Can consent under Section 53 of the Criminal Procedure Act 1965, be given now by the Attorney General and Minister of Justice?"

Mr. Terry argued questions 1, 2 and 4. He abandoned questions 3 and 5.

Mr. Tejan-Cole submitted during the course of his arguments that the questions posed before this Court could not be considered as raising constitutional issues. I do not agree. The questions raised relate to the interpretation of the Constitution in so far as it relates to the powers conferred on the Director of Public Prosecutions. A determination of the powers of the Director vis-a-vis the powers of the Attorney-General and Minister of Justice must necessarily involve or entail an interpretation of the Constitution. The office of Director of Public Prosecutions was created by the Constitution and his powers are spelt out therein. This Court can properly consider the questions referred to it by the Court of Appeal since they touch and concern the interpretation of the Constitution.

Section 53(1) and (2) of the Criminal Procedure Act 1965 provide -

"53(1) Subject to sub-section (2), proceedings for the trial of any person, who is not a citizen of Sierra Leone for an offence committed within the territorial sea of Sierra Leone, shall not be instituted in any court except with the consent of the Attorney-General and upon his certificate that it is expedient that such proceedings should be instituted."

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(2) (a) Proceedings before a Magistrate previous to the committal of an offender for trial or to the determination of the Magistrate that the offender is to be put on trial, shall not be deemed proceedings for the trial of the offence committed by such offender for the purposes of the said consent and certificate under this section.

(b) It shall not be necessary to aver in any information or indictment that the certificate of the Attorney-General required by this section has been given; and the fact of the same having been given shall be presumed unless disputed by the defendant at the trial; and the production of a document purporting to be signed by the Attorney-General and containing such consent and certificate shall be sufficient evidence of the consent and certificate required by this section."

The Director of Public Prosecutions and not the Attorney-General issued the consent and certificate. It was in the following terms -

I now proceed to answer the question - does the Office of Attorney-General exist under the Laws of Sierra Leone? A convenient starting point for present purposes is The Constitution of Sierra Leone 1971 (Act No. 6 of 1971). It came into operation on 19th April 1971. (I shall refer to it as 'the 1971 Constitution'). Sections 51 and 54 of the 1971 Constitution provide -

"51. There shall be an Attorney-General for Sierra Leone who shall be appointed by the President acting in accordance with the advice of the Prime Minister from among persons qualified to hold office as a Justice of Appeal and shall be deemed to be a Minister under this Constitution."

"54. The President acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for any business of the Government of Sierra Leone, including the administration of any department of government; (Emphasis mine).

Provided that the responsibility for judicial affairs shall not be assigned to the Attorney-General."

The combined effect of the above quoted sections was that there was the office of Attorney-General. He was deemed to be a Minister. He could be assigned 'responsibility for any business of government including the administration of any department of government' save that for judicial affairs. There could then have been for example an Attorney-General and Minister for Social Welfare.

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Section 51 of the 1971 Constitution was repealed and replaced by the Constitution (Amendment)(No.2) Act 1971 which came into existence on 19th April 1971. Section 51 as replaced was in these terms -

"51(1) There shall be an Attorney-General for Sierra Leone who shall be appointed by the President from among persons qualified to hold office as a Justice of Appeal and who shall be a Minister under this Constitution.

(2) Where no such qualified person is a Member of Parliament the President may appoint as Attorney-General for Sierra Leone a Member of Parliament who is otherwise qualified to practise as a Barrister and Solicitor in the Superior Courts of judicature."

Section 54 was consecutively repealed and replaced by The Constitution (Amendment)(No.2) Act 1971 and Section 4 of The Constitution (Amendment) (No.2) Act, 1975. Section 54 as it stood after its repeal and replacement stated -

"54. The President may, by directions in writing, assign to the Vice President, the Prime Minister or any other Minister responsibility for any business of Government, including the administration of any department of Government:

Provided that the responsibility for judicial affairs shall not be assigned to the Attorney-General."

The above proviso containing the restriction on the assignment of responsibility for judicial affairs, to the Attorney-General was removed on 13th April 1978. That was the date of the commencement of The Constitution (Amendment) Act, 1978 (Act No. 5 of 1978). Section 1 of that Act provided -

"1. Section 54 of the Constitution is hereby amended by repealing the proviso thereto."

The proviso to Section 54 of the 1971 Constitution was thereby removed. The President thereafter had the right to assign responsibility for judicial affairs to the Attorney General, if he wished to do so.

On that same day - 13th April, 1978, the President assigned to the Honourable F.M. Minah the portfolio of Attorney-General and Minister of Justice. A notice from the Cabinet Secretariat to that effect was published in the Sierra Leone Gazette Vol. C1X Thursday 11th May 1978 No. 27. The notice stated -

"Govt. Notice No. 445 M.P.CO/11

In exercise of the powers vested in the President by Section 54 of the Constitution of Sierra Leone, 1971, the President has assigned the portfolio of Attorney-General and Minister of Justice to the Honourable F.M. Minah, with effect from 13th April, 1973. *

THE CABINET SECRETARIAT

TOWER HILL

8TH MAY 1978."

It has since discovered that the date of Mr. Minah's appointment was 13th April 1978 and not 13th April 1973. The discrepancy was due to a typographical error.

Parliament was aware of the existence of the office of Attorney-General and Minister of Justice (under the 1971 Constitution) when it passed the Constitution. It provided for the holder of those portfolios immediately before the coming into effect of the Constitution, to continue in office as if he had been appointed under that Constitution. The provision is contained in Section 163(1). That section provides -

"163(1) Where any office has been established by or under the existing Constitution or any existing law, and this Constitution establishes or provides for the establishment of a similar or an equivalent office including the office of President, First Vice President, Second Vice President, Minister, Attorney-General and Minister of Justice, Member of the Cabinet, Deputy Minister or Parliamentary Special Assistant any person who, immediately before the commencement of this Constitution, holds or is acting in the former office shall, so far as is consistent with the provisions of this Constitution, be deemed as from the commencement of this Constitution to have been appointed, elected or otherwise selected to or to act in the latter office in accordance with the provisions of this Constitution" (Emphasis mine). There is a proviso to the above section which is not relevant for present purposes.

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The Ministerial portfolios of Attorney-General and Minister of Justice had been assigned to a single Minister. The combination of those two portfolios was given statutory recognition when the Constitution became effective on 14th June 1978. Quite unlike the 1971 Constitution which provided for the office of Attorney-General (who was deemed to be a Minister) (S.51) and the assignment of additional Ministerial responsibility (S.54), Section 88(1) of the Constitution provided for the establishment of one office to be known as that of 'Attorney-General and Minister of Justice'. Section 88(1) of the Constitution provides -

"88(1). There shall be an Attorney-General and Minister of Justice who shall be a Minister of State and the principal legal adviser to the Government.

The Attorney-General and Minister of Justice is the principal legal adviser to the Government (S.88(1)). The prosecution of all criminal offences in the name of the Republic shall flow from him (S.88(3)). He is exempted from the doctrine of the collective responsibility of Cabinet as regards advice given by him in criminal matters. (S.87 (2)(d)). He is not subject to the control of Parliament or the executive as to arriving at a decision, on whether or not to prosecute a particular case (S.97(8)). The ultimate authority over criminal prosecutions is his (S.97(7)). He is ex officio head of the Bar. The Solicitor-General is his principal assistant (S.96(4)). Those are some of the powers, rights and privileges which have traditionally characterized the office of Attorney-General.

There is no longer in existence the office of Attorney-General, simpliciter, as it was known prior to 13th April, 1978. But there is now, an Attorney-General functioning under the new nomenclature of Attorney-General and Minister of Justice.

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As I had said earlier, in this ruling, the single office of Attorney-General and Minister of Justice was established as such under the Constitution. The Constitution contains certain transitional provisions. Among those provisions are Sections 161 and 162(1). They state -

"161. For the purposes of this Chapter, the expression 'existing law' means any Act, Law, Rule, regulation, order or other instrument made in pursuance of (or containing in operation under) the existing Constitution and having effect as part of the law of Sierra Leone or of any part thereof immediately before the commencement of this Constitution or any Act of the Parliament of the United Kingdom or Order of Her Majesty in Council so having effect may be construed with such modifications adaptations qualifications and exceptions as may be necessary to bring it into conformity with this Constitution as if it had been made under this Constitution.

162(1) The existing law and enactments shall, notwithstanding the repeal of the Constitution of Sierra Leone Act 1971, have effect after the entry into force of this Constitution as if they had been made in pursuance of this Constitution and shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution."

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This existing Constitution referred to above is the 1971 Constitution. The Criminal Procedure Act 1965 has been preserved by the transitional provision of Section 95(1) of the 1971 Constitution and Section 162(1) of the Constitution respectively.

Section 53(1) of the Criminal Procedure Act (read and construed in the light of the Constitution with such adaptation as is necessary for present purposes,) should now be read by the deletion of the expression "Attorney-General" and the substitution of the words "Attorney-General and Minister of Justice" in its stead.

Can the Director of Public Prosecutions give the consent and certificate required by Section 53(1) of The Criminal Procedure Act?

The office of Director of Public Prosecutions was established by Section 97(1) of the Constitution. His powers are contained in Section 97(4). Sub-section (4) provides -

"(4). Subject to sub-section (3) of Section 88 the Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do -

- (a) to institute and undertake criminal proceedings against any offence against the law of Sierra Leone;
- (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority."

In order to present a complete picture of the powers of the Director of Public Prosecutions and the restrictions imposed on the exercise of those powers, I will also set out the provisions of Section 88(3) and 97(6) respectively.

"88(3) All offences prosecuted in the name of the Republic of Sierra Leone shall be at the suit of the Attorney-General and Minister of Justice or some other person authorised by him in accordance with any law governing the same.

97(6) The Director of Public Prosecutions shall in all matters including his powers under this Constitution or any other law be subject to the general or special direction of the Attorney-General and Minister of Justice."

The Director operates under the superintendence of the Attorney-General and Minister of Justice. Dr. Edwards in his book 'The Law Officers of the Crown' puts the position thus at page 10 -

"No one any longer doubts the exclusive subservience of the holder of the office of Director of Prosecutions to the State's Chief prosecutor the Attorney-General."

the position is the same under the Constitution as in England.

The offices of Attorney-General and Minister of Justice and Director of Public Prosecutions respectively, are neither synonymous nor interchangeable. Admittedly, the Director has power to initiate, take over, or discontinue criminal proceedings. The right to initiate criminal proceedings does not ipso facto confer a corresponding right to give consent for the institution of those proceedings otherwise than in accordance with the statutory provision requiring such consent.

The offices of Attorney-General, Solicitor-General and Director of Public Prosecutions are derived from the English legal system. There is much to be derived from the English experience on the functioning of those offices. There is the following useful note from Halsbury's Laws of England 4th Edition Volume 11, paragraph 97 at page 68.

"97. Right to initiate criminal proceedings:

In the absence of statutory provisions to the contrary any person may of his own initiative, and without any preliminary consent, institute criminal proceedings with a view to an indictment; but there are some statutes which require that certain criminal proceedings should be undertaken only by order of a judge or by the direction or with the consent of the Attorney-General, the Director of Public Prosecutions, or some other official person or body."

Edwards says at page 238 of his book -

"In all, some eighty offences exist at the present time in which no proceedings may be instituted without the consent of the Attorney-General, either acting alone or,

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alternatively with the consent of the Solicitor-General (under the Act creating the offence or the Law Officers, Act (1944)), the Director of Public Prosecutions, or some other person or persons."

Section 6 of the Law Officers' Act 1965 confers on the Solicitor-General, the power to exercise all or some of the functions of the Attorney-General and Minister of Justice. Sub-sections (1) and (2) of Section 6 read pursuant to Section 162(1) of the Constitution should now be read as follows -

"6(1). The Solicitor-General may exercise and perform all or any of the powers, functions and duties of the Attorney-General and Minister of Justice and shall, subject to the general or specific instructions of the Attorney-General and Minister of Justice, discharge such portion thereof as may from time to time be assigned to him by the Attorney-General and Minister of Justice.

(2) Whenever the expression "Attorney-General and Minister of Justice" occurs in any existing or future enactment except Section 59 of the Constitution it shall unless the contrary is explicitly stated be deemed to include a reference to the Solicitor-General (or an acting Solicitor-General) acting under the provisions of this Section."

The Solicitor-General or an acting Solicitor-General, by virtue of the above provisions, could have given the consent and certificate required by Section 53(1) of The Criminal Procedure Act.

Mr. Tejan-Cole had submitted that any 'Law Officer' could have given the consent and certificate having regard to the provision of Section 6(3) of The Law Officers Act 1972. This is a rather doubtful interpretation of Section 6(3). The definition of the expression 'Law Officer' as set out in Section 2 of The Criminal Procedure Act and Section 4 of The Interpretation Act 1971 respectively (read pursuant to Section 162(1) of the Constitution) is in these terms -

"Law Officer" means the Attorney-General and Minister of Justice, the Solicitor-General, the First Parliamentary Counsel, and every State Counsel and Parliamentary Counsel."

It would serve no useful purpose to make a pronouncement on that issue, in this ruling. Even if Mr. Tejan-Cole's submission was correct, the Director was not entitled to give the consent and certificate. The office of Director of Public Prosecutions does not come within the definition of 'Law Officer' which has been set out above.

Finally the Director sought to know whether he was included in the proviso to Section 97(7) thereby requiring him to obtain the consent of the Attorney-General and Minister of Justice before initiating proceedings under Section 53(1) of The Criminal Procedure Act. Section 97(7) reads -

"The powers conferred upon the Attorney-General and Minister of Justice by this Section shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this Section shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the Court."

I do not, with respect see the relevance of this question to the problems, before this Court. Firstly, the proviso contemplates the withdrawal of proceedings by some person or authority who has instituted them; giving such person or authority the right to do so before the accused or defendant has been charged before the Court. Secondly, it does not contemplate a situation where the defendant has been charged, tried and convicted. Thirdly, the Director is not "any other person or authority" referred to in Section 97. Section 97(4) throws light on the matter. Section 97(4)(b) gives the Director the power to "take over and continue any such criminal proceedings that may have been instituted by any other person or authority". Sub section (c) then empowers the Director to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority". The distinction is made between proceedings instituted by himself (the Director) and those initiated by some person or body of persons or a corporation.

M. Degui is not a citizen of the Republic of Sierra Leone. The offence for which he was charged, tried, and convicted, was alleged to have been committed within the territorial sea of

this Republic. The consent and certificate of the Attorney General and Minister of Justice or the Solicitor-General should have been obtained before the commencement of the proceedings. In my judgment the Director of Public Prosecutions was not competent to give the consent and certificate required by Section 53(1) of The Criminal Procedure Act.

I would answer questions 1 and 4 posed by Mr. Terry in the negative. I would answer his question 2 in the affirmative.

As regards those posed by Mr. Tejan-Cole, I would answer questions (a) and (c) in the affirmative. The answer to question (b) is that the Director is not included in the proviso to Section 97(7). He has to obtain the consent of the Attorney-General and Minister of Justice before initiating proceedings in the instant case.

J. Neely Davis
.....

I agree

[Signature]
.....

IN THE SUPREME COURT OF SIERRA LEONE

MISC. APP. NO. 4/81

CORAM:

The Honourable Mr. Justice E. Livesey Luke - Chief Justice
The Honourable Mr. Justice C.A. Harding - J.S.C.
The Honourable Mr. Justice O.B.R. Tejan - J.S.C.
The Honourable Mrs. Justice A.V.A. Awunor-Renner - J.S.C.
The Honourable Mr. Justice S.B. Davies - J.S.C.

BETWEEN:

WELLINGTON DISTILLERIES - APPELLANTS

AND

ELECTRODIA P. CLARKSON - RESPONDENT

(CONSTITUTIONAL REFERENCE)

C. DOE-SMITH, ESQ., for Appellant

DESMOND LUKE, ESQ., with him G. OKEKE, ESQ., for Respondent

J U D G M E N T

DELIVERED ON THE 8TH DAY OF APRIL, 1982

TEJAN, J.S.C.:- A writ of summons was issued on behalf of the appellants by the Hon. Attorney-General and Minister of Justice on the 25th day of January, 1978 claiming the sum of Le.1884.16 being cost of goods and products sold by the appellants to the respondent. The Statement of Claim states that the appellants is and was at all material times a limited liability company registered under Cap. 249 of the Laws of Sierra Leone, and that the respondent was at all material times agent and or distributor of the appellants's goods and products. The Statement of Claim then shows the circumstances under which the debt was incurred by the respondent. An appearance was entered and a statement of defence filed and delivered. In the statement of defence, the respondent counter-claimed against the appellant. A reply and defence to the counter-claim were also filed and issues were joined.

On 1st day of February, 1979, the respondent moved the High Court challenging the status of a Law Officer in issuing of the writ and asked that the writ be set aside on a number of grounds. There was an affidavit sworn on the 29th day of February, 1978 in support of the notice of motion.

The application was heard by Thompson-Davis J. on the 1st and 5th February, 1978 when Ruling was reserved.

In giving his ruling on the 5th day of November, 1979, the learned Judge said:

"The real question relevant to this notice of motion is whether the Writ of Summons in this action can be properly brought by a State Counsel that is, a member of the Law Officers' Department."

He then proceeded to refer to the relevant portions of the pleadings, and then said:-

"Now the office of the Attorney-General and the organisation of the Law Officers' Department are regulated by the Principal Act - the Law Officer's Act, 1965."

Section 2 of this Act reads -

- "2(1) The Attorney-General shall in addition to the function conferred upon him by sections 73 and 74 of the Constitution.
- (a) be the principal legal adviser of the government and
- (b) represent the government, ministers, Parliamentary Secretaries, and Public Officers in all civil proceedings arising in the course of the discharge of their duties.

2(2) The Attorney-General shall be the Principal Legal Adviser to the Minister referred to in any legislation establishing a statutory corporation as being responsible for the discharge of the functions conferred on a Minister by the said legislation."

In his carefully considered judgment, and having taken into account the relevant Acts and Legislations pertaining to the issues before him, the learned Judge allowed the application and set aside the writ of summons together with all subsequent proceedings.

It is against that decision that the Attorney-General and Minister of Justice appealed to the Court of Appeal on the following grounds

- (1) The learned trial Judge failed in law to advert his mind to section 3 of the Law Officers Act No.6 of 1965 before reaching his decision.
- (2) The learned trial Judge misdirected himself in holding that the real question relevant to this notice of Motion is whether the Writ of Summons in this action can be properly brought by a State Counsel that is a member of the Law Officer's Department.
- (3) The learned trial Judge failed to consider Section 88(4) of the Constitution which gives right of audience to the Attorney-General in all courts except Local Courts.
- (4) The learned trial Judge wrongfully reached his decision as if the Attorney-General was the Plaintiff in the action."

On the 29th September 1901, the hearing of the appeal came before During, Cole and Navo (JJ.A.). The proceeding before the Court of Appeal was brief and unsatisfactory. What was recorded in the record of the Court of Appeal can be shortly stated. It reads:-

"Court indicates to Mr. Doe-Smith that the question to be decided on appeal might be of Constitutional importance which should be gone into by the Supreme Court to wit whether or not the Attorney-General or anyone acting on his behalf, e.g. State Counsel could institute the proceedings in this matter. Doe-Smith - Agrees that the judgment raises point which touches on Constitutional question but in his view, having regard to Section 3 of the Law Officer's Act No.6 of 1965, the Attorney-General acting on the request of the President can himself and by someone acting on his behalf represent any other person in any proceedings before any Court, civil or otherwise."

DECISION

"We hold that this is a matter which we should refer to the Supreme Court to determine whether or not the Attorney-General or any person or a State Counsel acting on his behalf is competent to institute a Civil Action on behalf of a Corporation which is not a Statutory Corporation for example a Private Company in which the Sierra Leone Government has shares or controlling shares on a claim as that endorsed in the Writ of Summons in this matter.

We order stay of proceedings and refer this matter for consideration of the question referred to above by the Supreme Court of Sierra Leone."

Section 104(1) of the Constitution enacts that the Supreme Court shall, save as otherwise provided in sections 18 and 101 of this Constitution, have original jurisdiction, to the exclusion of all other Courts

- (a) in all matters relating to the enforcement or interpretation of any of the provision of this Constitution, and
- (b) where any question arises whether an enactment was made in excess of the power conferred upon Parliament or any other authority or person by law or under this Constitution.

In my opinion the question posed by the Court of Appeal is vague and imprecise. The lower Courts in referring matters to the Supreme Court should endeavour to formulate questions in precise terms. They must refer to the specific section of the Constitution which requires interpretation.

The question as posed is a Constitutional question. But it should be noted that not all Constitutional questions may necessarily involve or entail the interpretation of the Constitution. The question that should be referred to the Supreme Court must relate to the interpretation of any of the provision of the Constitution.

The question posed, in my view, does not relate to the interpretation of the Constitution. Therefore it should not have been referred to this Court. In the circumstances, we are not empowered to deal with it as a reference under section 104 of the Constitution.

Mr. Doe-Smith relied on the right of audience conferred on the Attorney-General and Minister of Justice by section 88(4) of the Constitution. Indeed that section is referred to in ground (3) of the grounds of appeal to the Court of Appeal. He used this right as the basis for his submission that the Attorney-General and Minister of Justice had an unrestricted right to represent any person in any proceedings before any Court (except Local Courts). This argument is so novel, and if accepted, will have such far reaching effect, that for the avoidance of a multiplicity of references, it is considered expedient to deal with it.

What then does the right of audience conferred on the Attorney-General and Minister of Justice by section 88(4) of the Constitution mean and what is its scope? In my opinion, the section is simple. What it confers, is a right to be heard. It says that the Attorney-General and Minister of Justice has the right to be heard in all Courts. This is one of the rights conferred on all duly enrolled Barristers and Solicitors in Sierra Leone. This is one of the rights enjoyed by all Barristers in England for centuries. The position in England was stated in Collier V. Hicks (1831) 2 B & A.D.663, Lord Tenterden C.J. said at page 668:-

"The Superior Courts do not allow every person to interfere in their proceedings as an advocate, but confine their privilege to gentlemen admitted to the bar by the members of one of the Inns of Courts. They do not allow attorneys to act as advocates, and in one of them (the Court of Common Pleas), even all gentlemen of the bar are not allowed to exercise all the duties of advocates, but the full privilege of so doing is confined to those who are of the degree of the coif. So doctors of the civil law are not

entitled to act as advocates in the courts at Westminster, although they may do so by special permission by those Courts. So at the quarter sessions, the justices usually require that gentlemen of the bar only should appear as advocates; but, in remote places where they do not attend, members of the other branch of the profession are permitted to act as advocates. Persons not in the legal profession are not allowed to practice as advocates in any of these courts."

Parke J. in the same case said at page 672:-

"No person has a right to act as an advocate without the leave of the Court, which must of necessity have the power of regulating its own proceedings in all cases where they are not already regulated by ancient usage. In the Superior Courts, by ancient usage, persons of a particular class are allowed to practice as advocates, and they could not lawfully be prevented."

In *Rondel v. Worsley* (1966) 3 W.L.R. 950, Lord Denning M.R. dealing with the right of audience of a Barrister in England said at page 962:-

"As an advocate he is a Minister of Justice equally with the judge. He has a monopoly of audience in the higher Courts. No one save he can address the judge, unless it be a litigant in person. This carries with it a corresponding responsibility."

In view of what I have said above, I do not think that we should answer the question posed. The Court of Appeal should proceed with the hearing of the appeal and ultimately answer the question posed if they consider it necessary.

O.B.R. Tejan
.....
Hon. Mr. Justice O.B.R. Tejan, J.S.C.

I agree.....
E. Livesey Luke
.....
Hon. Mr. Justice E. Livesey Luke, C.J.

I agree.....
C.A. Harding
.....
Hon. Mr. Justice C.A. Harding, J.S.C.

I agree.....
A. Awunor-Renner
.....
Hon. Mrs. Justice A. Awunor-Renner, J.S.C.

I agree.....
S. Beccles Davies
.....
Hon. Mr. Justice S. Beccles Davies, J.S.C.

Sierra Leone

a

The State v Adel Osman and Others

Supreme Court:

Kutubu, C.J., Beccles Davics and Warne, JJ.S.C., Turay and Adophy, JJ. A.
13th April 1988

b

- (1) *Constitutional law – Emergency powers – Proclamation of State of Public Emergency – Scope of presidential power – Whether proclamation of “State of Public Economic Emergency” within power – Constitution of Sierra Leone, section 19.*
- (2) *Constitutional law – Emergency powers – State of Public Emergency – Regulations – Effect of lapse – Constitution of Sierra Leone, section 19 – Interpretation Act 1971, section 18.*
- (3) *Constitutional law – Fundamental rights – Emergency Regulations – Retrospective effect – Whether in conflict with fundamental rights provisions of the Constitution – Suspension of such provisions during state of public emergency – Constitution of Sierra Leone, sections 13, 19 and 125 – Public Economic Emergency Regulations 1987, regulation 59.*
- (4) *Constitutional law – Emergency Regulations – Procedure for bringing into force – Whether compliance with Constitution – Constitution of Sierra Leone, sections 19(4) and 125(6).*
- (5) *Statutory interpretation – Retrospective statute – Whether legislature’s intention sufficiently expressed – Interpretation Act 1971, section 18.*

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In connection with proceedings against Adel Osman and five other persons for alleged offences against “Public Economic Emergency Regulations” purported to be made by the President of Sierra Leone in exercise of powers conferred upon him by section 19 of the Constitution of Sierra Leone, 1978, Wright, J., referred a number of questions of law to the Supreme Court for determination under the provisions of section 104(2) of the Constitution. The reference (set out in full in the judgment of Kutubu, C.J., below, pp. 215–216,) raised the following main issues: (a) whether, in the light of the constitutional guarantees of the protection of the law to an accused person, such a person could be properly tried and convicted for an alleged offence under Emergency Regulations in circumstances where that offence did not exist at the time of the commission of the alleged acts which formed the basis of the indictment; (b) whether the proper constitutional procedures were followed in laying, publishing and bringing into force the Public Economic Emergency Regulations; (c) whether the power of the President to proclaim a “State of Public Emergency” included a power to proclaim a “State of Public Economic Emergency”; and (d) whether the Regulations, even if validly made, lapsed after a maximum of 90 days in the absence of Parliamentary approval.

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[*Editors’ note:* the relevant provisions of sections 5, 13, 19, 104, 125 and 156 of the Constitution of Sierra Leone, 1978, are set out in the judgment of Kutubu, C.J., below, pp. 221, 222, 219 and 223, 214–215, 223 and 219 respectively, *post.*]

HELD: Questions answered so as to uphold the validity of the Regulations and to permit trial of the accused on the indictments to proceed.

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- a (1) The Constitution conferred on the President sole, unquestionable and unchallengeable power to determine the existence of a situation deserving of a Declaration by Proclamation of the existence of a State of Public Emergency. Once the decision to declare such a state of emergency vested in the President, his characterisation of any such situation as “economic” or
- b “political” was purely descriptive and could not derogate from the force and authority of the President’s constitutional powers. Accordingly, the characterisation of the Public Emergency and the Emergency Regulations as “economic” did not impugn their validity in terms of section 19 of the Constitution. (See p. 220, *post.*)
- c (2) The effect of the Public Economic Emergency Regulations was not nullified by lapse by virtue of section 19 of the Constitution (which empowered the President to make such Regulations during a period of public emergency the declaration of which would lapse at the expiration of a period of ninety days from publication (or fifteen days if Parliament was sitting at the time) if not approved by Parliamentary Resolution). The position was saved by the provisions of section 18 of the Interpretation Act 1971 which provided, *inter alia*, that where an Act was repealed, revoked expired or lapsed any legal proceedings instituted thereunder should not be affected and that any penalty might be imposed as if the Act had not been
- d repealed. (See pp. 220–221, *post.*)
- e (3) The enjoyment of, or right to the enjoyment of, such rights and freedoms as was guaranteed by the Constitution was neither absolute nor unlimited in scope, but relative and restrictive in all its aspects in the interest of an orderly society under the sovereignty of the law. An emergency situation inevitably connoted the curtailment of the rights and freedoms of the individual, and Emergency Regulations were “laws to which the fundamental rights constitutionally have to give way” (adopting the words of Rodrigo, J., in *Visuvalingam and Others v Liyanage and Others* [1985] LRC (Const) 909, 919). The offences of which the accused were charged were part and parcel of the criminal law. The provisions of the Constitution intended to prevent the retroactive creation of criminal offences (section 13(7) and (9)) were suspended during the currency of a Public Emergency
- f by virtue of section 19(11), which provided that Emergency Regulations should have effect notwithstanding anything inconsistent therewith contained “in any law”, since the latter expression included other provisions of the Constitution itself: section 125. Therefore, the Public Economic Emergency Regulations might operate retroactively in relation to the offences in the indictment. (See pp. 222–224, *post.*)
- g (4) There was a conflict between the provisions of section 19(4) of the Constitution, which empowered the President to make Regulations pursuant to the Declaration of a State of Public Emergency, and section 125(6), which provided that any Regulations made pursuant to any power conferred by the Constitution should not come into force until the expiration of twenty-one days of being laid before Parliament. However, section 19(4) was a specific provision in contemplation of an emergency and therefore prevailed over the general provisions of section 125(6), which envisaged a situation calling for the due observance of the doctrine of Parliamentary sovereignty. The Regulations were therefore validly brought into operation on 5th November 1987, three days after the declaration of the state of public emergency, even though far short of the twenty-one days contemplated by section 125(6). See p. 225, *post.*)
- h (5) If a statute was passed for the purpose of protecting the public and also individuals it might be allowed to operate retrospectively even though it caused hardship and injustice, provided that the language used plainly
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required a retrospective construction. The language of Regulation 59 was perfectly clear and unambiguous to convey the intention of retroactive operation and the Regulation had effect accordingly in terms of section 18 of the Interpretation Act. (See p. 224, *post.*)

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Case referred to in judgment:

Visuvalingam and Others v Liyanage and Others [1985] LRC (Const) 909

b

Legislation referred to in judgment:

Constitution of Sierra Leone 1978, sections 5, 13(4)(7) and (9), 19(1)(2)(4)(5)(11), 104(1)(2), 125(1)(6) and 156

Criminal Procedure Act 1965, section 136

Interpretation Act 1971, sections 3(1) and 18(1)(c) (2)

Proclamation of State of Public Economic Emergency, 1987

Public Economic Emergency Regulations 1987, regulations 40(a), 44 and 59

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Reference

In connection with indictments preferred against six accused under Public Economic Emergency Regulations, Wright, J., referred a number of questions concerning, *inter alia*, the constitutionality of the Regulations, to the Supreme Court by way of case stated under the provisions of section 104(2) of the Constitution of Sierra Leone 1978.

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T. Terry for the second applicant.

E. Holloway for the fifth applicant.

Attorney-General and Director of Public Prosecutions for the State.

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13th April 1988

KUTUBU, C.J. (BECCLES DAVIES and WARNE, JJ.S.C., TURAY and ADOPHY, JJ.A., concurring):

This is a reference to the Supreme Court by way of case stated by Wright, J., under the provisions of section 104(2) of the Constitution of Sierra Leone 1978, Act No. 12 of 1978, (which I shall hereafter refer to as the Constitution) and Rule 99 of the Supreme Court Rules 1982, Public Notice No. 1 of 1982.

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This section of the Constitution empowering lower courts to refer matters or questions to the Supreme Court for determination reads as follows:

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“104(1) The Supreme Court shall, save as otherwise provided in Sections 18 and 101 of this Constitution, have original jurisdiction to the exclusion of all other courts –

(a) in all matters relating to the enforcement or interpretation of any provision of this Constitution; and

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(b) where any question arises whether an enactment was made in excess of the power conferred upon Parliament or any other authority or person by law or under this Constitution.

(2) Where any question relating to any matter or question as is referred to in the preceding sub-section arises in any proceedings in any court, other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the

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a Supreme Court for determination; and the court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.”

Rule 99(1) of the Rules of the Supreme Court states:

b “A reference to the court for the determination of any question, cause or matter pursuant to any provision of the Constitution or any other law shall be by way of case stated by the Court below making the reference.”

c At the Criminal Sessions of the High Court holden at Freetown on the 6th January 1988 pursuant to Section 136 of the Criminal Procedure Act 1965, Act No 32 of 1965, her Ladyship gave her consent in writing for the preferment of a two-count indictment against all the applicants named above, under the Public Economic Emergency Regulations 1987, Public Notice No 25 of 1987 (as amended).

d On 10th February 1988 Mr. Terry for the 2nd applicant, Shamsu Mustapha, formulated several questions for the determination of the Supreme Court pursuant to Section 104 of the Constitution. Mr. Eke Halloway, Counsel for the fifth applicant, Richard Barlay, followed suit. The Director of Public Prosecutions, Mr. Tejan-Cole, for the State supported the proposed reference to the Supreme Court for determination.

The questions of law referred by Wright, J., to the Supreme Court for determination are as follows:

- e “1. In the light of the express mandatory provisions of Section 13(7) of the Constitution of Sierra Leone, Act No. 12 of 1978, can an accused person or persons inclusive of the 2nd accused person in this matter be tried and held guilty by our courts for an alleged offence or offences under the Public Economic Emergency Regulations, Public Notice 25 of 1987 (as amended), in circumstances where the alleged offence or offences were not in existence at the time of the alleged act or acts which constitute the alleged offence or offences against the accused person or persons?
- f 2. Do the provisions of Regulation 59 of the Public Economic Emergency Regulations, Public Notice No. 25 of 1987 (as amended), expressly or by necessary implication conflict with the express provisions of Section 13(7) and Section 13(9) of the Constitution? If the answer to that question is in the affirmative does that fact render the entire Public Economic Emergency Regulations null and void and *ultra vires* the Constitution?
- g 3. On the true and proper construction of Section 125(6) of the Constitution, Act No. 12 of 1978, can it be said that the procedure followed by the Parliament of Sierra Leone in laying, publishing and bringing the Public Economic Emergency Regulations into full force was in total compliance with the express provisions of Section 125(6) of the Constitution of Sierra Leone?
- h 4. Does Section 19 of the Constitution of Sierra Leone, Act No. 12 of 1978, expressly contemplate or provide for a declaration by His Excellency the President of a State of Public Economic Emergency
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- or for a State of Public Emergency on a true and proper construction of the said Section 19 of the Constitution? a
- 5. Does Section 19 of the Constitution of Sierra Leone contemplate or provide for the passing of resolution by Parliament for the purpose of declaring a State of Public Economic Emergency or a resolution declaring a State of Public Emergency?
- 6. In the light of Section 19 of the Constitution, Act No. 12 of 1978, can Parliament pass a resolution which has the effect of approving the proclamation of the State of Public Emergency declared by the President on the 2nd day of November, 1987? b
- 7. In the light of questions 1, 2, 3, 4, 5 and 6 posed *supra* can a provision in a regulation to wit regulation 59 of the Public Economic Emergency Regulations Public Notice 25 of 1987 render express constitutional provisions to wit Section 13(7) and Section 13(9) of the Constitution of Sierra Leone, Act No. 12 of 1978, inoperative notwithstanding the fact that the said regulations *ex post facto* create crimes and punishments and destroy fair safeguards to the 2nd accused person and other accused persons as guaranteed under the Constitution? c
- 8. In the light of questions 1, 2, 3, 4, 5, 6 and 7 *supra* can our courts and in particular this court be said to be vested with jurisdiction to try and pronounce the 2nd accused person guilty of offence or offences contrary to the express provisions of Sections 13(7) and 13(9) of the Constitution having regard to the peculiar circumstances of this case? d
- 9. Whether the 5th accused in particular could be convicted of offences against the Public Economic Emergency Regulations 1987 (as amended) in respect of things done by him before the regulations aforesaid came into force and in particular offences against Regulation 40(a) of the Public Economic Emergency Regulations (as amended) and Regulation 44 of the Public Economic Emergency Regulations (as amended). e
- 10. Whether the Public Economic Emergency Regulations (as amended) are not *ultra vires* the Constitution and therefore rendered a nullity/nugatory for non-compliance with Section 125(6) and particularly (c) of sub-section 6 of Section 125. f
- 11. Whether Section 125(6) is mandatory or directive. If mandatory whether the exercise of the powers conferred on the President and Minister of Defence under Section 19 sub-section 4 of the Constitution of Sierra Leone exercised in non-compliance of Section 125 sub-section 6(c) of the Constitution of Sierra Leone render the exercise of that power valid or of any legality under the laws of the Republic." g

Mr. Terry submitted eight of the eleven questions, namely, questions 1–8 inclusive, while Mr. Halloway submitted three questions, namely, questions 9–11 inclusive. Wright, J., thought it necessary to refer the aforesaid questions to the Supreme Court for determination as she considered their answers necessary for the continuation of the proceedings before her. h

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a Mr. Terry made several submissions in the course of his arguments before this court, based among others on excess jurisdiction, infringement of the fundamental rights and freedoms of the applicants, in particular, the 2nd applicant, under the Constitution, and also forcefully impugned the constitutional validity of the Proclamation dated 2nd November 1987 declaring a state of Public Economic Emergency in the Republic by the President, and the Public Economic Emergency Regulations, 1987, Public Notice No 25 of 1987, made pursuant to the Proclamation. Mr. Terry maintained that they did not conform with the manner, language and express provisions of the Constitution which rendered them *ultra vires* and void.

c Mr. Terry referred to the provisions of section 19 of the Constitution and submitted that both the Proclamation and the Regulations made thereunder were invalid and *ultra vires* the Constitution by reason of the introduction or importation, as he put it, of the word, "Economic", in both the Proclamation and the Regulations. In his view both the Proclamation and the Regulations would have been within the intendment and spirit of the Constitution if they had been titled "Public Emergency" and "Public Emergency Regulations" simpliciter, and no further. Such addition or importation proved fatal, he maintained. The Proclamation referred to was in the following terms:

"PUBLIC NOTICE
PUBLIC NOTICE NO 24 OF 1987
Published 2nd November, 1987
PROCLAMATION
UNDER SECTION 19 OF THE CONSTITUTION
OF SIERRA LEONE 1978
(Act No 12 of 1978)
By His Excellency
Major General Dr Joseph Saidu Momoh,
President of the Republic of Sierra Leone,
Supreme Head of State,
Grand Commander-in-Chief of the Armed Forces,
Fountain Head of Unity, Honour, Freedom and Justice.

LS
JOSEPH SAIDU MOMOH
PRESIDENT

h WHEREAS paragraph (b) of Sub-Section (1) of Section 19 of the Constitution of Sierra Leone, 1978, provides that whenever a period of public emergency shall commence, the President may, at any time, by Proclamation declare that a situation exists which, if it is allowed to continue, may lead to a state of public emergency in any part of or in the whole of Sierra Leone:

AND WHEREAS it appears to the President that a situation of economic crisis exists which, if it is allowed to continue may lead to a state of public emergency throughout Sierra Leone:

i NOW THEREFORE, I JOSEPH SAIDU MOMOH, President of the Republic, Supreme Head of State, Grand Commander of the Order of

the Republic, Commander-in-Chief of the Armed Forces, Fountain Head of Unity, Honour, Freedom and Justice, DO HEREBY by this Proclamation declare a State of Public Economic Emergency in the Republic, as from the publication hereof. a

Given under my hand and the Public Seal of the State of Sierra Leone at the State House Freetown, this 2nd day of November, in the Year of Our Lord One Thousand Nine Hundred and Eighty Seven. b

LONG LIVE THE STATE OF SIERRA LEONE."

The Proclamation itself embraces section 19(1)(a) and (b) of the Constitution which reads as follows:

"Section 19(1) Whenever a period of public emergency shall commence, the President may, at any time, by Proclamation which shall be published in the Gazette, declare that c

(a) a state of public emergency exists either in any part, or in the whole of Sierra Leone; or

(b) a situation exists which, if it is allowed to continue may lead to a state of public emergency in any part of or the whole of Sierra Leone." d

As I see it, the thrust and pivot of the arguments of counsel on the respective questions submitted to this court rest with the following main questions:-

(1) Whether the use of the word "Economic", used in the Proclamation and the Regulations, is outside the scope of section 19 of the Constitution; e

(2) On the assumption that the Public Economic Emergency Regulations are regular and therefore valid, whether they did not lapse after a period of ninety days, thereby nullifying their effect by virtue of section 19 of the Constitution; f

(3) Whether the Public Economic Emergency Regulations do not conflict with the provisions of section 13(7) and 13(9) of the Constitution, and, in particular, the effect of Regulation 59 of the Public Economic Emergency Regulations on the fundamental Human Rights provisions of the Constitution, having regard to its *ex post facto* or retroactive nature; g

(4) Whether the way and manner of bringing the Public Economic Emergency Regulations, Public Notice No 25 of 1987 (as amended), into operation was not in conformity with section 125(6) of the Constitution and therefore rendered void and *ultra vires* the Constitution. h

In answering these questions while it may well be useful to look for guidance and inspiration elsewhere, in particular, from the practice of other Commonwealth jurisdictions, it is in the end the wording of the Constitution itself that is to be interpreted and applied. In short, the answers to these questions are to be gathered from the four corners of the Constitution.

The far-reaching source of an Emergency Declaration, for the determination of the questions before us, is the Constitution. Section 19 empowers i

a the President by proclamation to declare a state of public emergency. It provides as follows:

“Section 19(1) Whenever a period of public emergency shall commence, the President may, at any time, by Proclamation which shall be published in the Gazette, declare that –

b (a) a state of public emergency exists either in any part, or in the whole of Sierra Leone; or
 (b) a situation exists which, if it is allowed to continue, may lead to a state of public emergency in any part of or the whole of Sierra Leone.

(2) Every declaration made under sub-section (1) of this Section shall lapse –

c (a) in the case of a declaration made when Parliament is sitting at the expiration of a period of fourteen days beginning with the date of publication of the declaration, and
 (b) in any other case, at the expiration of a period of ninety days beginning with the date of publication of the declaration,
 d unless it has in the meantime been approved by or superseded by a Resolution of Parliament supported by the votes of two-thirds of the Members of Parliament.”

Section 19(4) of the Constitution empowers the President to make Regulations pursuant to a proclamation of a state of public emergency and it reads:

e “During a period of public emergency the President may make such Regulations and take such measures as appear to him to be necessary or expedient for the purposes of maintaining and securing peace, order and good government in Sierra Leone or any part thereof.”

Section 19(5)(d) states:

f “Without prejudice to the generality of the powers conferred by sub-section (4) of this Section and notwithstanding the provisions of this Chapter the Regulations or measures may, so far as appears to the President to be necessary or expedient for any of the purposes mentioned in that sub-section – ...

g (d) amend any law, suspend the operation of any law and apply any law with or without modification;
 Provided that such amendment, suspension or modification shall not apply to this Constitution.”

Section 19(1) does not state what is “public emergency”. I therefore look for assistance in section 156 of the Constitution which defines public emergency as follows:

h “‘Public Emergency’ means any period during which –
 (a) Sierra Leone is at war, or
 (b) there is in force a proclamation issued by the President under sub-section (1) of Section 19, or
 (c) there is in force a Resolution of Parliament made under sub-section (2) of Section 16 of this Constitution.”

i The present state of public emergency came into being by Presidential Proclamation under section 19(1)(b) of the Constitution, that is the position

referred to under section 156(b) of the Constitution. Under the Constitution, the power of the President to declare by proclamation that a state of public emergency exists or "a situation" exists which may lead to a state of public emergency is in his absolute and unfettered discretion subject only to the provisions of sub-section (2) of section 19, *supra*.

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Section 19(1)(b) also does not define "a situation". This could be wide-ranging and encompasses a multiplicity of situations *ad infinitum*. It lies in the sole power and discretion of the President to determine a situation, which at any given time in his estimation deserves a declaration by Proclamation of a state of public emergency. The exercise of this power is unquestionable and unchallengeable. The situation could be described as "Economic", "Political", "National Disaster", and like situations, too numerous to mention here. Indeed, they are many and varied.

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The President, in his Proclamation of 2nd November 1987, Public Notice No 24 of 1987, expressly referred to the existence of a situation of "economic crisis" in the country, which if allowed to continue may lead to a state of public emergency in part or in the whole of Sierra Leone. Once the decision to declare a state of public emergency vests in the President in relation to a situation of which he is the sole determinant, his characterisation of any such situation, which I regard as purely descriptive, cannot derogate from the force and authority of section 19 of the Constitution which is the *fons et origo* of the President's emergency powers.

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It was therefore proper and correct, legitimate and constitutional for the President to characterise both the Proclamation, Public Notice No 24 of 1987, and the Regulations, Public Notice No. 25 of 1987 (as amended), in the manner and style he did, namely, "Public Economic Emergency" and "Public Economic Emergency Regulations". Alternatively, it would have also been proper for the President to entitle both the Proclamation and the Regulations as "Public Emergency" (Economic) and "Public Emergency Regulations" (Economic). Both the Proclamation and the Public Economic Emergency Regulations are accordingly within the scope of section 19 of the Constitution.

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The question which follows this finding is, – on the assumption that the Public Economic Emergency Regulations are regular and therefore valid, whether they did not lapse after a period of ninety days thereby nullifying their effect by virtue of section 19 of the Constitution.

The answer to this question is no. The position is saved by the provisions of section 18 (1)(c) of the Interpretation Act 1971, Act No 8 of 1971, which reads as follows:

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"The repeal or revocation of an Act, unless a contrary intention appears, shall not – ...

- (c) affect any investigation legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty forfeiture or punishment may be imposed as if the Act had not been repealed."

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Also section 18(2):

a "When an Act expires, lapses or otherwise ceases to have effect this section shall apply as if the Act had been repealed or revoked." [Emphasis added.]

The next question for consideration is whether the Public Economic Emergency Regulations 1987, Public Notice No 25, 1987 (as amended), do not conflict with the provisions of section 13(7) and 13(9) of the Constitution, and in particular the effect of Regulation 59 of the Public Economic Regulations on the fundamental Human Rights provisions of the Constitution, having regard to its *ex post facto* or retroactive nature.

b Before embarking on an answer to this question, I consider it pertinent to state in brief the constitutional provisions in this country in regard to the fundamental rights and freedoms of the individual as by law established. Suffice it to say that the Constitution provides adequate guarantees for the fundamental rights and freedoms of the individual subject to certain safeguards. In this regard, section 5 of Chapter II of the Constitution provides as follows:

c "Whereas every person in Sierra Leone is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, tribe, place of origin, colour, creed or sex, but subject to respect for the rights and freedoms of others and of the Recognised Party, and for the public interest, to each and all of the following:-

- d (a) life, liberty, security of the person, the enjoyment of property and the protection of the law;
- e (b) freedom of conscience, of expression, of assembly and association; and
- (c) respect for his private and family life;

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

g In short, our enjoyment of or rights to the enjoyment of such rights and freedoms as are guaranteed by the Constitution are neither absolute nor unlimited in scope, but relative and restrictive in all its aspects. In protecting fundamental rights, the court as the guardian of the Constitution has been described as being "in the role of a sentinel on the *qui vive*". It protects the individual against violations of his constitutional or legal rights or misuse or abuse of power by the State of its officers.

h In the same vein, it is the duty of the court to seek to protect the State against anti-social, disruptive conduct, by individuals or groups of persons whose purpose is to disturb the peace and good order of society or threaten the economic life of the nation. From this vantage point, the court holds the balance between the ordinary citizens *inter se* and the citizens on the one hand and the State on the other.

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To that extent, our fundamental rights and freedoms are not only limited in scope, but circumscribed and controlled, in the interest of an orderly society under the sovereignty of the law.

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Emergency situations connote abnormality, and curtailment of our rights and freedoms. This is an emergency, which empowers the President to take measures as he sees fit or necessary to control and contain a crisis situation.

In the words of Rodrigo, J., in *Visuvalingam and Others v Liyanage and Others* [1985] LRC Const 909 at p. 919 (which I adopt):

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“Emergency Regulations are laws to which the fundamental rights constitutionally have to give way. They take a back seat to the extent the Emergency Regulations take the front seat. There is no room for both in the front seat. An emergency is what the word means”.

c

Coming back to the question which was posed, I find it necessary and appropriate to look at the provisions of section 13(7) and 13(9) which falls under the Fundamental Human Rights provisions of the Constitution. I shall in turn consider the provisions of Regulation 59 of the Public Economic Emergency Regulations, Public Notice No 25 of 1987 (as amended).

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Section 13(7) provides as follows:

“No person shall be held to be guilty of a criminal offence on account of any act or omission which did not at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.”

e

Section 13(9) states:

“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 (7) 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.”

f

Regulation 59 of the Public Economic Emergency Regulations provides as follows:

g

“Where on the coming into force of the regulations, any investigation or case relating to the subject matter of the offences specified in these regulations is pending all the provisions of these regulations shall apply in the determination of that investigation or case.”

The applicants are charged with the offence of obtaining by false pretences, and also conspiracy under Regulations 40(a) and 44 of the Public Economic Emergency Regulations. It is trite law to mention that in our criminal procedure, an accused person is deemed to be innocent until his guilt is proved beyond reasonable doubt. Be that as it may, section 13(4) of the Constitution provides that:

h

“Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved, or has pleaded guilty:

i

a Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this sub-section, to the extent that the law in question imposes on any person charged as aforesaid the burden of proving particular facts."

b Mr. Tejan-Cole, Director of Prosecutions, for the State, urged on us that, contrary to the submissions of counsel for applicants, the offences complained of were not new to the criminal law of this country, and submitted with force that they were in existence at the time the consent order was sought and obtained on 6th January 1988 for the preferment of an indictment against applicants in the High Court.

c I have looked at the charges preferred under Regulations 40(a) and 44 of the Public Economic Emergency Regulations. On reflection, I cannot but agree with the submission of the learned Director of Public Prosecutions that these offences existed at the time the consent order was sought and obtained, and that they are still part and parcel of the criminal law of this country. I can find no legal justification in support of the submissions of Counsel for applicants on this question. I hold that the charges are correct, valid and properly laid.

d Looking at the provisions of section 13(7) of the Constitution it is apparent from the wording of section 13(9) that it was intended to save section 13(7). Regrettably, it fails in this, in the light of section 19(11) of the Constitution which provides as follows:

e "Every Regulation made under this Section and every Order or Rule made in pursuance of such a Regulation shall have effect notwithstanding anything inconsistent therewith contained in any law; and any provisions of a law which is inconsistent with any such Regulation, Order or Rule shall, whether that provision has or has not been amended, modified or suspended in its operation under any Act, cease to have effect to the extent that such Regulation, Order or Rule remains in force."

f The Constitution tells us what comprises the laws of Sierra Leone. Section 125(1) of the Constitution provides as follows:

g "The laws of Sierra Leone shall comprise –
 (a) this Constitution;
 (b) enactments made by or under the authority of the Parliament established by this Constitution;
 (c) any Orders, Rules and Regulations made by any person or authority pursuant to a power conferred in that behalf by this Constitution or any other law;
 (d) the existing law; and
 (e) the common law."

h Section 3(1) of the Interpretation Act, No 8 of 1971, refers to an Act, and states *inter alia*, that "Act" or "Act of Parliament" includes any Act, and any order, proclamation, rule, regulation or bye-law duly made under the authority of an Act.

i The second part of Section 19(11) of the Constitution, after the semicolon, speaks of "any provision of a law which is inconsistent with any such Regulation, Order or Rule". (Emphasis added).

In my view, to all intents and purposes, reference to "a law" in this context includes the Constitution in addition to other laws.

a

A fortiori, having regard to the existence of a state of public emergency, the provisions of section 13(7), 13(9) and 19(5) are suspended during the currency of the emergency.

These provisions in my view are not sacrosanct and inviolate, but must give way in an emergency, a crisis situation, in the interest, among others, of the public and of the national well-being.

b

Now, as regards the question whether or not Regulation 59 of the Public Economic Emergency Regulations can operate retroactively, Counsel for the applicants submitted that it cannot, on the ground that the language is not clear and precise enough to convey that intention. I disagree.

It is a cardinal rule of construction that a statute should be prospective and not retrospective, unless its language is such as plainly to require such a construction. The question in each case is whether the legislature has sufficiently expressed that intention, and this can be discovered by looking to the general scope and purview of the statute and at the remedy sought to be applied. If a statute is passed for the purpose of protecting the public and also individuals it may be allowed to operate retrospectively even though it causes hardship and injustice.

c

d

When I look at the language of Regulation 59, I come to the conclusion that it is perfectly clear and unambiguous, to convey the intention of retroactive operation, and I so hold. The provisions of sections 18(1)(c) and 18(2) of the Interpretation Act, No 8 of 1971, referred to *supra* apply accordingly.

e

The last question in my resumé of questions for consideration is whether or not the way and manner of bringing the Public Economic Emergency Regulations, Public Notice No 25 of 1987 (as amended), into force was in conformity with section 125(6) of the Constitution.

Counsel for applicants with much persuasion urged on us that the provisions of section 125(6) are mandatory and that the President has no powers to abridge time, that is to say, to act contrary to the provisions of section 125(6)(c), requiring any Orders, Rules or Regulations to be laid before Parliament for twenty-one days before they become operational. That the non-compliance with the provisions of section 125(6) rendered the Public Economic Emergency Regulations void and *ultra vires* the Constitution.

f

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Section 125(6) of the Constitution referred to *supra* provides as follows:

"Any Orders, Rules or Regulations made by any person or authority pursuant to a power conferred in that behalf by this Constitution or any other law -

- (a) shall be laid before Parliament;
- (b) shall be published in the Gazette on or before the day they are so laid before Parliament;
- (c) shall come into force at the expiration of a period of twenty-one days of being so laid unless Parliament before the expiration of twenty-one days annuls any such Orders, Rules, Regulations by the votes of not less than two-thirds of the Members of Parliament."

h

i

a a Section 19(4) empowers the President to make Regulations pursuant to the declaration of a state of public emergency. The state of public emergency was declared on 2nd November 1987 and the Emergency Regulations came into operation on 5th November 1987, far short of the twenty-one days contemplated by section 125(6)(c) of the Constitution.

b b Indeed, there is a conflict between the provisions of section 19(4) and section 125(6) of the Constitution, but it does not end there. While section 125(6) is a general provision section 19(4) is a specific provision. Where a section of an Act dealing with general provisions conflicts with another section dealing with specific provisions, as in the instant case, the specific provisions shall prevail over the general provisions. Even though section 125(6) is a later provision, it makes no difference where the earlier provisions, that is, section 19(4), are specific in their application.

c c Suffice it to say that while section 19 of the Constitution contemplates an emergency, section 125(6) envisages a situation calling for the due observance of the doctrine of Parliamentary sovereignty; that is to say, all Orders, Rules or Regulations made by any person pursuant to the Constitution shall without more be subject to Parliamentary control by being required to lay before Parliament, publish in the Gazette on or before laying, and shall become operational on the expiration of twenty-one days of being so laid unless Parliament sooner annuls by two-thirds votes of the Members.

d d I would answer the eleven questions submitted to this court as follows:

- e e 1. The offences complained of were in existence.
- e e 2. The answer to this question is in the negative. No conflict. The subsidiary question is unnecessary.
- e e 3. There is no material before us to answer question No 3.
- e e 4. Section 19 provides for a declaration of a state of public emergency which expression embraces a multitude of situations which can be descriptive of the type of public emergency.
- f f 5. No material having been furnished about a Resolution by Parliament under the proviso to section 19(2) of the Constitution, the question becomes hypothetical and an answer therefore becomes unnecessary.
- f f 6. No material having been furnished to this court, the question becomes unnecessary.
- g g 7. Regulation 59 does not create an offence. Assuming that the reference to the said regulation was intended to mean the entire body of regulations, the answer is yes.
- g g 8. The courts have jurisdiction. The offences set out in Regulations 40(a) and 44 are not contrary to the provisions of sections 13(7) and 13(9) of the Constitution having regard to the peculiar circumstances of this case.
- h h 9. The answer to question 9 is yes.
- h h 10. The answer to question 10 is no.
- h h 11. The question posed under 11 is academic.

i i Decision accordingly.

1764
SUPREME COURT RULING OF JUSTICE
Joko-SMART

SC MISC. APP. 6/2000

**IN THE SUPREME COURT OF SIERRA LEONE
AND
IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE 1991**

In the matter of an application under section 125 of the Constitution of Sierra Leone, Act No.6 1991 and under the common law for leave to apply for an Order of Certiorari and for directions and consequential Orders and in the matter of the English Supreme Court Rules And In the Matter of the Anti-Corruption Act 2000

AND IN THE MATTER

BETWEEN

EXPARTE MUCTARU OLA TAJU-DEEN - RESPONDENT

And

THE COMMISSIONER of the Anti-Corruption Commission - 1ST APPLICANT

THE ANTI-CORRUPTION COMMISSION - 2ND APPLICANT

And

THE STATE Represented by the ATTORNEY- GENERAL & MINISTER OF JUSTICE - 3RD APPLICANT

CORAM	Hon. Mr. Justice D.E.F. Luke	CJ
	Hon. Mr. Justice A.B. Timbo	JSC
	Hon. Mrs. Justice V.D.A Wright	JSC
	Hon. Mr. Justice H.M. Joko Smart	JSC
	Hon. Mr. Justice S.C. E. Warne	JSC

Mr. S.E. Berewa, Attorney-General & Minister of Justice and Mr. Kebbie, DPP, for the Applicants

Mr. C. Doe-Smith and Mr. T.M. Terry for the Respondent

Judgment delivered on.....18th.....day of.....January.....2001

JOKO SMART. JSC

The Background

It is Government's policy to root out corruption in the public service. Pursuant to this policy the Anti-Corruption Act, 2000 Act No.1 of 2000 was passed. The Act does not discriminate between public officers by reason of positions they hold or status in the society. Even judges can fall foul with it. The legislation provides for a Commission whose functions include the investigation of instances of alleged or suspected corruption referred to it by any person or authority or which has come to its attention whether by complaint or otherwise and the taking of such steps as may be necessary for the eradication or suppression of corrupt practices. Where after an investigation, the Commissioner is of the opinion that the findings of the Commission warrant consideration by the Attorney-General and Minister of Justice as to whether criminal action may be taken thereon, he sends the report of the investigation to the Attorney-General. An adverse finding of guilt of corrupt acquisition of wealth is to be referred to the Attorney-General and Minister of Justice. If after examining the report the Attorney-General and Minister of Justice decides that there are sufficient grounds to prosecute the public officer, he pursues the case in the courts.

Sometime in July 2000, an acting judge of the High Court was suspected of having offended against the Act. That judge is the Hon. Mr. Justice Muctaru Ola Taju-Deen. The Commissioner of the Anti-Corruption Commission sent a report of an investigation on the judge to the Attorney-General and Minister of Justice. The judge was eventually charged on a 12 count indictment and he appeared before the High Court. On 24 August 2000 while the trial was in one Court, Justice Taju-Deen applied to another judge of the High Court for leave to proceed on certiorari for the report of the Commission on him to be quashed. The leave was granted. On the 26 August 2000, he made a second application to the same judge for quashing the report. That application was dismissed. Later, he made a fresh ex parte application to the Supreme Court for leave to proceed on certiorari to quash the report. Leave was granted. Under the 1991 Constitution, he can apply for certiorari to the High Court (section 134) or to the Supreme Court (section 125).

The ex-parte application

On an ex-parte application made to the Supreme Court on the 6 day of December 2000 the Respondent herein then applicant sought the following orders:-

- (1) An Order granting leave to the Applicant herein Muctaru Ola Taju-Deen for an Order of Certiorari to issue both under the Common Law and section 125 of the 1991 Constitution of Sierra Leone to bring up to the Supreme Court for the purpose of its being quashed the purported Report and/or the purported undated Extracts of the alleged Findings of the Anti-Corruption Commission signed by the Commissioner of the Anti-Corruption that evidence exists of alleged non-existing offences against the Plaintiff herein under a Non-existing Act to wit the purported Anti-Corruption Commission Act 2000 upon grounds of failure to observe one of the fundamental principles of Natural Justice, Committal of Error of Law on the face of the Records and several other errors of law, want of

jurisdiction and/or excess of jurisdiction, as set forth and contained in the copy Statement herewith exhibited to the affidavit in support of the Application.

- (2) An interim Stay of the Criminal proceedings Holden at High Court No.1 before the Hon. Mrs Justice Patricia Macauley in the case between THE STATE vs. HONOURABLE JUSTICE MUCTARU OLA TAJU-DEEN pending the hearing and determination of the application for the Order of Certiorari if the leave is granted by the Honourable Supreme Court under the first Order prayed for above.
- (3) Such further OR other Orders as this Honourable Court may deem fit to make.
- (4) That the costs of and occasioned by this Application be costs in the cause.

The Motion was supported by the Affidavit of Muctaru Ola Taju-Deen sworn to the 2 December 2000 to which were attached several exhibits.

On the 19 December 2000 this Court sitting with three justices granted the orders prayed for except the one in para 2 of the motion paper. The Court also made the consequential orders that the Respondents be served the relevant papers within four days of this order and that the application for the Order of Certiorari be heard on the 2 January 2001.

The application now before this Court

Before 2 January 2001, the Commissioner of the Anti-Corruption Commission, The Anti-Corruption Commission and The State represented by the Learned Attorney-General and Minister of Justice, the 1st, 2nd and 3rd Applicants respectively, filed a Notice of Motion dated 20 December 2000 which is the subject-matter of the Application now before us seeking an order that the Order made by this Court on the 19 December 2000 granting the respondent herein leave to apply for an order of Certiorari to issue be discharged on the following grounds:-

- (1) That in making the application ex-parte resulting in the granting of the said order the respondent herein failed to make full and frank disclosure of material facts and/or did not fulfil the requirements of observing the utmost good faith in the making of the said ex-parte application in that (a) he failed to disclose to this Honourable Court the fact that he had earlier made identical application to the High Court against the same parties and the application was dismissed by the High Court (b) in the said application the High Court had determined the issue as to whether an Order for certiorari will lie against the Anti-Corruption Commission.
- (2) That the Applicant's proper course, after the earlier application referred to in (1) above had been dismissed by the High Court was, in law, not to file an identical application in this Honourable Court but to appeal against the Order of the High Court dismissing the said earlier application.
- (3) That the Respondent is precluded by the doctrine of estoppel per rem judicatam from making an application the subject-matter of the application herein.
- (4) Such further or other Orders as this Honourable Court may deem fit to make.

The Motion is supported by two affidavits sworn to by Lahai Momoh Farmah, Senior State Counsel. The first, sworn to on 20 December 2000, exhibits the Judge's Summons of the 26 August 2000 which the applicants alleged had been dismissed by the High Court (exhibit "A") together with nine other exhibits among which are (a) a Statement dated 26 August 2000 filed by the Applicant in support of the judge's Summons (exhibit "D"), (b) the Respondent's ex-parte Motion of the 6 December 2000 before this Court (exhibit "F") and (c) the order nisi of this Court made on the 20 December 2000 (exhibit "J"). These specific exhibits are the ones most relevant to the matter now before us. The second affidavit, a supplemental affidavit, sworn to on 30 December 2000, exhibits a certified copy of the whole proceedings in the judge's Summons. (exhibit "K") and the ruling of the judge (exhibit "L").

The respondent filed an Affidavit in Opposition dated 20 December 2000 in which he exhibited a certified extract of the proceedings in the judge's summons (exhibit "MOTD"). By this exhibit, the respondent for the first time made a clean breast to this Court of the judge's Summons.

The Arguments

Mr. Berewa, Attorney-General, Counsel for the applicants, underlined two issues as forming the nerve centre of the case for the applicants. One is that the respondent failed to disclose material facts to this Court when he made his ex parte application for an order nisi, the material fact being the proceedings of the judge's Summons which culminated in a decision. The other is that the decision by the judge in that summons raises the issue of *judicata per rem* in respect of the Respondent's ex parte application.

Non-Disclosure

To buttress his posture on the effect of non-disclosure, Mr. Berewa referred us to two cases: The Hagen [1908 - 10] All. ER 21 and The Andria [1984] 1All.ER 1126. In The Hagen the facts of which I find unnecessary for repetition in this judgment, Farwell LJ said at page 26:-

"In as much as the application was made ex parte, the fullest disclosure was necessary, as in all ex parte applications, and a failure to make a full disclosure would justify the court in discharging the full order, even though the party might afterwards be in a position to make another application."

In the case of The Andria, concerned with an arrest of a ship on a warrant based on an affidavit filed by the plaintiffs which failed to disclose the existence of arbitration proceedings or that arbitration was actively pursued, and the defendant's protection and indemnity club furnished an undertaking to the plaintiffs that the club would pay any sum awarded to the plaintiffs in return for the ship's release from arrest, Robert Goff LJ had this to say at page 1135:-

✓ "Though we do not for one moment suggest any bad faith on the part of the deponent, the fact is that the affidavit sworn to lead the warrant of arrest failed to disclose facts which were material to the issue of the warrant; and, as a result of the non-disclosure, the warrant was issued and thereafter the ship was arrested. It follows, in our judgment, that the invocation by the

appellants of the court's jurisdiction to arrest the ship amounted in the circumstances of the case to an abuse of process of the court and that the club's letter of undertaking must be discharged".

Exhibits "K" and "L" of the supplemental affidavit in Opposition which provides the first inkling of what transpired before the judge, though belatedly, tells the whole story. Exhibit "K" gives in detail arguments by both sides on the objection to the jurisdiction of the court to hear the Summons on the ground that the Anti-Corruption Commission was neither a court nor an adjudicating authority and therefore the court was not competent to quash the report of its findings in exercise of its supervisory powers over inferior courts and adjudicating authorities pursuant to section 134 of the 1991 Constitution. Exhibit "L" is the ruling of the judge that the Commission was neither a court nor an adjudicating authority. On the basis of these exhibits and the authorities cited, Mr. Berewa asks for the *ex parte* order nisi given by us to be discharged.

In reply to this particular issue, Mr. Terry, Counsel for the respondent, made five submissions which I can glean from his several submissions. Three of them appear to be general on the whole issue in controversy and the others are specific to the question of non-disclosure. One submission is that once an order nisi has been granted the Court cannot listen to a complaint against the order before the substantive hearing for the order of certiorari but that it may do so at the hearing when it is sought to make the order absolute. The second is that if at all the Court can look into the complaint before the substantive hearing, the party affected by the order nisi must show that the court was wrong in making the order. The third is that a court has a discretion to set aside its *ex parte* order but in doing so the court should hold a balance between the ordinary citizens *inter se* and the citizens on the one hand and the state on the other. For this submission he relies on a passage from the judgment of Kutubu CJ in the case of The State vs. Adel Osman and Others [1988] LRC (Const) 212 at 221. The fourth is that there is no obligation on the *ex parte* applicant to make a full and frank disclosure of material facts but that all he needs to do is to show that he has a *locus standi* and to establish a *prima facie* case. For this submission he relies on the decision of the court in Harry Will vs. Attorney-General & Minister of Justice, Mis. App. No. 8/99, (unreported, ruling delivered on 23 March 2000). The fifth submission is that the principle of full and frank disclosure is elementary but that it does not apply to certiorari proceedings. With due respect for the high quality of the research ability of counsel, I find nothing in the cases cited by him that supports the propositions which he posits. In particular, in the Harry Will case, Luke CJ merely stated the conditions on which an order can be made on an *ex parte* application. Non-disclosure of material facts was not in issue and therefore the Court did not address itself to it. I will come back to the first three submissions later.

Disclosure of material facts is, to my mind, incorporated into the principle of natural justice encapsulated in the doctrine of "audi alteram partem" which is cardinal in the rule of law. No man can be condemned behind his back in respect of either his person or his property. *Ex parte* applications are merely intended to enable a litigant to have an expeditious access to the court without notifying the other party in a matter between them when that litigant's legal right is in danger and if he is to give the other party a proper notice of his intention to go to court, delay will defeat the ends of justice. *Ex parte* applications must, to use a feline phrase, let the cat out of the bag. Disclosure of material facts when such an application is made in the absence of the other party, enables the court to bridge the lacuna created by the absence of the other party and to hold the scale evenly between them. This is the reason why an applicant must make a clean breast of material issues to

the court to which the application is made. It is a duty which the applicant owes to the court which I hold the respondent herein did not discharge when he made his ex parte application. The proceedings before Massally, J, in the High Court were very material to be disclosed to this Court when the Ex parte Application was made. It might not have made any difference to the outcome of the Court's decision if that material fact was revealed. On that occasion, the Court might have exercised its discretion to ask the Applicant herein to take part in the ex parte proceedings before it as it did in the Harry Will case.

Having said all this, I will go back to The Hagen case in which Lord Alverstone CJ articulated the point which I am making before discharging the ex parte order.

"If I had felt that Hargrave Deane J., had taken all the facts into consideration and had come to a conclusion upon them, I should hesitate to interfere with his decision, but looking at the judgment I can find nothing to show that he did. I come to the conclusion that he has not exercised his discretion, and I think it is a jurisdiction that ought to be very carefully exercised" (at page 26).

In the light of this statement of Lord Alverstone CJ., which I fully endorse, can we say that we really exercised our discretion when the full facts were not known to us? With reluctance, I apprehend that we did not.

In the cases which I have relied upon for the effect of non-disclosure, it was an Appeal Court that had to vacate an order of a lower court. In the light of this and section 122 of our Constitution, a searching question which I now pose is whether we have the power to vacate our own order. Section 126(b) of the Constitution specifically gives us that power in civil matters that have been decided by three Justices but there is no specific provision for criminal cases. Mr. Berewa urged that we can. Mr. Terry, on the other hand, did not deny that we cannot. What he submitted is that we may do so but only if the issue is raised at the substantive hearing of his application and when it is shown that we erred in law in making the order. This leads me into the field of autonomy. On binding precedent, section 122 of the Constitution enable us, as the highest court in the land, in the interest of justice, to depart from previous decisions which we take. A restrictive interpretation of a "previous decision" is a decision that has been taken in some other cause. I would not regard an order made in an interlocutory proceedings by a court to be a previous decision. Nevertheless, to my mind, this court or any other court has an inherent right to discharge any such order if justice requires it. This is where I agree with the third submission of Mr. Terry, the principle of which, I have stated, he perhaps inadvertently attributed to Adel Osman's case.

The estoppel question

Mr. Berewa for the applicants articulates that when the judge dismissed the application before him the proper course for the applicant to have pursued was to appeal as provided for under section 63 of the Courts Act, 1965, Act No. 31 of 1965. That section provides for appeals from the High Court to the Court of Appeal from any decision of the Supreme Court in exercise of its prerogative or supervisory jurisdiction in criminal matters.

The learned Attorney-General argues that instead of appealing, the respondent herein came to us on certiorari on the same matter that the High Court has taken a decision upon

and we gave the respondent leave to proceed with the certiorari. He contends that, in the circumstances, the respondent is estopped from raising the same issue, if I may put his case so very simply. He referred us to several authorities on estoppel. I will mention here the ones I regard as relevant to the matter before us. In Foli and Others v. Agya-Atta and others [1976] 1 G.L.R. 194, the Court of Appeal of Ghana held that estoppel per rem judicatam applies where an action is dismissed if the dismissal involves a determination of any particular issue or question of fact or law. Amissah JA, in his judgment at page 200 of the report made the following pronouncement on estoppel adopting the view of Spence-Bower and Turner, on Res Judicata, second edition, 1969, page 28:-

"When an action, or motion, or application, is dismissed by a judicial tribunal after a trial or hearing, it is often a question whether anything can be said to have been decided, so as to conclude the parties, beyond the actual fact of the dismissal. The answer to this inquiry depends upon whether, on reference to the record and such other materials as may; properly be resorted to, the dismissal itself is seen to have necessarily involved a determination of any particular issue or question of fact or law in which case there is an adjudication on the question or issues; if otherwise the dismissal decides nothing except that the party has been refused the relief which he sought."

In another case, Thoday V. Thoday [1964] 1 All ER 341, Diplock, LJ in the English Court of Appeal, gives two instances of estoppel that will prevent a litigant from bringing an action when a previous one has been decided by a court. One is "cause of action estoppel" and the other is "issue estoppel". He defines "cause of action estoppel" as that

"Which prevents a party to an action from asserting or denying as against the other party, the existence of a particular cause of action the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties... If the cause of action was determined to exist, i.e., judgment was given on it, it is said to be merged in the same judgment... If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does. This is simply an application of the rule of public policy." (at page 352)

He continues on issue estoppel.

"The second species which I will call 'issue estoppel' is, an extension of the same rule of public policy. There are many causes of action which can only be established by proving that two or more different conditions are fulfilled. Such causes of action involve as many separate issues between the parties as there are conditions to be fulfilled by the plaintiff in order to establish his cause of action; and there may be cases where the fulfilment of an identical condition is a requirement common to two or more different causes of action if in litigation on one such cause of action any of such separate issues whether a particular condition has been fulfilled is determined by a court of competent jurisdiction either on evidence or on admission by a party to the litigation, neither party can, in subsequent litigation between them on any cause of action which depends on the fulfilment of the identical condition, assert that the condition was fulfilled if the court has in the first litigation

determined that it was not, or deny that it was fulfilled if the court in the first litigation determined that it was. (at page 352)

The statement which Diplock makes refers specifically to estoppel in civil litigation. Mr. Terry argues the question of estoppel from two vantage points. One is that estoppel is not applicable to certiorari proceedings and he relies on the judgment of May LJ in Rv. Secretary of State for the Environment, Ex parte Hackney London Borough Council and another [1983] 3 All ER 358. where he said:

"In such (judicial review) proceedings there are no formal pleadings and it will frequently be difficult if not impossible to identify a particular issue which the first application will have decided. Moreover, we do not think that there is in proceedings brought under RSC ord. 53 a true lis between the crown in whose name the proceedings are brought and the respondent or between the exparte applicant and the respondent. Further, we doubt whether a decision in such proceedings, in the sense necessary for issue estoppel to operate, is a final decision; the nature of the relief, in many cases, leaves open reconsideration by the statutory or other tribunal of the matter in dispute"

In his reply to this point, Mr. Berewa referred us to the decision of the Court of Appeal when this case went on appeal but he did not elaborate. After careful perusal of the case on appeal, I found that the judgment of the Divisional Court was upheld. Dunham LJ said:-

"The Divisional Court was right to hold that the doctrine of issue estoppel cannot be relied upon in applications for judicial review although the court has an inherent jurisdiction as a matter of discretion in the interest of finality not to allow a particular issue which has already been litigated to be opened. This depends on the special nature of judicial review under RSC Ord 53, which makes it different both from ordinary civil litigation inter partes and from criminal proceedings". ([1984] 1 ALL ER 956 at 964)

I am grateful to both counsel for referring me to these two reports. For my part, I agree with the premise but not with the conclusion which Mr. Terry reached. The statements which the two lord justices made should not be taken out of context. The Hackney case should be considered with circumspection. There is another case which is linked with it in a chain of events: it immediately precedes the Hackney case in the same volume of the All England Law Reports. It is R.v. Secretary of State for the Environment, ex parte Brent London Borough Council and another [1983] 3 All ER 321. In that case six applicants including Hackney and Camden Borough Councils applied for and obtained orders for certiorari. An issue that was decided by the court was that on a specific date "the applicants were entitled to receive (from the Secretary of State) the rate Support Grant order 1979 as thus increased; thus the decision (made on 26 January 1981) to reduce the applicants' rate support grants adversely affected not merely an expectation but a right to a substantial sums of money". See judgment of Ackner, LJ at pp. 354, 355.

But the judgment did not end there. It left it open to the Secretary of State, "after considering the applicants' representations, now fully documented to make any decisions he considers right," (See page 357.)

Two of the applicants in the Brent case, i.e., Hackney and Camden, made a further application for certiorari in the Hackney case. Their complaint was, among other things, that the Secretary of State had deferred payment on their entitlements and reduced their grants and contending that their entitlement had been fixed by the judgment and that the Secretary of State was estopped by the judgment. The Secretary of State submitted that on the previous application, which the court accepted, all that was decided was that he had failed to hear last minute representations and that the court did not hold that he could not lawfully make a decision to reduce the grant. As can clearly be seen, the issues raised in the two cases were different. May LJ pointed out the difference when he said:-

"In the present case, however, we think that there are two answers to the powerful submissions on this point. (i.e. issue estoppel) made by counsel for the applicants. First, although on their face the passage from the first judgment do appear to contain a finding in favour of the present applicants on the particular issue, in our opinion, a careful reading of the context in which the passages occur, makes it quite clear that the court on the first occasion was not purporting to make the finding for which counsel for the applicants contends. In the first place, the circumstances in which and the times at which the Secretary of state was liable under the Statute to make payments of rate support were not in issue on the earlier application." (at p. 365)

Going back to the prior opinions of May and Dunn LJJ, I think they should be viewed from the peculiar nature of judicial review in which the court does not determine the validity of the order of the tribunal as between the parties but merely decides as to whether there has been excess or lack of jurisdiction. This does not mean that if a legal point arises and the court takes a decision on it, an issues estoppel cannot be eventually asserted to sustain it.

I do not find it necessary to draw a line between judicial review in England and certiorari proceedings here which the learned Attorney-General tried to make. The conclusion which I have reached will be the same if I do so.

I think that what is in issues in the case before us is actually not one directly concerned with certiorari. To my mind we should not confuse certiorari proceedings with what actually transpired before Massally, J. He did not go into the question as to whether or not the Anti-Corruption Commission acted contrary to or in excess of its statutory authority. Instead, an issue was raised in what was going to be certiorari proceedings. The identity of the Commission, the body against which the judge was to make a certiorari order was in issue and the judge decided that he could not proceed with the certiorari proceedings because the Commission was neither a court nor an adjudicating authority. If he had proceeded with certiorari, after his decision that he lacked jurisdiction, his decision thereafter would have amounted to a nullity. See Macaulay V. Commissioner of Police (1968 - 69) ALR SL 9, page 14.

It is in this vein, to my mind, that the doctrine of estoppel should be considered.

The other plank of Mr. Terry's posture on estoppel is that the dismissal of the application before Massally J. amounts to a mere refusal based on an issue during the proceedings and that no decision was taken on the merits of the application for certiorari issue i.e., the cause of action; therefore, the respondent cannot be precluded by estoppel when he comes to the Supreme Court. If I get him right, Mr. Terry is saying that there was no final

decision on the cause of action to attract estoppel. With respect to the learned Counsel, this argument is fraught with two misconceptions. First, it suggests that estoppel per rem judicatam does not apply to a final decision on an issue in an interlocutory matter. This is "issue estoppel". Both "cause of action estoppel" and "issue estoppel" need not coincide before estoppel per rem judicatam can be raised. They are independent of each other. In reaching this conclusion, I lean heavily on the Foli and Thoday's cases herein-before mentioned and to the decision in the English Queens Bench Division case of R.v. Governor of Brixton, ex parte Osman (No.1) [1992] 1 All ER 108. This was an application for habeas corpus but the principle stated therein, in my view, applies to certiorari as well. The facts are very revealing. The applicant, Osman who was in remand at Brixton prison awaiting extradition to Hong Kong to face criminal charges made three unsuccessful applications for a writ of habeas corpus. In the third application he sought the disclosure of some official documents and he was granted. In a fourth application he sought the disclosure of nine other official documents but the court refused it on the ground of irrelevance. Osman made a fifth application in which he again sought the disclosure of the nine documents referred to in the fourth application. Thereupon, the Secretary of State moved the court for the parts of Osman's affirmations which either referred to or quoted from the nine documents to be struck out, one of the grounds being that the court's decision in the fourth application refusing further disclosure on the basis of irrelevance resulted in an issue estoppel which prevented Osman from later asserting that the documents were relevant. In the judgment of the court this was what Mann LJ said.

"The issue estoppel in this case is said to arise from the decision of this court on 20 January 1990. That was a decision on an interlocutory application. That it was a decision on an interlocutory application does not, in my judgment, disable it from an ability to give rise to an issue estoppel. I can see no reason in principle why a final decision upon an interlocutory application should not be in this regard treated as any other decision." (p. 118)

My second reason for disagreement with Mr. Terry is that it is not necessary for a court to make a final pronouncement on the merits of a case before estoppel can be invoked. If I get Mr. Terry rightly again he is referring to "cause of action estoppel" which I have held to be independent of "issue estoppel". The jurisdictional issue that the respondents articulated before the judge pivoted on the identity of the Commission. The judge made a decision on it. This, to my mind, would give rise to issue estoppel on that issue. In taking this stance, I also derive support from the judgment of Simon Tuckey, Q.C. a deputy judge of the Queens Bench Division in Palmer & Anor v. Dunford Ford (a Firm) and Anor. [1992] 2 All ER 122, at page 128 in which he states what I regard as a correct statement of the law as follows:-

"The plaintiff contends that this was not a final decision of the court because the court did not itself pronounce on the merits of the claim. I disagree. I think that a final decision for this purpose is one which would give rise to a plea of res judicata. Such a decision is one which leaves nothing to be judicially determined or ascertained thereafter in order to render it effective."

Mr. Berewa, in his argument, emphasizes that the cause of action was in fact decided. I apprehend, with the greatest respect, that this was not done as the judge did not go into the merits of whether the Anti-Corruption Commission acted within or outside its mandate conferred by the Act. Mr. Berewa referred us to Hines v. Birkbeck College (No.2) [1991]

4All ER 450 but Mr. Terry did not mention it to buttress his argument on estoppel not arising when a cause of action has not been decided on its merits. In this case, the plaintiff, a professor of Economics at a college in London University, issued a writ claiming that his College had wrongfully dismissed him. The judge struck out the claim on the ground that the subject matter of the claim was exclusively within the jurisdiction of the Visitor to the College. There was no hearing on any issue. Later, the Education Reform Act 1988 came into force giving the court jurisdiction over disputes concerning the appointment or termination of the appointment of a member of the University staff. The plaintiff thereupon issued a second writ in identical terms to the first alleging wrongful dismissal. The college and the University applied without success to strike out the second action on the ground, inter alia, of res judicata. This was a case of "cause of action estoppel" but it must be noted that the court refused to go into the merit in the first instance by virtue of the fact that no jurisdiction was vested in it over such matters. It is distinguishable from the Taju-Deen case before us in that the court in the instant case ruled that it had jurisdiction to supervise inferior courts or adjudicating bodies; but that the Anti-Corruption Commission was neither a court nor an adjudicating body.

In my judgment, a case of "issue estoppel" could arise if it is sought to re-open the question of the identify of the Anti-Corruption Commission as a court or adjudicating authority but not a "cause of action estoppel". I am fortified on this stance by the judgment of Diplock LJ in Fidelitas Shipping v. V/O Exportchleb [1965] 2 All ER4, 10 where he says:

"Where the issue separately decided is not decisive of the suit, the judgment on that issue is an interlocutory judgment and the suit continues. Yet I take it to be too clear to need citation of authority that the parties to the suit are bound by the determination of the issue. They cannot subsequently in the same suit advance arguments or adduce further evidence directed to show that the issue was wrongly determined. Their only remedy is by way of appeal from the interlocutory judgment."

Conclusion

This is as far as I can go on the arguments presented to us by counsel on both sides. I cannot, however, at this stage, rule whether or not estoppel applies because the application before us at present is to discharge the order nisi. I uphold Mr. Terry's submissions that the appropriate stage for a determination on estoppel is at the substantive application for certiorari and I may add, at any other proceedings which the Respondent may institute. It suffices only to hold and I so hold that the application succeeds on the ground of non-disclosure of material facts.

CIV. APP. 76/95

IN THE SIERRA LEONE COURT OF APPEAL

BETWEEN:-

AHMED TEJAN KABBA	-	APPELLANT
AND		
FIRETEX COMPANY (S.L) LTD	-	RESPONDENT

CORAM:-

HON. MR. JUSTICE G. GELAGA-KING	-	J.A. (PRESIDING)
HON. MR. JUSTICE A.B. TIMBO	-	J.A.
HON. MR. JUSTICE N.D. ALHADI	-	J.A.

Mr. Y.H. Williams for the Appellant

Dr. W.S. Marcus-Jones for the Respondent.

RULING DELIVERED ON THE 18TH DAY OF JUNE, 1996.

GELAGA-KING, J. A.: When this matter was called, Counsel for the Respondent, Dr. Marcus-Jones, intervened to make preliminary objection, having filed a notice to that effect. His objection was as follows:- that the status of the Appellant had changed and the action ought to be stayed until the Appellant ceases to hold office as President of the Republic of Sierra Leone.

Firstly, that there is no appeal before the Court by H.E. The President of Sierra Leone. Secondly, that the person of the President of the Republic of Sierra Leone is inviolable and cannot be impeached in his own Courts. Thirdly, that it is infra dignitatem and against the principles of international and municipal law that a Head of State should pursue a remedy in his own Courts against his own subjects while he holds or continues office as President of the country.

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He relied on Act No.9 of 1971 The Constitution (Consequential Provisions) Act, 1971, and s. 48(4) of the Constitution of Sierra Leone Act No. 6 of 1991, (hereinafter referred to as the Constitution”) and argued that what he was raising was a constitutional point and that this Court ought to remit the matter to the Supreme Court for interpretation of S. 48(4) of the Constitution. His final submission was that this Court should have confirmation from H.E. The President himself that he was willing to submit to the Jurisdiction of this Court and he relied on O’Connell’s International Law, 1st ed. P. 936.

Mr. Y.H. Williams for the Appellant, in reply, submitted that O’Connell’s International Law had no application. He contended that s. 48(4) of the Constitution precludes anyone from instituting or continuing legal action against an incumbent President, but the section did not prohibit the President from pursuing his legal remedies and enforcing his legal rights in Court. He urged us to overrule the objection.

I shall deal with the Constitution (Consequential Provisions) Act 1971, first, if only to make short shrift of it. S. 15 provides:-

“Where under any law in force in Sierra Leone immediately before the commencement of the Constitution any prerogatives or privileges are vested in Her Majesty those prerogative or privileges shall from the commencement of the Constitution vest in the President.”

That Act has been repealed by s. 177 of the Constitution of Sierra Leone Act No.12 of 1978, itself repealed by s. 190 of the Constitution. I strongly believe that this Court will be ill-advised to set a most unworthy and unbecoming precedent by succumbing to a gratuitous invitation to act on a repealed statute.

It likewise does not avail Dr. Marcus-Jones to refer us to such statute. His submission on that ground is clearly untenable and fails.

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I now turn to s. 48(4) of the Constitution. It states:-

“(4) While any person holds or performs the functions of the office of President, no civil or criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his official or private capacity.”

I would have thought that the words are clear, precise and unambiguous. They speak for themselves and, therefore, need no interpretation. No civil or criminal proceedings shall be instituted or continued against the President, so says the Act. There is nothing in the section, however, to say that the President shall not pursue his remedies in Court in an action commenced by him before he became President, or that in such a case he cannot continue with his appeal in this court, where the decision in the court below had gone against him.

Dr. Marcus-Jones, however, urges us not to interpret s. 48(4) which, in fact, needs no interpretation as I have opined, but to transmit it to the Supreme Court for interpretation. He prays in aid s. 124 (2) of the Constitution which states:-

“124. (1) The Supreme Court shall, save as otherwise provided in section 122 of this Constitution, have original jurisdiction, to the exclusion of all other Courts –

(a) in all matters relating to the enforcement or interpretation of any provision of this Constitution, and

(b)

(2) Where any question relating to any matter or question as is referred to in subsection (1) arises in any proceedings in any court, other than the Supreme Court, that Court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the Court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.”

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This section also is clear and needs no interpretation. I shall, therefore, stay the proceedings and refer the question involved to the Supreme Court for determination. The question of law involved is as follows:-

“Whether s. 48(4) of the Constitution of Sierra Leone, 1991, (Act No. 6 of 1991) precludes or prohibits the President of Sierra Leone from continuing in the Court of Appeal the action intituled Civ. App. 76/95.

AHMED TEJAN KABBA - APPELLANT

AND

FIRETEX CO. (S.L.) LTD - RESPONDENT

instituted by him in the High Court before he became President of Sierra Leone.

(sgd) G. Gelaga-King

Hon. Mr. Justice G. Gelaga-King

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TIMBO, J.A.: I have read the Ruling of my Learned brother, Gelaga-King, J.A. While I wholeheartedly agree with the view expressed by him that section 48(4) of the Constitution (Act No. 6 of 1991) requires no interpretation as it is simple and straight forward, I fail to see the reason the Learned Presiding Justice nevertheless thinks the matter ought to be referred to the Supreme Court for interpretation under section 124 of the Constitution.

All that section 48(4) of the Constitution has done, in my opinion, is to confer immunity on the Head of State, whilst he holds that office, against criminal or civil process in respect of anything done or omitted to be done by him whether in his official or private capacity.

The Supreme Court in *Wellington Distilleries v. Electrodia P. Clarkson* (Constitutional Reference) Misc. App. No. 4/81 (unreported) while conceding that the question posed was a constitutional question, nonetheless had this to say at page 27 of the bound report,

“But it should be noted that not all constitutional questions necessarily involve or entail the interpretation of the Constitution.”

I will therefore overrule the preliminary objection of Dr. Marcus-Jones and order that the hearing of the appeal should proceed without further delay and I so order.

(Sgd), A.B. Timbo

(HON. JUSTICE A.B. TIMBO)

N.D. ALHADI, J.A.:-

I have had the advantage of reading the judgment first delivered by my Learned brother my Lord Gelaga-King, J.A. I agree with his reasons for rejecting the argument of Counsel for the Respondent in support of the preliminary objection. But I do not agree with his conclusion that a question of law is involved which should be transmitted to the Supreme Court for determination.

Section 124 of the Constitution provides inter-alia

- “(1) The Supreme Court shall, save as otherwise provided in Section 122 of this Constitution have original jurisdiction, to the exclusion of all other Court.
- (a) in all matters relating to the enforcement or interpretation of any provision of this constitution and
- (b)
- (2) Where any question relating to any matter or question as is referred to in sub-section (1) arises in any proceedings in Court, other than the Supreme Court, that Court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination, and the Court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.”

If according to the judgment of my Learned brother Gelaga-King J.A., the words of section 48(4) are clear, precise and unambiguous and need no interpretation I find no conceivable reason why that provision could be referred to the Supreme Court for interpretation.

Also there is the question raised as to the enforcement of my position of the constitution which is covered by the section. This again leaves us with no jurisdiction to have any matter referred to the Supreme Court.

It is never the intendment of this provision that all matters which have reference to a provision of the constitution should be remitted to the Supreme

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Court, especially matters which are within the competency of the Court, in which the matter arose, to decide.

The proposed question which my learned brother Gelaga-King J.A. wishes to be referred, as framed, is with respect one of jurisdiction. It is for the Court to decide what its jurisdiction is from its practices and statutory enactment which creates it.

The question in the jurisdiction of any Court is not one provided for in Section 124 of the Constitution.

For these reasons I will overrule the Preliminary Objection and rule that the appeal proceeds.

(Sgd) N.D. Alhadi

(HON. MR. JUSTICE N.D. ALHADI)

CERTIFIED TRUE COPY

A. Showers
REGISTRAR
COURT OF APPEAL.

ACT

Supplement to the Sierra Leone Gazette Extraordinary Vol. CXXII, No. 59

dated 25th September, 1991

THE CONSTITUTION OF SIERRA LEONE, 1991

(Act No. 6 of 1991)

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FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

FOURTH SCHEDULE

SIGNED this 24th day of September, 1991

J. S. MOMOH
President

LS

No. 6

1991



Sierra Leone

The Constitution of Sierra Leone, 1991

Short title.

Being an Act to make provision for a new Constitution of
Sierra Leone, and for connected purposes

[1st October, 1991] Date of
Commence-
ment.

BE IT ENACTED by the President and Members of Parliament in
his present Parliament assembled, as follows:—

CHAPTER I—THE REPUBLIC OF SIERRA LEONE

1. Sierra Leone is a Sovereign Republic, the boundaries of
which are delimited in the First Schedule hereto.

Declara-
tion of
Republic.

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2. The Public Seal of the Republic shall be such a device as Parliament shall prescribe.

3: (1) (a) The Flag of which the design is described in paragraph (b) hereof is hereby declared to be the National Flag of Sierra Leone.

(b) The design of the Flag shall be from the top of the Flag to the bottom thereof, three horizontal stripes of green, white and blue.

(c) The normal size of the Flag for official use shall be in the proportion of nine units across to six units down.

(2) The National Anthem of the Republic shall be such as Parliament shall prescribe.

CHAPTER II—FUNDAMENTAL PRINCIPLES OF STATE POLICY

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

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

(2) It is accordingly declared that—

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

(b) the security, peace and welfare of the people of Sierra Leone shall be the primary purpose and responsibility of Government, and to this end it shall be the duty of the Armed Forces, the Police, Public Officers and all security agents to protect and safeguard the people of Sierra Leone; and

(c) the participation of the people in the governance of the State shall be ensured in accordance with the provisions of this Constitution.

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

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

(3) For the purposes of promoting national integration and unity, the State shall—

- (a) provide adequate facilities for and encourage free mobility of people, goods and services throughout Sierra Leone; and
- (b) secure full rights of residence for every citizen in all parts of the State.

(4) The State shall protect and defend the liberty of the individual, enforce the rule of law and ensure the efficient functioning of Government services.

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

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

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

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

(2) In furtherance of the Social Order—

- (a) every citizen shall have equality of rights, obligations, and opportunities before the law, and the State shall ensure that every citizen has an equal right and access to all opportunities and benefits based on merit:

(3) For the purposes of promoting national integration and unity, the State shall—

- (a) provide adequate facilities for and encourage free mobility of people, goods and services throughout Sierra Leone; and
- (b) secure full rights of residence for every citizen in all parts of the State.

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8. (1) The Social Order of the State shall be founded on the goals of Freedom, Equality and Justice. Social objectives

(2) In furtherance of the Social Order—

- (a) every citizen shall have equality of rights, obligations, and opportunities before the law, and the State shall ensure that every citizen has an equal right and access to all opportunities and benefits based on merit;

(b) the State shall recognise, maintain and enhance the sanctity of the human person and human dignity; and

(c) the Government shall secure and maintain independence, impartiality and integrity of courts of law and unfettered access thereto, and to this end shall ensure that the operation of the legal system promotes justice on the basis of equality of opportunity, and that opportunities for securing justice are not denied any citizen by reason of economic or other disability.

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

(a) every citizen, without discrimination on any grounds whatsoever, shall have the opportunity for securing adequate means of livelihood as well as adequate opportunities to secure suitable employment;

(b) conditions of service and work are fair, just and humane and that there are adequate facilities for leisure and for social, religious and cultural life;

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

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

(e) there is equal pay for equal work without discrimination on account of sex, and that adequate and satisfactory remuneration is paid to all persons in employment; and

(f) the care and welfare of the aged, young and disabled shall be actively promoted and safeguarded.

Educational objectives.

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

(a) ensuring that every citizen is given the opportunity to be educated to the best of his ability, aptitude and inclination by providing educational facilities

at all levels and aspects of education such as primary, secondary, vocational, technical, college and university;

(b) safeguarding the rights of vulnerable groups, such as children, women and the disabled in securing educational facilities; and

(c) providing the necessary structures, finance and supportive facilities for education as and when practicable.

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

(a) free adult literacy programmes;

(b) free compulsory basic education at primary and junior secondary school levels; and

(c) free senior secondary education as and when practicable.

(3) The Government shall promote the learning of indigenous languages and the study and application of modern science, foreign languages, technology, commerce and business.

10. The Foreign Policy Objectives of the State shall be—

(a) the promotion and protection of the National interest;

(b) the promotion of sub-regional, regional and inter-African co-operation and unity;

(c) the promotion of international co-operation for the consolidation of international peace and security and mutual respect among all nations, and respect for their territorial integrity and independence; and

(d) respect for international law and treaty obligations, as well as the seeking of settlement of international disputes by negotiation, conciliation, arbitration or adjudication.

Foreign policy objectives.

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

Obligations of the mass media.

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Enhance-
ment of
national
culture.

12. The Government shall—

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

Duties
of the
citizen.

13. Every citizen shall—

- (a) abide by this Constitution, respect its ideals, its institutions, the National Flag, the National Anthem and authorities and offices established constituted under this Constitution or any other law;
- (b) cultivate a sense of nationalism and patriotism so that loyalty to the State shall override section 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 and 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 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 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.

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

Funda-
mental
principles
not
justiciable.

CHAPTER III—THE RECOGNITION AND PROTECTION OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS OF THE INDIVIDUAL

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

Funda-
mental
Human
Rights and
Freedoms
of the
Individual.

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

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

16. (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.

Protection
of right
to life.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases

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as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case, that is to say—

- (a) for the defence of any person from unlawful violence or for the defence of property; or
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence; or
- (e) if he dies as a result of a lawful act of war.

Protection from arbitrary arrest or detention.

(1) No person shall be deprived of his personal liberty except as may be authorised by law in any of the following cases, that is to say—

- (a) in consequence of his unfitness to plead to a criminal charge; or
- (b) in the execution of a sentence or order of a Court whether in Sierra Leone or elsewhere in respect of a criminal offence of which he has been convicted; or
- (c) in the execution of an order of the High Court or the Court of Appeal or the Supreme Court or such other court as may be prescribed by Parliament on the grounds of his contempt of any such court or of another court or tribunal or commission of inquiry as the case may be; or
- (d) in the execution of an Order of a court made in order to secure the fulfilment of any obligation imposed on him by law; or
- (e) for the purpose of bringing him before a court or tribunal, as the case may be, in execution of the order of a court; or
- (f) upon reasonable suspicion of his having committed or of being about to commit a criminal offence; or
- (g) in the case of a person who has not attained the age of twenty-one years, for the purpose of his education or welfare; or

- (h) for the purpose of preventing the spread of an infectious or contagious disease; or
- (i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community; or
- (j) for the purpose of preventing the unlawful entry of that person into Sierra Leone, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Sierra Leone or the taking of proceedings thereto.

(2) Any person who—

- (a) is arrested or detained shall be informed in writing or in a language that he understands at the time of his arrest, and in any event not later than twenty-four hours, of the facts and grounds for his arrest or detention;
- (b) is arrested or detained shall be informed immediately at the time of his arrest of his right of access to a legal practitioner or any person of his choice, and shall be permitted at his own expense to instruct without delay a legal practitioner of his own choice and to communicate with him confidentially.

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

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

and if any person arrested or detained in such a case as is mentioned in the said paragraph (f) is not tried within the periods specified in paragraph (a) or (b) of this section, as the case may be, then without prejudice to any further proceedings which may be brought against him he shall be released either unconditionally or upon reasonable conditions, including in particular, such conditions as are reasonably necessary to ensure that he appears at a later date for trial or proceedings preliminary to trial.

Protection
of freedom
of move-
ment.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

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

(2) Any restriction on a person's freedom of movement which is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) which is reasonably required in the interests of defence, public safety, public order, public morality, public health or the conservation of the natural resources, such as mineral, marine, forest and other resources of Sierra Leone, except in so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or
- (b) for the imposition of restrictions on the movement or residence within Sierra Leone of any person who is not a citizen thereof or the exclusion or expulsion from Sierra Leone of any such persons; or
- (c) for the imposition of restrictions on the acquisition or use by any person of land or other property in Sierra Leone; or
- (d) for the imposition of restrictions upon the movement or residence within Sierra Leone of public officers or members of a defence force; or
- (e) for the removal of a person from Sierra Leone to be tried outside Sierra Leone for a criminal offence recognised as such by the laws of Sierra Leone, or to serve a term of imprisonment outside Sierra Leone in the execution of the sentence of a court in respect of a criminal offence of which he has been convicted; or

(f) for preventing the departure from Sierra Leone of a person who is reasonably suspected of having committed a crime or seeking to evade the fulfilment of an obligation imposed on him under the civil law or to evade military service

Provided that no court or other authority shall prohibit any such person from entering into or residing in any place to which he is indigenous; or

(g) for restricting vagrancy.

(4) If—

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

(5) On any review by a tribunal in pursuance of subsection (4) of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or 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.

19. (1) No person shall be held in slavery or servitude or be required to perform forced labour or traffic or deal in human beings.

(2) For the purposes of this section the expression "forced labour" does not include

- (a) any labour required in consequence of a sentence or order of a court; or
- (b) labour required of any person while he is lawfully detained, which though not required in conse-

Protection
from
slavery
and forced
labour.

quence of the sentence or order of a court, is reasonably necessary in the interest of hygiene or for the maintenance of the place in which he is detained; or

- (c) any labour required of a member of a defence force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as such a member, any labour which that person is required by law to perform in place of such service; or
- (d) any labour required during a period of public emergency or calamity which threatens the life or well-being of the community; or
- (e) communal labour or labour which forms part of other civic obligation.

Protection
from
inhuman
treatment.

20. (1) No person shall be subject to any form of torture or any punishment or other treatment which is inhuman or degrading.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any kind of punishment which was lawful immediately before the entry into force of this Constitution.

Protection
from
depriva-
tion of
property.

21. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

- (a) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilization of any property in such a manner as to promote the public benefit or the public welfare of citizens of Sierra Leone; and
- (b) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having any interest in or right over the property; and
- (c) provision is made by law applicable to that taking of possession or acquisition—
 - (i) for the prompt payment of adequate compensation; and

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

(2) Nothing in this section shall be construed as affecting the making or operation of any law in so far as it provides for the taking of possession or acquisition of property—

- (a) in satisfaction of any tax, rate or due;
- (b) by way of penalty for breach of the law whether under civil process or after conviction of a criminal offence;
- (c) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
- (d) by way of the vesting or administration of trust property, enemy property; *bona vacantia*, property of prohibited aliens, or the property of persons adjudged or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate or incorporate in the course of being wound up;
- (e) in the execution of judgements or orders of courts;
- (f) by reason of such property being in a dangerous state or liable to cause injuries to the health of human beings, animals or plants;
- (g) in consequence of any law with respect to the limitation of actions;
- (h) for so long only as such taking of possession may be necessary for the purposes of any examination, investigation, trial, or inquiry, or, in the case of land, the carrying out thereon—
 - (i) of work of soil conservation or the conservation of other natural resources; or

- (ii) of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable or lawful excuse refused or failed to carry out.

(3) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property or the compulsory acquisition in the public interest in or right over property, where that property, interest or right is held by a body corporate which is established directly by any law and in which no moneys have been invested other than moneys provided by Parliament or by the Legislature of the former Colony and Protectorate of Sierra Leone.

(4) Any such property of whatever description compulsorily taken possession of, and any interest in, or right over, property of any description compulsorily acquired in the public interest or for public purposes, shall be used only in the public interest or for the public purposes for which it is taken or acquired.

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

Protection for privacy of home and other property.

22. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises, or interference with his correspondence, telephone conversations and telegraphic and electronic communications.

(2) Nothing contained in or done under authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that is reasonably required—

- (a) in the interest of defence, public safety, public order, public morality, public health, town and country planning, or the development or utilization of any property in such a manner as to promote the public benefit; or
- (b) to enable any body corporate established directly by any law or any department of the Government or any local authority to enter on the premises of

any person in order to carry out work in connection with any property or installation which is lawfully on such premises and which belongs to that body corporate or to the Government or to that authority, as the case may be; or

(e) for the purpose of protecting the rights and freedoms of other persons; or

(d) for the purpose of executing any judgement or order of a court; or

(e) for the purpose of affording such special care and assistance as are necessary for the health, safety, development and well-being of women, children and young persons, the aged and the handicapped;

and except in so far as that provision or, as the case may be, the thing done under authority thereof is shown not to be reasonably justifiable in a democratic society.

23. (1) Whenever any person is charged with a criminal offence he shall unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

Provision to secure protection of law.

(2) Any court or other authority prescribed by law for the determination of the existence or extent of civil rights or obligations shall be independent and impartial; and where proceedings for such determination are instituted by or against any person or authority or the Government before such court or authority, the case shall be given fair hearing within a reasonable time.

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

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

(4) Every person who is charged with a criminal offence, shall be presumed to be innocent until he is proved, or has pleaded guilty:

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection, to the extent that the law in question imposes on any person charged as aforesaid the burden of proving particular facts.

(5) Every person who is charged with a criminal offence—

(a) shall be informed at the time he is charged in the language which he understands and in detail, of the nature of the offence charged;

(b) shall be given adequate time and facilities for the preparation of his defence;

(c) shall be permitted to defend himself in person or by a legal practitioner of his own choice;

(d) shall be afforded facilities to examine in person or by his legal practitioner the witnesses called by the prosecution before any court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(e) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge:

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question prohibits legal representation in a Local Court.

(6) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall if he so requires, and subject to the payment of such reasonable fee as may be prescribed by law, be given within a reasonable time, and in any event not more than three months after trial, a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(7) No person shall be held to be guilty of a criminal offence on account of any act or omission which did not, at the time it took place, constitute such an offence.

(8) No penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.

(9) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence:

Provided that nothing in any law shall be held to be inconsistent with or in contravention of this subsection by reason only that it authorises any court to try a member of a defence force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under service law; but any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under service law.

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

(11) In paragraphs (c) and (d) of subsection (5), the expression "legal practitioner" means a person entitled to practise as a Barrister and Solicitor of the High Court.

24. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience and for the purpose of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom either alone or in community with others and both in public and in private to manifest and propagate his religion or belief in worship, teaching, practice and observance.

Protection of freedom of conscience.

(2) Except with his own consent (or if he is a minor the consent of his parent or guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or to attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

1804

(3) No religious community or denomination shall be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes a provision which is reasonably required—

- (a) in the interest of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons including the right to observe and practise any religion without the unsolicited intervention of the members of any other religion;

and except in so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of expression and the press.

25. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purpose of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, freedom from interference with his correspondence, freedom to own, establish and operate any medium for the dissemination of information, ideas and opinions, and academic freedom in institutions of learning:

Provided that no person other than the Government or any person or body authorised by the President shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) which is reasonably required—
 - (i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the telephony, telegraphy, telecommunications, posts, wireless broadcasting, television, public exhibitions or public entertainment; or

(b) which imposes restrictions on public officers or members of a defence force;

and except in so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.

26. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade unions or other economic, social or professional associations, national or international, for the protection of his interests.

Protection of freedom of assembly and association.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) which is reasonably required—
 - (i) in the interests of defence, public safety, public order, public morality, public health, or provision for the maintenance of supplies and services essential to the life of the community; or
 - (ii) for the purpose of protecting the rights and freedoms of other persons; or
- (b) which imposes restrictions upon public officers or upon members of a defence force; or
- (c) which imposes restrictions on the establishment of political parties, or regulates the organisation, registration, and functioning of political parties and the conduct of its members;

and except in so far as that provision, or as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

1805

Protection
from
discrimina-
tion.

X 27. (1) Subject to the provisions of subsection (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 of another such description.

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

- (a) for the appropriation of revenues or other funds of Sierra Leone or for the imposition of taxation (including the levying of fees for the grant of licences); or
- (b) with respect to persons who are not citizens of Sierra Leone; or
- (c) with respect to persons who acquire citizenship of Sierra Leone by registration or by naturalization, or by resolution of Parliament; or
- (d) with respect to adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law; or
- (e) for the application in the case of members of a particular race or tribe or customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or
- (f) for authorising the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency; or

- (g) whereby persons of any such description as mentioned in subsection (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society; or
- (h) for the limitation of citizenship or relating to national registration or to the collection of demographic statistics.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that it makes provision with respect to qualifications for service as a public officer or as a member of a defence force or for the service of a local government authority or a body corporate established directly by any law or of membership of Parliament.

(6) Subsection (2) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provisions of law as is referred to in subsection (4) or (5).

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) may be subjected to any restriction of the rights and freedoms guaranteed by sections 18, 22, 24, 25 and 26 being such a restriction as is authorised by subsection (3) of section 18, subsection (2) of section 22, subsection (5) of section 24, subsection (2) of section 25 or subsection (2) of section 26, as the case may be.

(8) The exercise of any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person under or by this Constitution or any other law shall not be enquired into by any Court on the grounds that it contravenes the provision of subsection (2).

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

Enforce-
ment of
protective
provisions.

(2) The Supreme Court shall have original jurisdiction—

- (a) to hear and determine any application made by any person in pursuance of subsection (1); and
- (b) to determine any question arising in the case of any person which is referred to in pursuance of subsection (3), and may make such order, issue such writs, and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of any of the provisions of the said sections 16 to 27 (inclusive) to the protection of which the person concerned is entitled:

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

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

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

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

(5) Parliament shall make provision—

- (a) for the rendering of financial assistance to any indigent citizen of Sierra Leone where his rights 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.

29. (1) Whenever in the opinion of the President a state of public emergency is imminent or has commenced, the President may, at any time, by Proclamation which shall be published in the *Gazette*, declare that—

- (a) a state of public emergency exists either in any part, or in the whole of Sierra Leone; or
- (b) a situation exists which, if it is allowed to continue, may lead to a state of public emergency in any part of or the whole of Sierra Leone.

(2) The President may issue a Proclamation of a state of public emergency only when—

- (a) Sierra Leone is at war;
- (b) Sierra Leone is in imminent danger of invasion or involvement in a state of war; or
- (c) there is actual breakdown of public order and public safety in the whole of Sierra Leone or any part thereof to such an extent as to require extraordinary measures to restore peace and security; or
- (d) there is a clear and present danger of an actual breakdown of public order and public safety in the whole of Sierra Leone or any part thereof requiring extraordinary measures to avert the same; or
- (e) there is an occurrence of imminent danger, or the occurrence of any disaster or natural calamity affecting the community or a section of the community in Sierra Leone; or

(f) there is any other public danger which clearly constitutes a threat to the existence of Sierra Leone.

(3) Every declaration made under subsection (1) shall lapse—

(a) in the case of a declaration made when Parliament is sitting at the expiration of a period of seven days beginning with the date of publication of the declaration; and

(b) in any other case, at the expiration of a period of twenty-one days beginning with the date of the declaration,

unless it has in the meantime been approved by or superseded by a Resolution of Parliament supported by the votes of two-thirds of the Members of Parliament.

(4) A declaration made under subsection (1) may at any time before being superseded by a Resolution of Parliament be revoked by the President by Proclamation which shall be published in the *Gazette*, and all measures taken thereunder shall be deemed valid and lawful and shall not be enquired into by any court or tribunal.

(5) During a period of public emergency, the President may make such regulations and take such measures as appear to him to be necessary or expedient for the purpose of maintaining and securing peace, order and good government in Sierra Leone or any part thereof.

(6) Without derogating from the generality of the powers conferred by subsection (5) and notwithstanding the provisions of this Chapter, the regulations or measures may, so far as appears to the President to be necessary or expedient for any of the purposes mentioned in that subsection—

(a) make provision for the detention of persons, the restriction of the movement of persons within defined localities, and the deportation and exclusion of persons other than citizens of Sierra Leone from Sierra Leone or any part thereof;

(b) authorise—

(i) the taking of possession or control on behalf of the Government of any property or undertaking;

(ii) the acquisition on behalf of the Government of any property other than land;

(c) authorise the entering and search of any premises;

(d) amend any law, suspend the operation of any law, and apply any law with or without modification:

Provided that such amendment, suspension or modification shall not apply to this Constitution;

(e) provide for charging, in respect of the grant or issue of any licence, permit, certificate or other document for the purpose of the regulations, such fees as may be prescribed by or under the regulations;

(f) provide for payment of compensation and remuneration to persons affected by the regulations;

(g) provide for the apprehension, trial and punishment of persons offending against the regulations;

(h) provide for maintaining such supplies and services as are, in the opinion of the President, essential to the life and well-being of the community:

Provided that nothing in this subsection shall authorise the making of regulations during a period of public emergency for the trial of persons who are not members of defence forces by military courts.

(7) The payment of any compensation or remuneration under the provisions of such regulations shall be a charge upon the Consolidated Fund.

(8) Regulations made under this section shall apply to the whole of Sierra Leone or to such parts thereof as may be specified in the regulations.

(9) Regulations made under this section may provide for empowering such authorities or persons as may be specified in the regulations to make Orders and Rules for any of the purposes for which the regulations are authorised by this Constitution to be necessary or expedient for the purposes of the regulations.

(10) (a) Every regulation or measure taken under this section and every order or rule made in pursuance of such a regulation shall, without prejudice to the validity of anything lawfully done thereunder, cease to have effect ninety days from the date upon which it comes into operation unless before the expiration of the period, it has been approved by resolution passed by Parliament.

(b) Any such regulation, order or rule may, without prejudice to the validity of anything lawfully done thereunder, at any time be amended or revoked by the President.

(11) Subject to the provisions of subsections (7) and (8) of section 23, every regulation made under this section and every order or rule made in pursuance of such a regulation shall have effect notwithstanding anything inconsistent therewith contained in any law; and any provision of a law which is inconsistent with any such regulation, order or rule shall, whether that provision has or has not been amended, modified or suspended in its operation under any Act, cease to have effect to the extent that such regulation, order or rule remains in force.

(12) A declaration made under subsection (1) that has been approved by or superseded by a resolution of Parliament in pursuance of subsection (2) shall, subject to the provisions of subsection (3), remain in force as long as that resolution remains in force.

(13) A resolution of Parliament passed for the purpose of this section shall remain in force for a period of twelve months or such shorter period as may be specified therein:

Provided that any such resolution may be extended from time to time by a further such resolution, supported by the votes of two-thirds of Members of Parliament, each extension not exceeding twelve months from the date of the resolution effecting the extension; and any such resolution may be revoked at any time by a resolution supported by the votes of a simple majority of all the Members of Parliament.

(14) Any provision of this Section that a declaration made under subsection (1) shall lapse or cease to be in force at any particular time is without prejudice to the making of a further such declaration whether before or after that time.

(15) Every document purporting to be an instrument made or issued by the President or other authority or person in pursuance of this section, or of any regulation made thereunder and to be signed by or on behalf of the President or such other authority or person, shall be received in evidence, and shall, until the contrary be proved, be deemed to be an instrument made or issued by the President or that authority or person.

(16) The President may summon Parliament to meet for the purpose of subsection (2) notwithstanding that Parliament then stands dissolved, and the persons who were Members of Parliament immediately before the dissolution shall be deemed, for those purposes, still to be Members of Parliament but subject to the provisions of section 79 of this Constitution (which relates to the election of the Speaker of Parliament), without prejudice to the provisions of section 85 of this Constitution (which relates to the prolongation of the

life of Parliament during a period of public emergency), Parliament shall not when summoned by virtue of this subsection transact any business other than debating and voting upon a resolution for the purpose of subsection (2).

(17) During a period of detention—

(a) if any person who is detained in such a case as is mentioned in paragraph (a) of subsection (6) and who is not released so requests at any time not earlier than thirty days after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law, comprising not more than three persons from amongst persons of not less than fifteen year's standing entitled to practice in Sierra Leone as legal practitioners;

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

(c) on any review by a tribunal in pursuance of paragraph (a) of the case of any detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by whom it was ordered, but unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

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

30. (1) In this Chapter, unless the context otherwise requires, the following expressions have the following meanings respectively, that is to say—

“contravention” in relation to any requirement includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law in Sierra Leone other than a local court or a court constituted by or under service law and—

Interpretation of Chapter III.

(a) in section 16, section 17, section 18, section 19, subsections (3), (5), (6), (9) (but not the proviso thereto) and (11) of Section 23, subsection (2) of section 25, subsection 8 of section 27, subsection (3) of section 28 and subsection (4) of section 29 includes, in relation to an offence against service law, a court so constituted; and

(b) in sections 17 and 19, and subsection (8) of section 27, includes, in relation to an offence against service law, an officer of a defence force or of the Sierra Leone Police Force;

“defence force” means any naval, military or airforce of the Government of the Republic of Sierra Leone;

“member” in relation to a defence force or other disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline;

“owner” includes any person or his successor in title deprived of any right or interest pursuant to section 21; and

“service law” means the law regarding the discipline of a defence force or of the Sierra Leone Police Force or the Prisons Service or any disciplined volunteer force.

(2) References in sections 16, 17, 18 and 21 to a “criminal offence” shall be construed as including references to an offence against service law and such references in subsections (4) to (9) of section 23 shall, in relation to proceedings before a court constituted by or under service law, be similarly construed.

(3) Nothing done by or under the authority of the law of any country other than Sierra Leone to a member of an armed force raised under that law and lawfully present in Sierra Leone shall be held to be in contravention of the provisions of this Chapter.

(4) In relation to any person who is a member of a disciplined force raised under an Act of Parliament, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(5) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Sierra Leone, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(6) In determining the appropriate “majority of all Members of Parliament” account shall only be taken of the persons actually and validly existing as Members of Parliament at the relevant time.

CHAPTER IV—THE REPRESENTATION OF THE PEOPLE

31. Every citizen of Sierra Leone being eighteen years of age and above and of sound mind shall have the right to vote, and accordingly shall be entitled to be registered as a voter for the purposes of public elections and referenda. Registration of voters.

32. (1) There shall be an Electoral Commission for Sierra Leone. Electoral Commission.

(2) The members of the Electoral Commission shall be a Chief Electoral Commissioner, who shall be Chairman, and four other members who shall be known as Electoral Commissioners.

(3) The members of the Electoral Commission shall be appointed by the President after consultation with the leaders of all registered political parties and subject to the approval of Parliament.

(4) A person shall not be qualified—

(a) for appointment as a member of the Electoral Commission if he is not qualified to be elected as a Member of Parliament, or

(b) 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.

(5) The terms and conditions of service of members of the Electoral Commission shall be such as Parliament shall prescribe.

(6) A member of the Electoral Commission shall before assuming the functions of his office, take and subscribe before the President the Oath as set out in the Third Schedule to this Constitution.

(7) Subject to the provisions of this section, a member of the Electoral Commission shall vacate his office—

(a) at the expiration of five years from the date of his appointment; or

(b) on attaining the age of sixty-five years; or

(c) if any circumstances arise which, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

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

(9) A member of the Electoral Commission shall not be removed from office except in accordance with the provisions of this section.

(10) Whenever a member of the Electoral Commission dies, resigns, is removed from office, or is absent from Sierra Leone, or is by reason of illness or any other cause unable to perform the functions of his office, the President may appoint a person who is qualified to be appointed Electoral Commissioner and any person so appointed shall, subject to the provisions of subsections (6) and (7), continue to perform those functions until his appointment is revoked by the President, or until the Electoral Commissioner is able to perform those functions, or until the appointment of a new Electoral Commissioner.

(11) In the exercise of any functions vested in it by this Constitution, the Electoral Commission shall not be subject to the direction or control of any person or authority.

(12) The Chief Electoral Commissioner shall submit a report on the programme and work of the Electoral Commission at least once a year to the President and copy of such report shall be laid before Parliament.

Functions
of the
Electoral
Com-
mission.

33. Subject to the provisions of this Constitution, the Electoral Commission shall be responsible for the conduct and supervision of the registration of voters for, and of, all public elections and referenda; and for that purpose shall have power to make regulations by statutory instrument for the registration of voters, the conduct of Presidential, Parliamentary or Local Government elections and referenda, and other matters connected therewith, including regulations for voting by proxy.

Political
Parties
Registra-
tion Com-
mission.

34. (1) There shall be a Political Parties Registration Commission which shall consist of four members appointed by the President, namely—

- (a) the Chairman of the Commission, who shall be a person who has held Judicial office or is qualified to be appointed a Judge of the Superior Court of Judicature nominated by the Judicial and Legal Service Commission;
- (b) the Chief Electoral Commissioner;

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

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

(2) The members of the Commission, other than the Chief Electoral Commissioner, shall be appointed by the President, subject to the approval of Parliament.

(3) The Administrator and Registrar-General shall be Secretary to the Commission.

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

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

(5) In the exercise of any functions vested in it by this Constitution, the Commission shall not be subject to the direction or control of any person or authority, save only as regards the right to appeal contained in section 35.

35. (1) Subject to the provisions of this section, political parties may be established to participate in shaping the political will of the people, to disseminate information on political ideas, and social and economic programmes of a national character, and to sponsor candidates for Presidential, Parliamentary or Local Government elections. Registra-
tion and
conduct of
political
parties.

(2) The internal organisation of a political party shall conform to democratic principles, and its aims, objectives, purposes and programmes shall not contravene, or be inconsistent with, any provisions of this Constitution.

(3) A statement of the sources of income and the audited accounts of a political party, together with a statement of its assets and liabilities, shall be submitted annually to the Political Parties Registration Commission, but no such account shall be audited by a member of the political party whose account is submitted.

(4) No political party shall have as a leader a person who is not qualified to be elected as a Member of Parliament.

(5) No association, by whatever name called, shall be registered or be allowed to operate or to function as a political party if the Political Parties Registration Commission is satisfied that—

- (a) membership or leadership of the party is restricted to members of any particular tribal or ethnic group or religious faith; or
- (b) the name, symbol, colour or motto of the party has exclusive or particular significance or connotation to members of any particular tribal or ethnic group or religious faith; or
- (c) the party is formed for the sole purpose of securing or advancing the interests and welfare of a particular tribal or ethnic group, community, geographical area or religious faith; or
- (d) the party does not have a registered office in each of the Provincial Headquarter towns and the Western Area.

(6) Subject to the provisions of this Constitution, and in furtherance of the provisions of this section, Parliament may make laws regulating the registration, functions and operation of political parties.

(7) Any association aggrieved by a decision of the Political Parties Registration Commission under this section may appeal to the Supreme Court and the decision of the Court shall be final.

(8) For the purposes of this section the expression—

“association” includes any body of persons, corporate or incorporate, who agree to act together for any common purpose, or an association formed for any ethnic, social, cultural, occupational or religious purpose; and

“political party” means any association registered as a political party as prescribed by subsection (5).

36. At any public elections or referenda voting shall be by secret ballot.

37. (1) In any referendum held pursuant to an Act of Parliament, every person who is entitled to vote in elections of Members of Parliament shall be entitled to vote at such referendum and no other person may so vote; and the issue in the referendum shall not be regarded as having been approved at that referendum unless it was so approved by the votes of not less than one-half of all such persons or by not less than two-thirds of all the valid votes cast.

(2) The conduct of any referendum for the purposes of subsection (1) shall be under the general supervision of the Electoral Commission and the provisions of Section 38 of this Constitution

Secret
ballot.

Referen-
dum.

shall apply in relation to the exercise by the Electoral Commission of its functions with respect to a referendum as they apply in relation to the exercise of its functions with respect to elections of Members of Parliament.

(3) A Bill for an Act of Parliament under this Section shall not be submitted to the President for his assent unless it is accompanied by a certificate under the hand of the Speaker (or if the Speaker is for any reason unable to exercise the functions of his office, the Deputy Speaker) that the provisions of subsections (1), (2) and (3) of section 106 and, where appropriate, the provisions of subsections (1) and (2) have been complied with.

38. (1) Sierra Leone shall be divided into such constituencies for the purpose of electing the Members of Parliament referred to in paragraph (b) of subsection (1) of section 74 of this Constitution as the Electoral Commission, acting with the approval of Parliament signified by resolution of Parliament, may prescribe.

Consti-
tuencies
and
elections.

(2) Every constituency established under this section shall return one Member of Parliament.

(3) The boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable:

Provided that the number of inhabitants of such a constituency may be greater or less than the population quota in order to take account of means of communications, geographical features, density of population, the distribution of different communities, the areas and boundaries of the Chiefdoms and other administrative or traditional areas.

(4) The Electoral Commission shall review the division of Sierra Leone into constituencies at intervals of not less than five and not more than seven years, and may alter the constituencies in accordance with the provisions of this section to such extent as it may consider desirable in the light of the review:

Provided that the Commission may at any time carry out such a review and alter the constituencies in accordance with the provisions of this section to such extent as it considers necessary in consequence of any alteration in the number of Members of Parliament referred to in paragraph (b) of subsection (1) of section 74 by reason of the holding of a census of the population of Sierra Leone in pursuance of an Act of Parliament.

(5) Where the boundaries of any constituency are altered in accordance with the provisions of this section, that alteration shall

come into effect upon the next dissolution of Parliament after the alteration has been approved by Parliament:

(6) In this section "population quota" means the number obtained by dividing the number of inhabitants of Sierra Leone by the number of constituencies into which Sierra Leone is divided under this section.

(7) For the purposes of this section the number of inhabitants of Sierra Leone shall be ascertained by reference to the latest census of the population of Sierra Leone held in pursuance of an Act of Parliament or if no census has been so held, by reference to any available information, which in the opinion of the Electoral Commission best indicates the number of those inhabitants.

(8) The registration of voters and the conduct of elections in every constituency shall be subject to the direction and supervision of the Electoral Commission, and it shall cause the register of voters to be revised and reviewed at least once in every three years.

Filling of vacancies.

39. (1) When the seat of any member of Parliament becomes vacant, the vacancy shall be filled by election, not later than six months after the vacancy occurs, in accordance with the provisions of law relating to such election:

Provided that if Parliament is dissolved before such election is due to be held, the vacancy shall be filled at the general election.

(2) The Proclamation appointing a date for the holding of an election to fill a vacancy shall be published in the Gazette not less than twenty-one days before the date appointed for holding the election.

CHAPTER V—THE EXECUTIVE

PART I—THE PRESIDENT

Office of President.

40. (1) There shall be a President of the Republic of Sierra Leone who shall be Head of State, the supreme executive authority of the Republic and Commander-in-Chief of the Armed Forces.

(2) The President shall be the Fountain of Honour and Justice and the symbol of national unity and sovereignty.

(3) The President shall be the guardian of the Constitution and the guarantor of national independence and territorial integrity and shall ensure respect for treaties and international agreements.

(4) Notwithstanding any provisions of this Constitution or any other law to the contrary, the President shall, without prejudice to any such law as may for the time being be adopted by Parliament,

be responsible, in addition to the functions conferred upon him in the Constitution, for—

- (a) all constitutional matters concerning legislation;
- (b) relations with Foreign States;
- (c) the reception of Envoys accredited to Sierra Leone and the appointment of principal representatives of Sierra Leone abroad;
- (d) the execution of treaties, agreements or conventions in the name of Sierra Leone;
- (e) the exercise of the Prerogative of Mercy;
- (f) the grant of Honours and Awards;
- (g) the declaration of war; and
- (h) such other matters as may be referred to the President by Parliament:

Provided that any Treaty, Agreement or Convention executed by or under the authority of the President which relates to any matter within the legislative competence of Parliament, or which in any way alters the law of Sierra Leone or imposes any charge on, or authorises any expenditure out of, the Consolidated Fund or any other fund of Sierra Leone, and any declaration of war made by the President shall be subject to ratification by Parliament—

- (i) by an enactment of Parliament; or
- (ii) by a resolution supported by the votes of not less than one-half of the Members of Parliament.

41. No person shall be qualified for election as President unless he—

Qualifications for Office of President.

- (a) is a citizen of Sierra Leone;
- (b) is a member of a political party;
- (c) has attained the age of forty years; and
- (d) is otherwise qualified to be elected as a Member of Parliament.

42. (1) A Presidential candidate shall be nominated by a political party.

Election of President.

(2) The following provisions shall apply to an election to the office of President—

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- (a) all persons registered in Sierra Leone as voters for the purposes of election to Parliament shall be entitled to vote in the election;
- (b) the poll shall be taken by a secret ballot on such day or days, at such time, and in such manner as may be prescribed by or under an Act of Parliament;
- (c) a candidate for an election to the office of President shall be deemed to have been duly elected to such office where he is the only candidate nominated for the election after the close of nomination;
- (d) where in an election to the office of President a candidate nominated for the election dies, is incapacitated or disqualified, the party which nominated him shall within seven days of such death, incapacitation or disqualification, nominate another candidate;
- (e) no person shall be elected as President of Sierra Leone unless at the Presidential election he has polled not less than fifty-five per cent of the valid votes in his favour; and
- (f) in default of a candidate being duly elected under paragraph (e), the two candidates with the highest number or numbers of votes shall go forward to a second election which shall be held within fourteen days of the announcement of the result of the previous election, and the candidate polling the higher number of votes cast in his favour shall be declared President.

(3) A person elected to the office of President under this section shall assume that office on the day upon which he is declared elected by the Returning Officer, or upon the date that his predecessor's term of office expires, whichever is the latter.

Period during which Presidential election shall be held.

43. A Presidential election shall take place—

- (a) where the office of President is to become vacant by effluxion of time and the President continues in office after the beginning of the period of four months ending with the date when his term of office would expire by effluxion of time, during the first three months of that period;

- (b) in any other case, during the period of three months beginning with the date when the office of President becomes vacant;

Provided that—

- (a) where any proceedings have been lawfully commenced or taken for the purposes of the election and assumption of office of a President, it shall not be recommended or retaken whether or not a President has thereby been duly elected, by reason only that a vacancy has occurred in the office of President otherwise than by effluxion of time; and the said proceedings shall, subject to the provisions of this Constitution, be continued and completed in accordance with this Constitution and any other law for the time being in force relating thereto, with such modification as may be necessary; and
- (b) where the office of President becomes vacant during a period when Parliament is dissolved, the Presidential election shall be held and completed before the election of Members of Parliament.

44. Parliament shall make laws for the purpose of regulating the election of the President and other matters connected therewith.

Parliament to make laws for election of President.

45. (1) The Chief Electoral Commissioner shall be the Returning Officer for the election of a President.

Presidential Returning Officer.

(2) Any question which may arise as to whether—

- (a) any provision of this Constitution or any law relating to the election of a President under sections 42 and 43 of this Constitution has been complied with; or
- (b) any person has been validly elected as President under section 42 of this Constitution or any other law,

shall be referred to and determined by the Supreme Court.

46. (1) No person shall hold office as President for more than two terms of five years each whether or not the terms are consecutive.

Tenure of office of President, etc.

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(2) Any person who is elected President while he is, or has been elected a Member of Parliament shall, on assuming office as President, cease to be an elected Member of Parliament and his seat shall be declared vacant.

(3) The President shall not, while he continues in office as President, hold any other office of profit or emolument in the service of Sierra Leone or occupy any other position carrying the right of remuneration for rendering services.

Second
Schedule.

(4) Upon his assumption of office, the President shall take and subscribe the oath for the due execution of his office as set out in the Second Schedule to this Constitution.

(5) The oath aforesaid shall be administered by the Chief Justice of Sierra Leone or the person for the time being appointed to exercise the functions of the Chief Justice.

President
in
Parliament.

47. The President shall be entitled to address Parliament in person or to send a message to Parliament to be read by his Vice-President or a Minister on his behalf.

Incidents
of office,
etc.

48. (1) The President shall receive such salary and allowances as may be prescribed by Parliament and such salary and allowances payable to the President are hereby charged on the Consolidated Fund.

(2) The salary and allowances of the President shall not be altered to his disadvantage during his tenure of office.

(3) The President shall be exempted from personal taxation.

(4) While any person holds or performs the functions of the office of President, no civil or criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his official or private capacity.

(5) The President shall be entitled to such pension and retiring benefits as shall be prescribed by Parliament.

Vacancy in
office of
President.

49. (1) The office of President shall become vacant—

(a) on the expiration of any of the terms prescribed in subsection (1) of section 46 of this Constitution;

(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:

Provided that the President shall not resign or retire from this office even at the due expiration of his term of office while a general election of Members of Parliament is pending within the ensuing three months, or where a state of public emergency has been declared.

(2) If Sierra Leone is at war in which the national territory is physically involved, and the President considers that it is not practicable to hold elections, Parliament may by resolution extend the period of five years mentioned in sub-section (1) of section 46, but no such extension shall exceed a period of six months at any one time.

(3) Any resignation or retirement by a person from the office of President shall be in writing addressed to the Chief Justice and a copy thereof shall be sent to the Speaker and the Chief Electoral Commissioner.

(4) Whenever the President dies, resigns, retires or is removed from office as a result of paragraphs (b) and (c) of subsection (1), the Vice-President shall assume office as President for the unexpired term of the President with effect from the date of the death, resignation, retirement or removal of the President, as the case may be.

(5) The Vice-President shall, before assuming office as President in accordance with subsection (4), take and subscribe the oath for the due execution of his office as set out in the Second Schedule to this Constitution.

50. (1) Where the Cabinet has resolved that the question of the mental or physical capacity of the President to discharge the functions conferred on him by this Constitution ought to be investigated and has informed the Speaker accordingly, the Speaker shall, in consultation with the Head of the Medical Service of Sierra Leone, appoint a Board consisting of not less than five persons selected by him from among persons registered as medical practitioners under the laws of Sierra Leone.

Mental or
physical
incapacity.

(2) The Board appointed under subsection (1) shall enquire into the matter and make a report to the Speaker stating the opinion of the Board whether or not the President is, by reason of any infirmity of mind or body, incapable of discharging the functions conferred on the President by this Constitution.

(3) Where the Cabinet has resolved that the question of the mental or physical capacity of the President to discharge the functions conferred on him by this Constitution ought to be investigated in accordance with the provisions of subsection (1), the President shall, as soon as another person assumes the office of President, cease to perform those functions and until the Board submits its report, those functions shall be exercised in accordance with subsection (1) of section 52 of this Constitution.

(4) Where the Board reports that the President is incapable of discharging the functions conferred on him by this Constitution by reason of infirmity of mind or body, the Speaker shall certify in writing accordingly, and thereupon, the President shall cease to hold office and a vacancy shall be deemed to have occurred in the office of President and subsection (4) of section 4 of this Constitution shall apply.

(5) Upon receipt of the report of the Board referred to in subsection (4), the Speaker shall—

(a) if Parliament is then sitting or has been summoned to meet, within five days communicate the report to Parliament;

(b) if Parliament is not then sitting, (and notwithstanding that it may be prorogued), summon Parliament to meet within twenty-one days after the receipt by the Speaker of the report of the Board and communicate the report of the Board to Parliament.

(6) For the purposes of this section—

(a) the Cabinet may act notwithstanding any vacancy in its membership or the absence of any member;

(b) a Certificate by the Speaker that the President is by reason of mental or physical infirmity unable to discharge the functions of the office of President conferred on him by this Constitution shall, in respect of any period for which it is in force, be conclusive and shall not be entertained or enquired into in any court.

Misconduct by President.

51. (1) If notice in writing is given to the Speaker signed by not less than one-half of all the Members of Parliament of a motion alleging that the President has committed any violation of the Constitution or any gross misconduct in the performance of the functions

of his office and specifying the particulars of the allegations and proposing that a tribunal be appointed under this section to investigate those allegations, the Speaker shall—

(a) if Parliament is then sitting or has been summoned to meet within five days, cause the motion to be considered by Parliament within seven days of the receipt of the notice; or

(b) if Parliament is not then sitting, (and notwithstanding that it may be prorogued), summon Parliament to meet within twenty-one days of the receipt of the notice, and cause the motion to be considered by Parliament.

(2) Where a motion under this section is proposed for consideration by Parliament, it shall meet in secret session and shall not debate the motion, but the Speaker or the person presiding in Parliament shall forthwith cause a vote to be taken on the motion and, if the motion is supported by the votes of not less than two-thirds of all Members of Parliament, shall declare the motion to be passed.

(3) If a motion is declared to be passed under subsection (2)—

(a) the Speaker shall immediately notify the Chief Justice who shall appoint a Tribunal which shall consist of a Chairman who shall be a Justice of the Supreme Court and not less than four others selected by the Chief Justice, at least two of whom shall hold or shall have held high judicial office;

(b) the Tribunal shall investigate the matter and shall within the period of three months from the date on which the motion was passed report to Parliament through the Speaker whether or not it finds the particulars of the allegation specified in the motion to have been sustained;

(c) the President shall have the right to appear and be represented before the Tribunal during its investigation of the allegations against him.

(4) If the Tribunal reports to Parliament that it finds that the particulars of any allegations against the President specified in the motion have not been substantiated, no further proceedings shall be taken under this Section in respect of that allegation.

(5) Where the Tribunal reports to Parliament that it finds that the particulars of any allegation specified in the motion have been substantiated, Parliament may, in secret session, on a motion supported by the votes of not less than two-thirds of all the Members of Parliament, resolve that the President has been guilty of such violation of the Constitution or, as the case may, such gross misconduct as is incompatible with his continuance in office as President; and where Parliament so resolves, the President shall thereupon cease to hold office and a vacancy shall then be deemed to have occurred in the office of President and subsection (4) of Section 49 of this Constitution shall apply accordingly.

Temporary filling of vacancy.

52. (1) Whenever the President is absent from Sierra Leone or is by reason of illness or any other cause unable to perform the functions conferred upon him by this Constitution, those functions shall be performed by the Vice-President.

(2) Upon assumption of office under subsection (1), the Vice-President shall not take and subscribe the oath of office of President.

PART II—EXECUTIVE POWERS

Exercise of executive authority in Sierra Leone.

53. (1) Subject to the provisions of this Constitution, the executive power in Sierra Leone shall vest in the President and may be exercised by him directly or through members of the Cabinet, Ministers, Deputy Ministers or public officers subordinate to him.

(2) In the exercise of his functions, the President may act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet except in cases where, by this Constitution or any other law, he is required to act with the approval of Parliament or in accordance with the advice of any person or authority other than the Cabinet.

Provided that the President shall always act in accordance with his deliberate judgement in signifying his approval for the purpose of an appointment to an office on his personal staff.

(3) Where by this Constitution or under any other law the President is required to act in accordance with the advice of any person or authority, the question whether he has in any case received or acted in accordance with such advice shall not be inquired into in any court.

(4) The reference in subsection (1) to the functions of the President shall be construed as reference to his powers and duties in the exercise of the executive authority of Sierra Leone and to any

other powers and duties conferred or imposed on him as President by or under this Constitution or any other law.

(5) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President.

54. (1) There shall be a Vice-President of the Republic of Sierra Leone who shall be the Principal Assistant to the President in the discharge of his executive functions. ^{Vice-President.}

(2) A person—

(a) shall be designated a candidate for the office of Vice-President by a Presidential candidate before a Presidential election;

(b) shall not be qualified to be a candidate for the office of Vice-President unless he has the qualifications specified in section 41.

(3) A candidate shall be deemed to be duly elected as Vice-President if the candidate who designated him as candidate for election to the office of Vice-President has been duly elected as President in accordance with the provisions of section 42.

(4) The Vice-President shall, before entering upon the duties of his office, take and subscribe the oath of Vice-President as set out in the Third Schedule of this Constitution.

(5) Whenever the office of the Vice-President is vacant, or the Vice-President dies, resigns, retires or is removed from office, the President shall appoint a person qualified to be elected as a Member of Parliament to the office of Vice-President with effect from the date of such vacancy, death, resignation, retirement or removal.

(6) Whenever the President and Vice-President are both for any reason unable to perform the functions of the President, the Speaker of Parliament shall perform those functions until the President or Vice-President is able to perform those functions, and shall take and subscribe the oath of office as set out in the Second Schedule before commencing to perform those functions.

(7) Where the Speaker of Parliament assumes the office of President as a result of the death, resignation or removal from office of the President and Vice-President, there shall be a Presidential election within ninety days of that assumption of office.

(8) The provisions of sections 50 and 51 of this Constitution, relating to the removal from office of the President, shall apply to the removal from office of the Vice-President.

Vacancy in the office of Vice-President.

55. The office of the Vice-President shall become vacant—

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

Ministers and Deputy Ministers of Government.

X 56. (1) 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.

(2) A person shall not be appointed a Minister or Deputy Minister unless—

- (a) he is qualified to be elected as a Member of Parliament; and
- (b) he has not contested and lost as a candidate in the general election immediately preceding his nomination for appointment; and
- (c) his nomination is approved by Parliament.

(3) A Minister or a Deputy Minister 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:

Provided that the Vice-President, the Ministers and the Deputy Ministers shall be entitled to such remuneration allowances, gratuities, pensions, and other incidents of office as may be prescribed by Parliament.

(4) Subject to the provisions of section 53 of this Constitution, the Ministers and Deputy Ministers shall hold office at the President's discretion.

(5) Subject to the provisions of subsection (6), the Vice-President and the other Ministers under the direction of the President shall be responsible for such departments of State or other business of the Government as the President may assign to them.

(6) Notwithstanding the provisions of subsection (5), the President shall be responsible for such departments of State, including the Commissions established under this Constitution, as he may determine.

57. A Minister or a Deputy Minister shall not enter upon the duties of his office unless he has taken and subscribed the oath for the due execution of his duties as set out in the Third Schedule.

Oaths to be taken by Ministers, etc.

58. (1) The office of a Minister or a Deputy Minister shall become vacant—

Ministerial vacancies.

- (a) on the expiration of the term of office of the President; or
- (b) if his appointment is revoked by the President; or
- (c) if he resigns or retires from office or dies; or
- (d) if he is elected as Speaker or Deputy Speaker of Parliament; or
- (e) upon the assumption of any other person to the office of President.

(2) Notwithstanding the provisions of paragraphs (a) and (e) of subsection (1), Ministers and Deputy Ministers shall not vacate office as such by reason of the expiration of the term of office of the President or the assumption by the Speaker to the office of President pursuant to subsections (7) and (8) of section 54 and shall accordingly continue to perform the functions of their respective offices until the election of the new President and the Vice-President.

59. (1) There shall be a Cabinet whose functions shall be to advise the President in the government of Sierra Leone and which shall consist of the President, the Vice-President and such Ministers as the President may from time to time appoint.

Establishment of Cabinet.

(2) A person appointed as a Member of Cabinet shall vacate his seat in the Cabinet if he ceases to be a Minister or if the President so directs.

(3) The Cabinet shall determine the general policy of the Government.

(4) The President shall hold regular meetings of the Cabinet at which he shall preside, and in his absence the Vice-President shall preside.

Collective responsibility.

60. (1) The Cabinet shall be collectively responsible to Parliament for any advice given to the President by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office.

(2) The provisions of this section shall not apply in relation to—

- (a) the appointment and removal from office of Ministers and Deputy Ministers, or the assignment of responsibility to any Minister; or
- (b) the exercise of the prerogative of mercy; or
- (c) the exercise by the Attorney-General and Minister of Justice or the Director of Public Prosecutions of the powers conferred upon them under section 66.

Constitution of offices.

61. Subject to the provisions of this Constitution and of any Act of Parliament, the President may constitute offices for Sierra Leone, make appointments to any such office and terminate any such appointment.

Administration of ministries.

62. Where any Minister has been charged with responsibility for any department of Government, he shall exercise general direction and control over that department and, subject to such direction and control, the department shall be under the supervision of a Permanent Secretary, whose office shall be a public office:

Provided that two or more Departments of Government may be placed under the supervision of one Permanent Secretary.

Prerogative of Mercy.

63. (1) The President may, acting in accordance with the advice of a Committee appointed by the Cabinet over which the Vice-President shall preside—

- (a) grant any person convicted of any offence against the laws of Sierra Leone a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period of the execution of any punishment imposed on that person for such an offence;
- (c) substitute a less severe form of punishment for any punishment imposed on any person for such an offence;

(d) remit the whole or any part of any punishment imposed upon any person for such an offence or any penalty or forfeiture otherwise due to the Government on account of such an offence.

(2) Where any person has been sentenced to death by any Court for any offence, the Committee appointed under subsection (1) shall cause a written report of the case from the trial judge together with such other information, including a medical report on the prisoner, derived from the record of the case or elsewhere, as the Committee may require, to be submitted to it as soon as possible.

64. (1) There shall be an Attorney-General and Minister of Justice who shall be the principal legal adviser to the Government and a Minister. Establishment of office of Attorney-General and Minister of Justice.

(2) The Attorney-General and Minister of Justice shall be appointed by the President from among persons qualified to hold office as a Justice of the Supreme Court and shall have a seat in the Cabinet.

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

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

65. (1) There shall be a Solicitor-General, whose office shall be a public office. Solicitor-General.

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

(3) A person shall not be qualified to hold or act in the office of Solicitor-General unless he is qualified for appointment as a Justice of the Court of Appeal.

(4) The Solicitor-General shall be the principal assistant to the Attorney-General and Minister of Justice.

(5) The Solicitor-General shall have audience in all courts in Sierra Leone except local courts.

(6) The Solicitor-General shall in all matters or any other law be subject to the general or special direction of the Attorney-General and Minister of Justice.

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(7) Subject to the provisions of this section, a person holding the office of Solicitor-General shall vacate his office when he attains the age of sixty-five years.

(8) If the office of Solicitor-General is vacant or the holder of that office is for any reason unable to perform the functions thereof, a person qualified for appointment to that office may be appointed to act therein, and any person so appointed shall, subject to the provisions of subsection (7) and subsections (9) to (12) inclusive, continue to act until a person has been appointed to and has assumed the functions of the office of Solicitor-General or until the person holding that office has resumed those functions.

(9) The Solicitor-General may be removed from office only for inability to discharge the functions of his office, (whether arising from infirmity of mind or body or any other cause), or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(10) If the Judicial and Legal Service Commission represents to the President that the question of removing the Solicitor-General from office under subsection (9) ought to be investigated then—

- (a) the President, acting in consultation with the Judicial and Legal Service Commission, shall appoint a tribunal which shall consist of a Chairman and two other members, all of whom shall be persons who hold, have held or are qualified to hold office as a Justice of the Supreme Court; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof and the findings thereon, and recommend to the President whether the Solicitor-General ought to be removed from office under subsection (12).

(11) Where the question of removing the Solicitor-General from office has been referred to a tribunal under subsection (10), the President may suspend the Solicitor-General from performing the functions of his office, and any such suspension may at any time be revoked by the President, and shall in any case cease to have effect if the tribunal recommends to the President that the Solicitor-General shall not be removed from office.

(12) The Solicitor-General shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (10) and the tribunal has recommended to the President that he ought to be re-

moved from office for inability to discharge the functions of his office as stated in subsection (9) or for misbehaviour.

66. (1) There shall be a Director of Public Prosecutions, whose office shall be a public office. Director of Public Prosecutions.

(2) The Director of Public Prosecutions shall be appointed by the President on the advice of the Judicial and Legal Service Commission and subject to the approval of Parliament, and shall, before assuming the functions of his office, take and subscribe to the oath as set out in the Third Schedule to this Constitution.

(3) A person shall not be qualified to hold or act in the office of Director of Public Prosecutions unless he is qualified for appointment as a Justice of the Court of Appeal.

(4) Subject to subsection (3) of section 64, the Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do—

- (a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against the laws of Sierra Leone;
- (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(5) The powers of the Director of Public Prosecutions under subsection (4) may be exercised by him in person or through other persons acting under and in accordance with his general or special instructions.

(6) The Director of Public Prosecutions shall in all matters including his powers under this Constitution or any other law be subject to the general or special direction of the Attorney-General and Minister of Justice.

(7) The powers conferred upon the Attorney-General and Minister of Justice by this section shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this section shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(8) In the exercise of the powers conferred upon him by this section, the Attorney-General and Minister of Justice shall not be subject to the direction or control of any other person or authority.

(9) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purposes of any such proceedings, to any other court shall be deemed to be part of those proceedings.

(10) Subject to the provisions of this section, a person holding the office of Director of Public Prosecutions shall vacate his office when he attains the age of sixty-five years.

(11) If the office of Director of Public Prosecutions is vacant or the holder of that office is for any reason unable to perform the functions thereof, a person qualified for appointment to that office may be appointed to act therein, and any person so appointed shall, subject to the provisions of subsection (10) and subsections (12) to (15) inclusive, continue to act until a person has been appointed to and has assumed the functions of the office of Director of Public Prosecutions or until the person holding that office has resumed those functions.

(12) The Director of Public Prosecutions may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(13) If the Judicial and Legal Service Commission represents to the President that the question of removing the Director of Public Prosecutions from office under subsection (12) ought to be investigated then—

- (a) the President, acting in consultation with the Judicial and Legal Service Commission, shall appoint a tribunal which shall consist of a Chairman and two other members, all of whom shall be persons who hold, have held, or are qualified to hold office as a Justice of the Supreme Court; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof and the findings thereon to the President and recommend to the President whether the Director of Public Prosecutions ought to be removed from office under subsection (15).

(14) Where the question of removing the Director of Public Prosecutions from office has been referred to a tribunal under subsection (10), the President may suspend the Director of Public Prosecutions from performing the functions of his office, and any such suspension may at any time be revoked by the President, and shall in any case cease to have effect if the tribunal recommends to the President that the Director of Public Prosecutions shall not be removed from office.

(15) The Director of Public Prosecutions shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (13) and the tribunal has recommended to the President that he ought to be removed from office for inability as aforesaid or for misbehaviour.

67. (1) There shall be a Secretary to the President who shall be appointed by the President at his sole discretion.

Secretary
to the
President.

(2) The functions of the Secretary to the President shall include—

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

(3) The office of Secretary to the President and the offices of members of his staff shall be public offices.

(4) Before assuming the functions of his office, the Secretary to the President shall take and subscribe to the oath as set out in the Third Schedule to this Constitution.

68. (1) There shall be a Secretary to the Cabinet who shall be the Head of the Civil Service and whose office shall be a public office.

Secretary
to the
Cabinet.

(2) The Secretary to the Cabinet shall be appointed by the President in consultation with the Public Service Commission.

(3) The functions of the Secretary to the Cabinet shall include—

- (a) having charge of the Cabinet Secretariat;
- (b) responsibility for arranging the business for, and keeping the minutes of, the Cabinet, and for con-

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veying the decisions of the Cabinet to the appropriate person or authority, in accordance with instructions as may be given to him by the President;

(c) co-ordinating and supervising the work of administrative heads of ministries and departments in the Public Service;

(d) such other functions as the President may from time to time determine.

(4) The Secretary to the Cabinet shall not assume duties of his office unless he has taken and subscribed to the oath as set out in the Third Schedule to this Constitution.

Secretary to the Vice-President.

69. (1) There shall be a Secretary to the Vice-President whose office shall be a public office.

(2) The Secretary to the Vice-President shall be appointed by the President in consultation with the Public Service Commission and shall, before assuming the functions of his office, take and subscribe to the oath as set out in the Third Schedule to this Constitution.

Power of appointment vested in the President.

70. 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, subject to the approval of Parliament.

Other statutory appointments.

71. Notwithstanding the provisions of section 152 of this Constitution and save as otherwise provided in this Constitution, the President shall, in accordance with the provisions of this Constitution or any other law, appoint—

(a) to any office to which section 141 (which relates to the offices within the jurisdiction of the Judiciary and Legal Service Commission) applies;

(b) to any office to which sections 153 and 154, which relate to certain offices abroad and the offices of Permanent Secretaries respectively, apply;

(c) the Governor and the other members of the governing body of any State Bank, Banking or Financial Institutions.

72. (1) The institution of Chieftaincy as established by customary law and usage and its non-abolition by legislation is hereby guaranteed and preserved. Office of Paramount Chief.

(2) Without derogating from the generality of the provisions of subsection (1), no provision of law in so far as it provides for the abolition of the office of Paramount Chief as existing by customary law and usage immediately before the entry into force of this Constitution, shall have effect unless it is included in an Act of Parliament and the provisions of Section 108 shall apply in relation to the Bill for such an Act as they apply in relation to the Bill for an Act of Parliament that alters any of the provisions of this Constitution that are referred to in subsection (3) of that section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, the provisions of subsection (1) to the extent that the law in question makes provision for the determination, in accordance with appropriate customary law and usage, of the validity of the nomination, election, unseating or replacement of any Paramount Chief, or the question of restraining in any way the exercise of any rights, duties, privileges or functions conferred upon, or enjoyed by him, by virtue of his office or the installation or deposition of a person as a Paramount Chief.

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

(5) Subject to the provisions of this Constitution and in furtherance of the provisions of this section, Parliament shall make laws for the qualifications, election, powers, functions, removal and other matters connected with Chieftaincy.

CHAPTER VI—THE LEGISLATURE

PART I—COMPOSITION OF PARLIAMENT

Establishment of Parliament.

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

(2) Subject to the provisions of this Constitution, the legislative power of Sierra Leone is vested in Parliament.

(3) Parliament may make laws for the peace, security order and good government of Sierra Leone.

Members of Parliament.

74. (1) Members of Parliament shall comprise the following—

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

(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.

(2) The number of Members of Parliament to be elected pursuant to paragraphs (a) and (b) of subsection (1) shall not together be less than sixty.

(3) In any election of Members of Parliament the votes of the electors shall be given by ballot in such manner as not to disclose how any particular elector votes.

(4) Members of Parliament shall be entitled to such salaries, allowances, gratuities, pensions and such other benefits as may be prescribed by Parliament.

Qualifications for membership of Parliament.

75. Subject to the provisions of section 76, any person who—

(a) is a citizen of Sierra Leone (otherwise than by naturalization); and

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

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

Act No. 44 of 1961.

(d) is able to speak and to read the English Language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of Parliament,

shall be qualified for election as such a Member of Parliament:

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

76. (1) No person shall be qualified for election as a Member of Parliament—

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

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

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

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

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

(f) if in the case of the election of such member as is referred to in paragraph (b) of subsection (1) of section 74, he is for the time being a Paramount Chief under any law; or

(g) if being a person possessed of professional qualifications, he is disqualified (otherwise than at his own request) from practising his profession in Sierra Leone by order of any competent authority

Disqualifications for membership of Parliament.

made in respect of him personally within the immediately preceding five years of an election held in pursuance of section 87; or

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

(2) A person shall not be qualified for election to Parliament if he is convicted by any court of any offence connected with the election of Members of Parliament:

Provided that in any such case the period of disqualification shall not exceed a period of five years from the date of the general election following the one for which he was disqualified.

(3) Any person who is the holder of any office the functions of which involve responsibility for, or in connection with, the conduct of any election to Parliament or the compilation of any register of voters for the purposes of such an election shall not be qualified for election to Parliament.

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

(5) Save as otherwise provided by Parliament, a person shall not be disqualified from being a Member of Parliament by reason only that he holds office as a member of a Statutory Corporation.

Act No. 20 of
1973
Cap. 61
Cap. 75
Cap. 76
Cap. 79
Cap. 80
Cap. 295.

Tenure of
seats of
Members of
Parliament.

77. (1) A Member of Parliament shall vacate his seat in Parliament—

- (a) on the dissolution of Parliament next following his election; or
(b) if he is elected Speaker of Parliament; or
(c) if any other circumstances arise that if he were not a Member of Parliament would cause him to be disqualified for election as such under section 76; or
(d) if he ceases to be a citizen of Sierra Leone; or
(e) if he is absent from sittings of Parliament for such period and in such circumstances as may be prescribed in the rules of procedure of Parliament; or

(f) if in the case of such a Member as is referred to in paragraph (b) of subsection (1) of section 74, he becomes a Paramount Chief under any law; or

(g) if he ceases to be qualified under any law to be registered as an elector for election of Members to Parliament; or

(h) if he is adjudged to be a lunatic or declared to be of unsound mind or sentenced to death; or

(i) if he is adjudged or otherwise declared a bankrupt under any law and has not been discharged; or

(j) if he resigns from office as a Member of Parliament by writing under his hand addressed to the Speaker, or if the Office of Speaker is vacant or the Speaker is absent from Sierra Leone, to the Deputy Speaker; or

(k) if he ceases to be a member of the political party of which he was a member at the time of his election to Parliament and he so informs the Speaker, or the Speaker is so informed by the Leader of that political party; or

(l) if by his conduct in Parliament by sitting and voting with members of a different party, the Speaker is satisfied after consultation with the Leader of that Member's party that the Member is no longer a member of the political party under whose symbol he was elected to Parliament; or

(m) if, being elected to Parliament as an independent candidate, he joins a political party in Parliament; or

(n) if he accepts office as Ambassador or High Commissioner for Sierra Leone or any position with an International or Regional Organization.

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

78. (1) The High Court shall have jurisdiction to hear and determine any question whether—

- (a) any person has been validly elected as a Member of Parliament; and

Determina-
tion of ques-
tion as to
membership
of Parlia-
ment.

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(b) the seat of a Member of Parliament has become vacant.

(2) The High Court to which any question is brought under subsection (1) shall determine the said question and give judgement thereon within four months after the commencement of the proceedings before that Court.

(3) An appeal shall lie to the Court of Appeal from the decision of the High Court on any matter determined pursuant to subsection (1), save that no appeal shall lie in respect of any interlocutory decisions of the High Court in such proceedings.

(4) The Court of Appeal before which an appeal is brought pursuant to subsection (3) shall determine the appeal and give judgement thereon within four months after the appeal was filed.

(5) The decision of the Court of Appeal on any matter pursuant to subsection (3) shall be final and not be inquired into by any Court.

(6) For the purpose of this section Parliament may make provision, or may authorise the making of provisions with respect to the practice and procedure of the High Court or the Court of Appeal, and may confer upon such Courts such powers or may authorise the conferment thereon of such powers as may appear to be necessary or desirable for the purpose of enabling the said Courts effectively to exercise the jurisdiction conferred upon them by this section or by any law relating to the hearing of appeals from the High Court.

The Speaker.

79. (1) The Speaker of Parliament shall be elected by the Members of Parliament from among persons who are Members of Parliament or are qualified to be elected as such and who are qualified to be appointed Judges of the Superior Court of Judicature or have held such office:

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

(2) 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.

(3) No person shall be elected as Speaker—

(a) if he is a member of the Armed Forces; or

(b) if he is a Minister or a Deputy Minister.

(4) The Speaker shall vacate his office—

(a) if he becomes a Minister or a Deputy Minister; or

(b) if any circumstances arise that, if he were not the Speaker, would disqualify him from election as Speaker; or

(c) when Parliament first meets after any dissolution; or

(d) if he is removed from office by a resolution of Parliament supported by the votes of not less than two-thirds of the Members of Parliament.

(5) No business shall be transacted in Parliament (other than an election to the office of Speaker) at any time if the office of Speaker is vacant.

(6) Any person elected to the office of Speaker who is not a Member of Parliament shall before entering upon the duties of his office, take and subscribe before Parliament the oath as set out in the Third Schedule in this Constitution.

(7) The Speaker, or in his absence the Deputy Speaker, shall preside over all sittings of Parliament, except when the President is present.

80. (1) There shall be a Deputy Speaker who shall be elected by the Members of Parliament. Deputy Speaker.

(2) No person shall be elected as Deputy Speaker unless he is a Member of Parliament.

(3) The Members of Parliament shall elect a person to the office of Deputy Speaker—

(a) at the first sitting of Parliament in every session; or

(b) at the first sitting of Parliament after the occurrence of a vacancy in the office of Deputy Speaker, or so soon thereafter as may be convenient.

(4) The Deputy Speaker shall vacate his office—

(a) if he ceases to be a Member of Parliament; or

(b) if he is removed from office by a resolution of Parliament.

(5) If the Speaker is absent from Sierra Leone or otherwise unable to perform any of the functions conferred upon him by this Constitution those functions may be performed by the Deputy Speaker.

Election of Speaker and Deputy Speaker.

81. On any resolution for the election or removal of a Speaker or Deputy Speaker, the votes of the Members of Parliament shall be given by ballot in such manner as not to disclose how any particular member votes.

Clerk of Parliament.

82. (1) There shall be a Clerk of Parliament who shall be appointed by the President acting in consultation with the Public Service Commission, and shall be responsible for the administration of Parliament.

(2) The office of the Clerk of Parliament and the offices of the members of his staff shall be public offices.

Oath to be taken by Members of Parliament.

83. Every Member of Parliament shall, before taking his seat in Parliament, take and subscribe before Parliament the oath as set out in the Third Schedule, but a Member may, before taking that oath, take part in the election of a Speaker.

PART II—SUMMONING, PROROGATION AND DISSOLUTION

Sessions of Parliament.

84. (1) Each session of Parliament shall be held at such place within Sierra Leone and shall commence at such time as the President may by Proclamation appoint.

(2) There shall be a session of Parliament at least once in every year, so that a period of twelve months shall not intervene between the last sitting of Parliament in one session and the first sitting thereof in the next session:

Provided that there shall be a session of Parliament not later than twenty-eight days from the holding of a general election of Members of Parliament.

(3) The President shall at the beginning of each session of Parliament present to Parliament an address on the state of the nation.

Life of Parliament.

85. (1) Parliament shall stand dissolved at the expiration of a period of five years commencing from the date of its first sitting after a general election.

(2) If there is in existence a state of public emergency in accordance with section 29 of this Constitution and the President considers it not practicable to hold elections, Parliament may, by

resolution, extend the period of five years mentioned in subsection (1) from time to time but not beyond a period of six months at any one time.

86. (1) The President may at any time summon a meeting of Parliament. Sittings of Parliament.

(2) Notwithstanding the provision of subsection (1), at least twenty *per centum* of all the Members of Parliament may request a meeting of Parliament and the Speaker shall, within fourteen days after the receipt of that request, summon a meeting of Parliament.

(3) Subject to the provisions of subsection (1) and of Sections 29 and 84 of this Constitution, sittings of Parliament in any session after the commencement of that session shall be held at such times and on such days as Parliament shall appoint.

(4) Parliament shall sit for a period of not less than one hundred and twenty days in each year.

87. (1) A general election of the Members of Parliament shall be held not earlier than thirty days and not later than ninety days after any dissolution of Parliament. General Election.

Provided that nominations for such elections shall in no case be closed within fourteen days after dissolution.

(2) If, when Parliament has been dissolved, the President considers that owing to the existence of a state of public emergency it would not be practicable to hold a general election within ninety days after the dissolution, the President may by Proclamation recall the Parliament that has been dissolved and the following provisions shall then have effect—

(a) the Parliament shall meet at such date, not later than fourteen days after the date of the Proclamation, as may be specified therein;

(b) the President shall, subject to the provisions of subsection (16) of section 29, cause to be introduced in Parliament as soon as it meets, a resolution declaring that a state of Public Emergency exists and subject as aforesaid, no other business shall be transacted in Parliament until that resolution has been passed or defeated;

(c) if the resolution is passed by Parliament with the support of the votes of not less than two-thirds of

the Members thereof, a general election shall be held on the last day of the period of six months beginning with the date of the original dissolution of the Parliament which has been recalled or such earlier date as the President shall appoint, and the Parliament that has been recalled shall be deemed to be the Parliament for the time being and may meet and be kept in session accordingly until the date fixed for nomination of candidates in that general election, and unless previously dissolved, shall then stand dissolved;

- (d) if the resolution is defeated, or is passed with the support of the votes of less than two-thirds of the Members of Parliament or has not been put to the vote within five days after it has been introduced, the Parliament that has been recalled shall then be again dissolved and a general election shall be held not later than the ninetieth day after the date of the Proclamation by which the Parliament was so recalled or such earlier date as the President may by Proclamation appoint.

(3) When Parliament is recalled under this section after having been dissolved—

- (a) the session of that Parliament held next before that dissolution; and
(b) the session or sessions of that Parliament held between the date of its first sitting and of the next dissolution thereafter.

shall be deemed together to form one session.

PART III—PROCEDURE OF PARLIAMENT

Presiding in
Parliament.

88. There shall preside at any sitting of Parliament—

- (a) the Speaker; or
(b) in the absence of the Speaker, the Deputy Speaker;
or
(c) in the absence of the Speaker and the Deputy Speaker, such Member of Parliament as may be elected for that purpose:

Provided that when the President addresses Parliament or attends in person, the Speaker shall leave his chair and no other person shall preside during such address or attendance.

89. If objection is taken by any Member of Parliament that there are present in Parliament (besides the person presiding) less than one-fourth of all the Members of Parliament and the person presiding shall be so satisfied he shall thereupon adjourn Parliament.

90. The business of Parliament shall be conducted in the English Language.

91. (1) Except as otherwise provided in this Constitution, any question proposed for decision in Parliament shall be determined by a majority of the votes of the Members present and voting.

(2) The person presiding in Parliament may cast a vote whenever necessary to avoid an equality of votes but shall not vote in any other case; if the person presiding does not exercise his casting vote the question proposed for discussion in Parliament shall be deemed to be rejected.

(3) The rules of procedure of Parliament may provide that the vote of a Member upon a question in which he has a direct pecuniary interest shall be disallowed and if any such provision is made a Member whose vote is disallowed in accordance therewith shall be deemed not to have voted.

92. Any person who sits or votes in Parliament knowing or having reasonable ground for knowing that he is not entitled to do so shall be liable to a penalty not exceeding one thousand leones or such other sum as may be prescribed by Parliament for each day in which he so sits or votes in Parliament, which shall be recoverable by action in the High Court at the suit of the Attorney-General and Minister of Justice.

93. (1) At the beginning of each session of Parliament, but in any case not later than twenty-one days thereafter, there shall be appointed from among its members the following Standing Committees, that is to say—

- (a) the Legislative Committee;
(b) the Finance Committee;
(c) the Committee on Appointments and Public Service;
(d) the Foreign Affairs and International Co-operation Committee;
(e) the Public Accounts Committee;
(f) the Committee of Privileges;
(g) the Standing Orders Committee;

(A) such other Committees of Parliament as the rules of procedure of Parliament shall provide.

(2) In addition to the Committees referred to in subsection (1), Parliament shall appoint other Committees which shall perform the functions specified in subsection (3).

(3) It shall be the duty of any such Committee as is referred to in subsection (2) to investigate or inquire into the activities or administration of such Ministries or Departments as may be assigned to it, and such investigation or inquiry may extend to proposals for legislation.

(4) Notwithstanding anything contained in subsections (1) and (2), Parliament may at any time appoint any other Committee to investigate any matter of public importance.

(5) The composition of each of the Committees appointed under subsections (1), (2) and (4) shall, as much as possible, reflect the strength of the political parties and Independent Members in Parliament.

(6) For the purposes of effectively performing its functions, each of the Committees shall have all such powers, rights and privileges as are vested in the High Court at a trial in respect of—

- (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
- (b) compelling the production of documents; and
- (c) the issue of a commission or requests to examine witnesses abroad.

Regulation of procedure in Parliament.

94. (1) Subject to the provisions of this Constitution, Parliament may regulate its own procedure, and may in particular make, amend and revoke Standing Orders for the orderly conduct of its own proceedings.

(2) Notwithstanding anything to the contrary in this Constitution or in any other law contained, no decision, order or direction of Parliament or any of its Committees or the Speaker, relating to the rules of procedure of Parliament, or to the application or interpretation of such rules, or any act done or purporting to have been done by Parliament or by the Speaker under any rules of procedure, shall be inquired into by any court.

(3) Parliament may act notwithstanding any vacancy in its membership (including any vacancy not filled when Parliament first meets after the entry into force of this Constitution or after any dissolution of Parliament) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of Parliament shall not invalidate those proceedings.

(4) Parliament may, for the purpose of the orderly and effective discharge of its business, make provision for the powers, privileges and immunities of Parliament, its Committees and the Members thereof.

95. Any act or omission which obstructs or impedes Parliament in the performance of its functions, or which obstructs or impedes any Member or officer thereof in the discharge of his duties or affronts the dignity of Parliament, or which tends either directly or indirectly to produce such a result shall be a contempt of Parliament.

96. Where an act or omission which constitutes contempt of Parliament is an offence under the criminal law, the exercise by Parliament of the power to punish for contempt shall not be a bar to the institution of proceedings under the criminal law.

PART IV—RESPONSIBILITIES, PRIVILEGES AND IMMUNITIES

97. 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.

98. There shall be freedom of speech, debate and proceedings in Parliament and that freedom shall not be impeached or questioned in any court or place out of Parliament.

99. (1) Subject to the provisions of this section, but without prejudice to the generality of section 97, no civil or criminal proceedings shall be instituted against a Member of Parliament in any court or place out of Parliament by reason of anything said by him in Parliament.

(2) Whenever in the opinion of the person presiding in Parliament a statement made by a Member is *prima facie* defamatory of any person, the person presiding shall refer the matter for inquiry to the Committee of Privileges which shall report its findings to Parliament not later than thirty days of the matter being so referred.

(3) Where the Committee of Privileges reports to Parliament that the statement made by the Member is defamatory of any

person, the Member who made the statement shall, within seven days of that report, render an apology at the bar of Parliament, the terms of which shall be approved by the Committee of Privileges and communicated to the person who has been defamed.

(4) Where a Member refuses to render an apology pursuant to the provisions of subsection (3), the Speaker shall suspend that Member for the duration of the session of Parliament in which the defamatory statement was made and a Member so suspended shall lose his Parliamentary privileges, immunities and remuneration which shall be restored to him if at any time before the end of the session he renders the apology as required under the provisions of subsection (3).

(5) Any person who may have made a contemporaneous report of the proceedings in Parliament including a statement which has been the subject of an inquiry pursuant to the provisions of subsection (2) shall publish the apology referred to in subsection (3) or the suspension or the apology referred to in subsection (4) with the same prominence as he published the first report; and if any such person fails to publish that apology he shall not be protected by privilege.

Immunity from service of process and arrest.

100. 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.

Immunity from witness summons.

101. (1) Neither the Speaker nor any Member of, nor the Clerk of, Parliament shall be compelled, while attending Parliament, to appear as a witness in any court or place out of Parliament.

(2) The certificate of the Speaker that a Member or the Clerk is attending the proceedings of Parliament shall be conclusive evidence of attendance at Parliament.

Immunity from serving as jurymen.

102. Neither the Speaker nor any Member of, nor the Clerk of, Parliament shall be required to serve on a jury in any court or place out of Parliament.

Immunity for publication of proceedings.

103. Subject to the provisions of this Constitution, no person shall be under any civil or criminal liability in respect of the publication of—

- (a) the text or a summary of any report, papers, minutes, votes or proceedings of Parliament; or
- (b) a contemporaneous report of the proceedings of Parliament,

unless it is shown that the publication was effected maliciously or otherwise in want of good faith.

104. (1) Every person summoned to attend to give evidence or to produce any paper, book, record or other document before Parliament shall be entitled, in respect of his evidence, or the production of such document, to the same privileges as if he were appearing before a Court. Privileges of witness.

(2) No public officer shall be required to produce before Parliament any document if the Speaker certifies that—

- (a) the document belongs to a class of documents which will be injurious to the public interest or prejudicial to the security of the State to produce; or
- (b) disclosure of the contents thereof will be injurious to the public interest or prejudicial to the security of the State.

(3) Where there is a doubt as to whether any document as is referred to in subsection (2) is injurious to the public interest or prejudicial to the security of the State, the Speaker shall refer the matter to the Supreme Court to determine whether the production or the disclosure of the contents of any such document would be injurious to the public interest or prejudicial to the security of the State.

(4) An answer by a person to a question put by Parliament shall not be admissible in evidence against him in any civil or criminal proceedings out of Parliament, not being proceedings for perjury brought under the criminal law.

PART V—LEGISLATION AND PROCEDURE IN PARLIAMENT

105. Subject to the provisions of this Constitution, Parliament shall be the supreme legislative authority for Sierra Leone. Power to make laws.

106. (1) The power of Parliament to make laws shall be exercised by Bills passed by Parliament and signed by the President. Mode of exercising legislative power.

(2) Subject to the provisions of subsection (8), a Bill shall not become law unless it has been duly passed and signed in accordance with this Constitution.

(3) An Act signed by the President shall come into operation on the date of its publication in the *Gazette* or such other date as may be prescribed therein or in any other enactment.

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

(5) No law made by Parliament shall come into operation until it has been published in the *Gazette*, but Parliament may postpone the coming into operation of any such law and may make laws with retroactive effect.

(6) All laws made by Parliament shall be styled "Acts" and the words of enactment shall be "Enacted by the President and Members of Parliament in this present Parliament assembled".

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

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

(9) Nothing in this section or in section 53 of this Constitution shall prevent Parliament from conferring on any person or authority the power to make statutory instruments.

Minister may introduce Bill and be summoned to Parliament.

107. (1) A Minister may introduce a Bill in Parliament and take part, but without a vote, in the deliberations of Parliament on that Bill.

(2) A Minister may be summoned before Parliament or a Committee thereof—

- (a) to give an account of any matter falling within his portfolio; or
- (b) to explain any aspect of Government policy.

Alteration of this Constitution.

108. (1) Subject to the provisions of this section, Parliament may alter this Constitution.

(2) A Bill for an Act of Parliament under this section shall not be passed by Parliament unless—

- (a) before the first reading of the Bill in Parliament the text of the Bill is published in at least two issues of the *Gazette*;

Provided that not less than nine days shall elapse between the first publication of the Bill in the *Gazette* and the second publication; and

(b) the Bill is supported on the second and third readings by the votes of not less than two-thirds of the Members of Parliament.

(3) A Bill for an Act of Parliament enacting a new Constitution or altering any of the following provisions of this Constitution, that is to say—

(a) this section,

(b) Chapter III,

(c) sections 46, 56, 72, 73, 74(2), 74(3), 84(2), 85, 87, 105, 110-119, 120, 121, 122, 123, 124, 128, 129, 131, 132, 133, 135, 136, 137, 140, 151, 156, 167,

shall not be submitted to the President for his assent and shall not become law unless the Bill, after it has been passed by Parliament and in the form in which it was so passed, has, in accordance with the provisions of any law in that behalf, been submitted to and been approved at a referendum.

(4) Every person who is entitled to vote in the elections of Members of Parliament shall be entitled to vote at a referendum held for the purposes of subsection (3) and no other person may so vote; and the Bill shall not be regarded as having been approved at the referendum unless it was so approved by the votes of not less than one-half of all such persons and by not less than two-thirds of all the votes validly cast at the referendum:

Provided that in calculating the total number of persons entitled to vote at such referendum, the names of deceased persons, of persons disqualified as electors, and of persons duplicated in the register of electors and so certified by the Electoral Commission, shall not be taken into account.

(5) The conduct of any referendum for the purposes of subsection (3) of this section shall be under the general supervision of the Electoral Commission and the provisions of subsections (4), (5) and (6) of section 38 of this Constitution shall apply in relation to the exercise by the Electoral Commission of its functions with respect to a referendum as they apply in relation to the exercise of its functions with respect to elections of Members of Parliament.

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(6) A Bill for an Act of Parliament under this section shall not be submitted to the President for his signature unless it is accompanied by a certificate under the hand of the Speaker of Parliament (or, if the Speaker is for any reason unable to exercise the functions of his office, the Deputy Speaker) that the provisions of subsections (3) and (4) of this section have been complied with, and every such certificate shall be conclusive for all purposes and shall not be inquired in any court.

(7) No Act of Parliament shall be deemed to amend, add to or repeal or in any way alter any of the provisions of this Constitution unless it does so in express terms.

(8) Any suspension, alteration, or repeal of this Constitution other than on the authority of Parliament shall be deemed to be an act of Treason.

(9) In this section—

- (a) references to this Constitution include references to any law that amends or replaces any of the provisions of this Constitution; and
- (b) references to the alteration of this Constitution or of any Chapter or section of this Constitution include references to the amendment, modification or re-enactment, with or without amendment or modification, of any provision for the time being contained in this Constitution or Chapter or section thereof, the suspension or repeal of any such provision, the making of different provision in lieu of such provision and the addition of new provisions to this Constitution or Chapter or section thereof, and references to the alteration of any particular provision of this Constitution shall be construed likewise.

Residual
authority of
Parliament.

109. Subject to the provisions of section 105 of this Constitution, where on any matter, whether arising out of this Constitution or otherwise there is no provision, expressed or by necessary implication, of this Constitution which deals with the matter that has arisen, Parliament shall, by an Act of Parliament, not being inconsistent with any provision of this Constitution, provide for that matter to be dealt with.

PART VI—FINANCE

Authority for
imposition of
taxation.

110. (1) No taxation shall be imposed or altered otherwise than by or under the authority of an Act of Parliament.

(2) Where an Act enacted pursuant to subsection (1) confers a power on any person or authority to waive or vary a tax (otherwise than by reduction) imposed by that Act, the exercise of the power of waiver or variation in favour of any person or authority shall be subject to the prior approval of Parliament by resolution passed in that behalf.

(3) Parliament may make provision under which the President or a Minister may by order provide that, on or after the publication of a Bill (being a Bill approved by the President) that it is proposed to introduce into Parliament providing for the imposition or alteration of taxation, such provisions of the Bill as may be specified in the order shall, until the Bill becomes law, have the force of law for such period and subject to such conditions as may be prescribed by Parliament:

Provided that any such order shall, unless sooner revoked, cease to have effect—

- (a) if the Bill to which it relates is not passed within such period from the date of its first reading in Parliament as may be prescribed by Parliament; or
- (b) if, after the introduction of the Bill to which it relates, Parliament is prorogued or dissolved; or
- (c) if, after the passage of the Bill to which it relates, the President refuses his assent thereto; or
- (d) at the expiration of a period of four months from the date it came into operation or such longer period from that date as may be specified in any resolution passed by Parliament after the Bill to which it relates has been introduced.

(4) Parliament may confer upon any authority established by law for the purpose of local government power to impose taxation within the area for which that authority is established and to alter taxation so imposed.

(5) Where the Appropriation Act in respect of a financial year has not come into force at the expiration of six months from the commencement of that financial year, the operation of any law relating to the collection or recovery of any tax upon any income or profits or any duty of customs or excise shall be suspended until that Act comes into force:

Provided that—

- (a) in any financial year in which Parliament stands dissolved at the commencement of that year the period of six months shall begin from the day upon which Parliament first sits following that dissolution instead of from the commencement of the financial year;
- (b) the provisions of this subsection shall not apply in any financial year in which Parliament is dissolved after the laying of estimates in accordance with section 112 and before the Appropriation Bill relating to those estimates is passed by Parliament.

Consolidated Fund. 111. (1) There shall be a Consolidated Fund into which, subject to the provisions of this section, shall be paid—

- (a) all revenues or other moneys raised or received for the purpose of, or on behalf of, the Government;
- (b) any other moneys raised or received in trust for or on behalf of the Government; and
- (c) all revenues and moneys payable by or under any bilateral or multilateral agreement.

(2) The revenues or other moneys referred to in subsection (1) shall not include revenues or other moneys—

- (a) that are payable by or under an Act of Parliament into some other fund established for a specific purpose; or
- (b) that may by or under an Act of Parliament, be retained by the department of Government that received them for the purpose of defraying the expenses of that department.

(3) No moneys shall be withdrawn from the Consolidated Fund except—

- (a) to meet expenditure that is charged upon the Fund by this Constitution or by an Act of Parliament; or
- (b) where the issue of those moneys has been authorised—
 - (i) by an Appropriation Act; or

- (ii) by a Supplementary Estimate approved by a resolution of Parliament passed in that behalf; or
- (iii) by an Act of Parliament enacted pursuant to the provisions of sections 112 and 113 of this Constitution; or
- (iv) by rules or regulations made under an Act of Parliament in respect of trust moneys paid into the Consolidated Fund.

(4) No moneys shall be withdrawn from any public fund, other than the Consolidated Fund and the Contingencies Fund, unless the issues of those moneys have been authorised by or under the authority of an Act of Parliament.

112. (1) Subject to the provisions of section 107 of this Constitution, the Minister for the time being responsible for finance shall cause to be prepared and laid before Parliament in each financial year estimates of the revenues and expenditures of Sierra Leone for the next following financial year. Authorisation of expenditure from Consolidated Fund.

(2) The Head of the expenditure—

- (a) of the estimates shall be included in a Bill to be known as an Appropriation Bill which shall be introduced into Parliament to provide for the issue from the Consolidated Fund of the sums of money necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein; and
- (b) of the Consolidated Fund payments shall be laid before Parliament for the information of the Members thereof.

(3) Where, in respect of any financial year, it is found that the amount of moneys appropriated by the Appropriation Act for any purpose is insufficient or that a need has arisen for expenditure for a purpose for which no amount of moneys has been appropriated by that Act, a supplementary estimate showing the sum of money required shall be laid before Parliament.

(4) Where, in respect of any financial year, a supplementary estimate has been approved by Parliament in accordance with the provisions of subsection (3), a Supplementary Appropriation Bill shall be introduced in Parliament in the financial year next following the financial year to which the estimates relate, providing for the appropriation of the sum so approved for the purposes specified in that estimate.

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(5) Notwithstanding the provisions of subsection (4), the Minister for the time being responsible for finance may cause to be prepared and laid before Parliament estimates of revenue and expenditure of Sierra Leone for periods of over one year.

(6) Parliament shall prescribe the procedure for the presentation of Appropriation Bills.

Authorisation of expenditure in advance of appropriation.

113. Where it appears to the Minister responsible for finance that the Appropriation Act in respect of any financial year will not come into operation by the beginning of that financial year, he may, with the prior approval of Parliament signified in that behalf by a resolution thereof, authorise the withdrawal of moneys from the Consolidated Fund for the purposes of meeting expenditure necessary to carry on the services of the Government in respect of the period expiring four months from the beginning of the financial year or on the coming into operation of the Act, whichever is earlier.

Withdrawal of moneys from general revenues.

114. (1) No moneys shall be expended from the general revenue of the Republic unless—

- (a) the expenditure is authorised by a warrant under the hand of the President; or
- (b) the expenditure is charged by this Constitution or any other law on the general revenues of the Republic; or
- (c) the expenditure is of moneys received by a department of Government and is made under the provisions of any law which authorises that department to retain and expend those moneys for defraying the expenses of the department.

(2) No warrant shall be issued by the President authorising expenditure from the general revenues of the Republic unless—

- (a) the expenditure is necessary to carry on the services of the Government in respect of any period not exceeding four months beginning with the commencement of a financial year during which the Appropriation Act for that financial year is not in force; or
- (b) the expenditure has been proposed in a supplementary estimate to be approved by Parliament; or

(c) no provision exists for the expenditure and the President considers that there is such an urgent need to incur the expenditure that it would not be in the public interest to delay the authorisation of the expenditure until such time as a supplementary estimate can be laid before and approved by Parliament; or

(d) the expenditure is incurred on capital projects continuing from the previous financial year until the commencement of the Appropriation Act for the current financial year.

(3) The President shall, immediately after he has signed any warrant authorising expenditure from the general revenues of the Republic, cause a copy of the warrant to be transmitted to the Accountant-General.

(4) The issue of warrants under paragraph (c) of subsection (2), the investment of moneys forming part of the general revenue of the Republic and the making of advances from such revenues shall be subject to such limitations and conditions as Parliament may from time to time prescribe.

115. (1) There shall be paid to the holders of the offices to which this section applies such salaries and allowances as may be prescribed by or under any law.

(2) The salaries and allowances payable to the holders of the offices to which this section applies shall be a charge on the Consolidated Fund.

(3) The salary, pensions, gratuity and allowances payable to the holder of any office to which this section applies and his other terms of services shall not be altered to his disadvantage after his appointment, and for the purposes of this subsection in so far as the terms of service of any person depend on the option of that person, the terms for which he opts shall be taken to be more advantageous to him than any other terms for which he might have opted.

(4) This section applies to the offices of the President, Vice-President, Attorney-General and Minister of Justice, Ministers, Deputy Ministers, the Chief Justice, a Justice of the Supreme Court, a Justice of Appeal, a Judge of the High Court, the Director of Public Prosecutions, the Chairman and Members of the Electoral Commission, the Chairman and Members of the Public Service Commission, and the Auditor-General.

Remuneration of the President and certain other officers.

Contingencies Fund.

116. (1) Parliament may provide for the establishment of the Contingencies Fund and for authorising the Minister responsible for Finance, if he is satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advance from the Fund to meet that need.

(2) Where any advance is made in accordance with subsection (1), a Supplementary Estimate shall be presented and a Supplementary Appropriation Bill shall be introduced into Parliament as soon as possible for the purpose of replacing the amount so advanced.

Public debt.

117. (1) The public debt of Sierra Leone shall be secured on the revenues and assets of Sierra Leone.

(2) In this section reference to the public debt of Sierra Leone includes reference to the interest on that debt, sinking fund payments in respect of that debt and the costs, charges and expenses incidental to the management of that debt.

Loans.

118. (1) Parliament may by a resolution passed in that behalf and supported by the votes of a majority of all the Members of Parliament, authorise the Government to enter into an agreement for the granting of a loan out of any public fund or public account.

(2) An agreement entered pursuant to subsection (1) shall be laid before Parliament and shall not come into operation unless the same has been approved by a resolution of Parliament.

(3) No loan shall be raised by the Government on behalf of itself or any other public institution or authority otherwise than by or under the authority of an Act of Parliament.

(4) An Act of Parliament enacted in accordance with subsection (3) shall provide—

(a) that the terms and conditions of a loan shall be laid before Parliament and shall not come into operation unless it has been approved by a resolution of Parliament; and

(b) that any moneys received in respect of that loan shall be paid into the Consolidated Fund and form part thereof or into some other Public Fund of Sierra Leone either existing or created for the purposes of the loan.

(5) For the purposes of this section, the expression "loan" includes any moneys lent or given to or by the Government on condition of return or repayment and any other form of borrowing or lending in respect of which—

(a) moneys from the Consolidated Fund or any other Public Fund may be used for payment or repayment; or

(b) moneys from any fund by whatever name called established for the purposes of payment or repayment whether in whole or in part and whether directly or indirectly may be used for payment or repayment.

(6) The provisions of subsections (1), (2), (3), (4) and (5) shall also apply to any agreement for a loan entered into by the Government in respect of the natural resources of Sierra Leone, such as mineral, marine, forest and such other resources.

(7) Parliament shall be notified by the appropriate minister or authority of all gifts, donations, grants and pledges made to the State of Sierra Leone.

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

Establishment of office and functions of Auditor-General.

(2) The public accounts of Sierra Leone and of all public offices, including the Courts, the accounts of the central and local government administrations, of the Universities and public institutions of like nature, any statutory corporation, company or other body or organisation established by an Act of Parliament or statutory instrument or otherwise set up partly or wholly out of Public Funds, shall be audited and reported on by or on behalf of the Auditor-General, and for that purpose the Auditor-General of any person authorised or appointed in that behalf by the Auditor-General shall have access to all books, records, returns and other documents relating or relevant to those accounts.

(3) The public accounts of Sierra Leone and of all other persons or authorities referred to in subsection (2) shall be kept in such form as the Auditor-General shall approve.

(4) The Auditor-General shall, within twelve months of the end of the immediately preceding financial year, submit his report to Parliament and shall in that report draw attention to any irregularities in the accounts audited and to any other matter which in his opinion ought to be brought to the notice of Parliament.

(5) Parliament shall debate the report of the Auditor-General and appoint where necessary in the public interest a committee to deal with any matters arising therefrom.

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(6) In the exercise of his functions under this Constitution or any other law, the Auditor-General shall not be subject to the direction or control of any other person or authority.

(7) The provisions of subsection (6) shall not preclude the President, acting in accordance with the advice of Cabinet, or Parliament from requesting the Auditor-General in the public interest to audit at any particular time, the accounts of any body or organisation as is referred to in subsection (2).

(8) The salary and allowances payable to the Auditor-General, his rights in respect of leave of absence, retiring age and other conditions of service, shall not be varied to his disadvantage after his appointment.

(9) The provision of section 137 of this Constitution, relating to the removal of a Judge of the Superior Court of Judicature, other than the Chief Justice, from office, shall apply to the Auditor-General.

(10) The Auditor-General shall retire from office on attaining the age of sixty-five years or such age as may be prescribed by Parliament.

(11) The administrative expenses of the office of the Auditor-General including all salaries, allowances, gratuities and pensions payable to or in respect of persons serving in the Audit Service shall be a charge upon the Consolidated Fund.

(12) The accounts of the office of the Auditor-General shall be audited and reported upon by an auditor appointed by Parliament.

(13) Any person appointed to be the Auditor-General for Sierra Leone shall, before entering upon the duties of his office, take and subscribe the oath as set out in the Third Schedule to this Constitution.

(14) 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 this section relating to the removal of the Auditor-General, continue to act until his appointment is revoked by the President.

CHAPTER VII—THE JUDICIARY

PART I—THE SUPERIOR COURT OF JUDICATURE

Establishment of the Judiciary.

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

(2) The Judiciary shall have jurisdiction in all matters civil and criminal including matters relating to this Constitution, and such other matters in respect of which Parliament may by or under an Act of Parliament confer jurisdiction on the Judiciary.

(3) In the exercise of its judicial functions, the Judiciary shall be subject to only this Constitution or any other law, and shall not be subject to the control or direction of any other person or authority.

(4) The Judicature shall consist of the Supreme Court of Sierra Leone, the Court of Appeal and the High Court of Justice which shall be the superior courts of record of Sierra Leone and which shall constitute one Superior Court of Judicature, and such other inferior and traditional courts as Parliament may by law establish.

(5) The Superior Court of Judicature shall have the power to commit for contempt to themselves and all such powers as were vested in a court of record immediately before the coming into force of this Constitution.

(6) Save as may be otherwise ordered by a Court in the interests of public morality, public safety or public order, all proceedings of every Court, including the announcement of the decision of the court, shall be held in public.

(7) Nothing contained in subsection (6) shall prevent a court from excluding from its proceedings persons, other than the parties thereto and their counsel, to such an extent as the Court may consider necessary or expedient—

(a) in circumstances where publicity would prejudice the interests of justice or any interlocutory proceedings; or

(b) in the interests of defence, public safety, public morality, the welfare of minors or the protection of the private lives of persons concerned in the proceedings.

(8) In the exercise of the Judicial power conferred upon the Judiciary by this Constitution or any other law, the Superior Court of Judicature shall have power, in relation to any matter within its jurisdiction, to issue such orders as may be necessary to ensure the enforcement of any judgement, decree or order of the Court.

(9) A Judge of the Superior Court of Judicature shall not be liable to any action or suit for any matter or thing done by him in the performance of his judicial functions.

(10) The Judges of the High Court shall be entitled to sit as Justices of Appeal, and the Justices of Appeal shall be entitled to sit as Justices of the Supreme Court whenever so requested by the Chief Justice.

(11) Notwithstanding the provisions of the preceding subsections, any Justice of Appeal may, on the request of the Chief Justice, sit and act as a Judge of the High Court.

(12) Every such person, while sitting and acting as a Judge of the High Court, shall have all the jurisdiction, powers and privileges of, but not otherwise be deemed to be, a Judge of the High Court.

(13) The provisions of subsections (11) and (12) shall apply *mutatis mutandis* to a Justice of the Supreme Court sitting as a Justice of Appeal.

(14) Neither the Chief Justice nor any Justice of the Supreme Court or of the Court of Appeal or a Judge of the High Court may take any part in the hearing of any appeal from his own judgement or the judgement of a panel of judges of which he was a member.

(15) No office of Judge of the High Court, Justice of Appeal or Justice of the Supreme Court shall be abolished while there is a substantive holder thereof.

(16) Every Court established under this Constitution shall deliver its decision in writing not later than three months after the conclusion of the evidence and final addresses or arguments of appeal, and furnish all parties to the cause or matter determined with duly authenticated copies of the decision on the date of the delivery thereof.

PART II—THE SUPREME COURT

Composition of the Supreme Court.

121. (1) The Supreme Court shall consist of—

- (a) the Chief Justice;
- (b) not less than four other Justices of the Supreme Court; and
- (c) such other Justices of the Superior Court of Judicature or of Superior Courts in any State practising a body of law similar to Sierra Leone, not being more in number than the number of Justices of the Supreme Court sitting as such, as the Chief Justice may, for the determination of any particular cause or matter by writing under his hand, request to sit

in the Supreme Court for such period as the Chief Justice may specify or until the request is withdrawn.

(2) The Supreme Court shall, save as otherwise provided in paragraph (a) of subsection (6) of section 28 and section 126 of this Constitution, be duly constituted for the despatch of its business by not less than three Justices thereof.

(3) The Chief Justice shall preside at the sittings of the Supreme Court and in his absence the most senior of the Justices of the Supreme Court as constituted for the time being shall preside.

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

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

(2) The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears right so to do; and all other Courts shall be bound to follow the decision of the Supreme Court on questions of law.

(3) For the purposes of hearing and determining any matter within its jurisdiction and the amendment, execution or the enforcement of any judgement or order made on any such matter, and for the purposes of any other authority, expressly or by necessary implication given to it, the Supreme Court shall have all the powers, authority and jurisdiction vested in any Court established by this Constitution or any other law.

123. (1) An appeal shall lie from a judgement, decree or order of the Court of Appeal to the Supreme Court—

Appeals to the Supreme Court.

- (a) as of right, in any civil cause or matter;
- (b) as of right, in any criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgement, decree or order of the High Court of Justice in the exercise of its original jurisdiction; or
- (c) with leave of the Court of Appeal in any criminal cause or matter, where the Court of Appeal is satisfied that the case involves a substantial question of law or is of public importance.

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(2) Notwithstanding the provisions of subsection (1), the Supreme Court shall have power to entertain any application for special leave to appeal in any cause or matter, civil or criminal, to the Supreme Court, and to grant such leave accordingly.

~~of the powers conferred by this section may be varied, discharged or reversed by the Supreme Court constituted by five Justices thereof.~~

Interpretation of the Constitution.

124. (1) The Supreme Court shall, save as otherwise provided in section 122 of this Constitution, have original jurisdiction, to the exclusion of all other Courts—

127. (1) A person who alleges that an enactment or anything contained in or done under the authority of that or any other enactment is inconsistent with, or is in contravention of a provision of this Constitution, may at any time bring an action in the Supreme Court for a declaration to that effect.

(a) in all matters relating to the enforcement or interpretation of any provision of this Constitution; and

(2) The Supreme Court shall, for the purposes of a declaration under subsection (1), make such orders and give such directions as it may consider appropriate for giving effect to, or enabling effect to be given to, the declaration so made.

(b) where any question arises whether an enactment was made in excess of the power conferred upon Parliament or any other authority or person by law or under this Constitution.

(3) Any person to whom an order or direction is addressed under subsection (1) by the Supreme Court shall duly obey and carry out the terms of the order or direction.

(2) Where any question relating to any matter or question as is referred to in subsection (1) arises in any proceedings in any Court, other than the Supreme Court, that Court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the Court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.

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

Supervisory Jurisdiction.

125. The Supreme Court shall have supervisory jurisdiction over all other Courts in Sierra Leone and over any adjudicating authority; and in exercise of its supervisory jurisdiction shall have power to issue such directions, orders or writs including writs of *habeas corpus*, orders of *certiorari*, *mandamus* and *prohibition* as it may consider appropriate for the purposes of enforcing or securing the enforcement of its supervisory powers.

PART III—COURT OF APPEAL

128. (1) The Court of Appeal shall consist of—

Composition of the Court of Appeal.

(a) the Chief Justice;

(b) not less than seven Justices of the Court of Appeal; and

(c) such other Justices of the Superior Court of Judicature as the Chief Justice may, for the determination of any particular cause or matter by writing under his hand, request to sit in the Court of Appeal for such period as the Chief Justice may specify or until the request is withdrawn.

Power of Justices of the Supreme Court in interlocutory matters.

126. A single Justice of the Supreme Court acting in its criminal jurisdiction, and three Justices of the Supreme Court acting in its civil jurisdiction may exercise any power vested in the Supreme Court not involving the decision of a cause or matter before the Supreme Court save that—

(2) The Court of Appeal shall be duly constituted by any three Justices thereof and when so constituted the most senior of such Justices shall preside.

(a) in criminal matters, if any such Justices refuses or grants an application in the exercise of any such power, any person affected thereby shall be entitled to have the application determined by the Supreme Court constituted by three Justices thereof; and

(3) Subject to the provisions of subsections (1) and (2) of section 122 of this Constitution, the Court of Appeal shall be bound by its own previous decisions and all Courts inferior to the Court of Appeal shall be bound to follow the decisions of the Court of Appeal on questions of law.

(b) in civil matters any order, direction or decision made or given by the three Justices in pursuance

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(4) Parliament may create such Divisions of the Court of Appeal as it may consider necessary—

- (a) consisting of such number of Justices as may be assigned thereto by the Chief Justice;
- (b) sitting at such places in Sierra Leone as the Chief Justice may determine; and
- (c) presided over by the most senior of the Justices of the Court of Appeal constituting the Court.

Jurisdiction of the Court of Appeal.

129. (1) The Court of Appeal shall have jurisdiction throughout Sierra Leone to hear and determine, subject to the provisions of this section and of this Constitution, appeals from any judgement, decree or order of the High Court of Justice or any Justice thereof and such other appellate jurisdiction as may be conferred upon it by this Constitution or any other law.

(2) Save as otherwise provided in this Constitution or any other law, an appeal shall lie as of right from a judgement, decree or order of the High Court of Justice to the Court of Appeal in any cause or matter determined by the High Court of Justice.

(3) For the purposes of hearing and determining any appeal within its jurisdiction and the amendment, execution or the enforcement of any judgement or order made on any such appeal and for the purposes of any other authority expressly or by necessary implication given to the Court of Appeal by this Constitution or any other law, the Court of Appeal shall have all the powers, authority and jurisdiction vested in the Court from which the Appeal is brought.

Power of single Justice of Appeal.

130. A single Justice of the Court of Appeal may exercise any power vested in the Court of Appeal not involving the decision of any cause or matter before the Court of Appeal save that—

- (a) in criminal matters, if any such Justice refuses or grants an application in the exercise of any such power, any person affected thereby shall be entitled to have the application determined by the Court of Appeal as duly constituted; and
- (b) in civil matters, any order, direction or decision made or given in pursuance of the power conferred by this section may be varied, discharged or reversed by the Court of Appeal as duly constituted.

PART IV—THE HIGH COURT OF JUSTICE

131. (1) The High Court of Justice shall consist of—

- (a) the Chief Justice;
- (b) not less than nine High Court Judges; and

(c) such other Judges of the Superior Court or Judicature as the Chief Justice may, for the determination of any particular cause or matter, by writing under his hand request to sit in the High Court of Justice for such period as the Chief Justice may specify or until the request is withdrawn.

Composition of the High Court.

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(2) The High Court of Justice shall be duly constituted as the case may be—

- (a) by any one Judge thereof; or
- (b) by any one Judge thereof and a jury.

(3) There shall be in the said High Court such Divisions consisting of such number of Judges respectively as may be assigned thereto by the Chief Justice; and sitting in such places in Sierra Leone as the Chief Justice may determine.

132. (1) The High Court of Justice shall have jurisdiction in civil and criminal matters and such other original appellate and other jurisdiction as may be conferred upon it by this Constitution or any other law

Jurisdiction of the High Court.

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(2) The High Court of Justice shall have jurisdiction to determine any matter relating to industrial and labour disputes and administrative complaints.

(3) Parliament shall, by an Act of Parliament, make provision for the exercise of the jurisdiction conferred on the High Court of Justice by the provisions of the immediately preceding subsection.

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

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(5) Any Judge of the High Court of Justice may, in accordance with Rules of Court made in that behalf, exercise in Court or in Chambers all or any part of the jurisdiction vested in the High Court of Justice by this Constitution or any other law.

Claims
against the
Government.

133. (1) Where a person has a claim against the Government, that claim may be enforced as of right by proceedings taken against the Government for that purpose, without the grant of a *fiat* or the use of the process known as Petition of Right.

(2) Parliament shall, by an Act of Parliament, make provision for the exercise of jurisdiction under this section.

Supervisory
Jurisdiction
of the High
Court.

134. The High Court of Justice shall have supervisory jurisdiction over all inferior and traditional Courts in Sierra Leone and any adjudicating authority, and in the exercise of its supervisory jurisdiction shall have power to issue such directions, writs and orders, including writs of *habeas corpus*, and orders of *certiorari*, *mandamus* and *prohibition* as it may consider appropriate for the purposes of enforcing or securing the enforcement of its supervisory powers.

PART V—APPOINTMENT OF JUDGES, ETC.

Appointment
of Judges,
etc.

135. (1) The President shall, acting on the advice of the Judicial and Legal Service Commission and subject to the approval of Parliament, appoint the Chief Justice by warrant under his hand from among persons qualified to hold office as Justice of the Supreme Court.

(2) The other Judges of the Superior Court of Judicature shall be appointed by the President by warrant under his hand acting on the advice of the Judicial and Legal Service Commission and subject to the approval of Parliament.

(3) A person shall not be qualified for appointment as a Judge of the Superior Court of Judicature, unless he is entitled to practise as Counsel in a Court having unlimited jurisdiction in civil and criminal matters in Sierra Leone or any other country having a system of law analogous to that of Sierra Leone and approved by the the Judicial and Legal Service Commission, and has been entitled as such Counsel in the case of appointment to—

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

(4) For the purposes of subsection (3), a person shall be regarded as entitled to practise as Counsel if he has been called, enrolled or otherwise admitted as such and has not subsequently been disbarred or removed from the Roll of Counsel or Legal Practitioners.

(5) For the purposes of this section, a person shall not be regarded as not being entitled to practise in a court by reason only that he is precluded from doing so by virtue of his holding or acting in any office.

136. (1) Where the office of the Chief Justice is vacant or if the Chief Justice is for any reason unable to perform the functions of his office, then—

Judicial
vacancies.

- (a) until a person has been appointed to and has assumed the functions of that office; or
- (b) until the person holding that office has resumed the functions of that office, as the case may be, those functions shall be performed by the most senior for the time being of the Justices of the Supreme Court.

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

(3) Any person appointed under the provisions of subsection (2) of this section to act as a Judge of the High Court of Justice shall continue to act for the period of his appointment or if no such period is specified until his appointment is revoked by the President, acting in accordance with the advice of the Judicial and Legal Service Commission.

(4) Where the office of a Justice of the Supreme Court or of the Court of Appeal is vacant or for any reason a Justice thereof is unable to perform the functions of his office or if the Chief Justice advises the President that the state of business in the Supreme Court or in the Court of Appeal, as the case may be, so requires the President may, acting in accordance with the advice of the Judicial and

Legal Service Commission, appoint a person who has held office as or a person qualified for appointment as a Judge of the Superior Court of Judicature to act as a Justice of the Supreme Court or of the Court of Appeal, as the case may be, notwithstanding the fact that he has already attained the retiring age prescribed by section 137.

(5) Any person appointed under the provisions of subsection (4) of this section to act as a Justice of the Supreme Court or of the Court of Appeal shall continue to act for the period of his appointment or if no such period is specified until his appointment is revoked by the President acting in accordance with the advice of the Judicial and Legal Service Commission.

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

Tenure of
Office of
Judges,
etc.

137. (1) Subject to the provisions of this section, a Judge of the Superior Court of Judicature shall hold office during good behaviour.

(2) A person holding office as a Judge of the Superior Court of Judicature—

- (a) may retire as Judge at any time after attaining the age of sixty years;
- (b) shall vacate that office on attaining the age of sixty-five years.

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

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

(5) If the Judicial and Legal Service Commission represents to the President that the question of removing a Judge of the Superior Court of Judicature, other than the Chief Justice, under subsection (4) ought to be investigated then—

- (a) the President, acting in consultation with the Judicial and Legal Service Commission, shall appoint a tribunal which shall consist of a Chairman and two other members, all of whom shall be persons qualified to hold or have held office as a Justice of the Supreme Court; and
- (b) the tribunal appointed under paragraph (a) shall enquire into the matter and report on the facts thereof and the findings thereon to the President and recommend to the President whether the Judge ought to be removed from office under subsection (7).

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

(7) A Judge of the Superior Court of Judicature shall be removed from office by the President—

- (a) if the question of his removal from office has been referred to a tribunal appointed under subsection (5) and the tribunal has recommended to the President that he ought to be removed from office; and
- (b) if his removal has been approved by a two-thirds majority in Parliament.

(8) If the President is satisfied on a petition presented to him in that behalf, that the question of removing the Chief Justice ought to be investigated, then—

- (a) the President shall, acting in consultation with the Cabinet, appoint a tribunal which shall consist of—

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- (i) three Justices of the Supreme Court, or legal practitioners qualified to be appointed as Justices of the Supreme Court; and
- (ii) two other persons who are not Members of Parliament or legal practitioners;
- (b) the tribunal shall enquire into the matter and report on the facts thereof and the findings thereon to the President whether the Chief Justice ought to be removed from office under subsection (10), and the President shall act in accordance with the recommendations of the tribunal.

(9) Where the question of removing the Chief Justice from office has been referred to a tribunal under subsection (8), the President may by warrant under his hand suspend the Chief Justice from performing the functions of his office, and any such suspension may at any time be revoked by the President, and shall in any case cease to have effect if the tribunal recommends to the President that the Chief Justice shall not be removed from office.

(10) The Chief Justice shall be removed from office by the President—

- (a) if the question of his removal from office has been referred to a tribunal appointed under subsection (8) and the tribunal has recommended to the President that he ought to be removed from office; and
- (b) if his removal has been approved by a two-thirds majority in Parliament.

Remuneration of Judges, etc.

138. (1) The salaries, allowances, gratuities and pensions of Judges of the Superior Court of Judicature shall be a charge upon the Consolidated Fund.

(2) A Judge of the Superior Court of Judicature shall on retiring from office as such Judge, be entitled to such gratuity and pension as may be determined by Parliament

(3) The salary, allowances, privileges, right in respect of leave of absence, gratuity or pension and other conditions of service of a Judge of the Superior Court of Judicature shall not be varied to his disadvantage.

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

139. A Judge of the Superior Court of Judicature shall, before assuming the functions of his office, take and subscribe before—

Oath of Office of Judges.

- (a) the President, in the case of the Chief Justice and Justices of the Supreme Court; and
- (b) the Chief Justice, in the case of any other Judge, the Judicial Oath as set out in the Third Schedule to this Constitution.

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

Judicial and Legal Service Commission.

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

(2) The Chief Justice shall, acting in accordance with the advice of the Judicial and Legal Service Commission and save as otherwise provided in this Constitution, be responsible for the effective and efficient administration of the Judiciary.

(3) The following provisions shall apply in relation to a member of the Judicial and Legal Service Commission who is appointed pursuant to paragraphs (d) and (f) of subsection (1)—

- (a) subject to the provisions of this subsection, such member shall vacate office at the expiration of three years from the date of his appointment;

(b) any such member may be removed from office by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct; and

(c) such member shall not be removed from office except in accordance with the provisions of this subsection.

(4) A member of the Judicial and Legal Service Commission shall, before assuming the functions of his office, take and subscribe before the President the oath as set out in the Third Schedule to this Constitution.

Appointment of
Judicial
and Legal
Officers,
etc.

141. (1) The power to appoint persons to hold or act in any office to which this section applies (including the power to make appointments on promotion and transfer from one office to another and to confirm appointments) and to dismiss and exercise disciplinary control over persons holding or acting in such offices shall vest in the Judicial and Legal Service Commission:

Provided that the Commission may, with the approval of the President and subject to such conditions as it may think fit, delegate any of its powers under this section, by direction in writing to any of its members, or to any Judge of the High Court, or to the holder of any office to which this section applies, or, in the case of a power relating to an office connected with the Court of Appeal or the Supreme Court, to any Justice of either of these Courts.

(2) This section applies to the offices of Administrator and Registrar-General, Registrar and Deputy Registrar of the Supreme Court, Registrar and Deputy Registrar of the Court of Appeal, Master and Registrar of the High Court, Deputy Master and Registrar of the High Court, any Registrar of the High Court, Deputy Administrator and Registrar-General, any Principal Magistrate, Senior Magistrate, Magistrate, Under Sheriff, First Parliamentary Counsel, Second Parliamentary Counsel, Principal State Counsel, Customary Law Officer, Senior State Counsel, Senior Parliamentary Counsel, Research Counsel, Parliamentary Counsel, State Counsel, Assistant Customary Law Officer and such other officers as may be prescribed by Parliament.

Appointment of
Court
Officers.

142. (1) The appointment of officers and servants of the Courts of Sierra Leone shall, subject to the provisions of section 141 of this Constitution, be made by the Chief Justice or such other Judge or

officer of the Court as the Chief Justice may direct, acting in consultation with the Judicial and Legal Service Commission.

(2) The Judicial and Legal Service Commission may, acting in consultation with the Public Service Commission and with the prior approval of the President, make regulations by statutory instrument prescribing the terms and conditions of service of officers and other employees of the Courts and of the Judicial and the Legal Services established by this Constitution or any other law.

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

Fees of
Court, etc.

144. (1) Whenever in any proceedings in a Court, other than the Supreme Court, any question arises as to the discovery of an official document, and any person or authority having custody legal or otherwise of any such document refuses, upon request, to produce that document, on the ground—

Official
document.

(a) that the document belongs to a class of documents which it is prejudicial to the security of the State or injurious to the public interest to produce, or

(b) that disclosure of the contents thereof will be prejudicial to the security of the State or injurious to the public interest,

the Court shall stay the proceedings and refer the question to the Supreme Court for determination.

(2) The Supreme Court may, pursuant to the provisions of subsection (1)—

(a) order any person or authority having custody, legal or otherwise, of the document to produce it; and any person so ordered to produce the document for the purpose of inspection by the Supreme Court; and

(b) determine whether or not any such document shall be produced in the Court from which the reference was made after hearing the parties thereto or their legal representatives or after having given them the opportunity of being heard.

(3) Where the Supreme Court is of the opinion that the document shall be produced, it shall make an order upon the person or authority having custody of the document to produce the same

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or so much of the contents thereof as is essential for the proceedings in accordance with the terms of the order.

(4) Where the question of the discovery of an official document arises in any proceedings in the Supreme Court in the circumstances mentioned in subsection (1) of this section, the Supreme Court shall be governed, *mutatis mutandis*, by the preceding provisions of this section for the determination of the question that has arisen.

Rules of
Court
Committee.

145. (1) There shall be established a Rules of Court Committee which shall consist of—

- (a) the Chief Justice, who shall be Chairman;
- (b) the Director of Public Prosecutions;
- (c) a Justice of the Supreme Court, a Justice of Appeal, and a Judge of the High Court, to be appointed by the Chief Justice;
- (d) the First Parliamentary Counsel;
- (e) a nominee of the Attorney-General and Minister of Justice;
- (f) two practising Counsel of not less than ten years standing both of whom shall be nominated annually by the Sierra Leone Bar Association.

(2) Subject to the provisions of this Constitution the Rules of Court Committee may make Rules of Court for regulating the practice and procedure of all Courts in Sierra Leone, which shall include rules relating to the prevention of frivolous and vexatious proceedings.

CHAPTER VIII—THE OMBUDSMAN

Parliament
to establish
office of
Ombuds-
man.

146. (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;

- (c) any member of the Public Service, being an action taken or omitted to be taken in the exercise of the administrative functions of that department, ministry, statutory corporation, institution or person.

CHAPTER IX—COMMISSIONS OF INQUIRY

147. (1) Save as otherwise provided in subsection (2), the President shall, by constitutional instrument, appoint a Commission of Inquiry into any matter of public interest where—

Appoint-
ment of
Commis-
sions of
Inquiry.

- (a) the Cabinet advises that it is in the public interest so to do; or
- (b) Parliament by a resolution passed in that behalf requires that a Commission be appointed to inquire into any matter specified in the resolution being a matter of public importance.

(2) A Commission appointed pursuant to the provisions of subsection (1) may consist of a sole Commissioner or two or more persons one of whom shall be appointed the Chairman of the Commission.

(3) No person shall be appointed a sole Commissioner or the Chairman of a Commission of Inquiry pursuant to the provisions of this section unless—

- (a) he is a Judge of the Superior Court of Judicature; or
- (b) he is a person qualified to be appointed a Judge of the Superior Court of Judicature; or
- (c) he is a person who has held office as a Judge of the Superior Court of Judicature; or
- (d) he is a person who possesses special background knowledge in respect of the matter forming the subject-matter of the investigation.

(4) Subject to the provisions of subsection (3), where a Commission of Inquiry appointed pursuant to the provisions of subsection (1) consists of more than two Commissioners other than the Chairman, at least one of them shall be a person who possesses special qualifications or knowledge in respect of the matter forming the subject-matter of the investigation.

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Powers,
rights and
privileges
of Com-
missions
of Inquiry.

148. (1) A Commission of Inquiry shall have such powers, rights and privileges as are vested in the High Court of Justice or a Judge thereof at a trial in respect of—

- (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise; and
- (b) compelling the production of documents; and
- (c) the issue of a commission or request to examine witnesses abroad.

(2) A sole Commissioner or a Member of a Commission of Inquiry shall not be liable to any action or suit in respect of any matter or thing done by him in the performance of his functions as such Commissioner or Member.

(3) Save as may be otherwise ordered by the Commission in the interest of public safety or public order, the proceedings of every Commission of Inquiry shall be held in public.

149. (1) The Commission of Inquiry shall—

- (a) make a full, faithful and an impartial inquiry into any matter specified in the commission of appointment;
- (b) report in writing the result of the inquiry; and
- (c) furnish in the report the reasons leading to the conclusions arrived at or reported.

(2) The President shall, subject to the provisions of subsection (4), cause to be published the report of a Commission of Inquiry together with the White Paper thereon within six months of the date of the submission of the report by the Commission.

(3) Where the report of a Commission of Inquiry is not to be published, the President shall issue a statement to that effect, giving reasons why the report is not to be published.

(4) Where a Commission of Inquiry makes an adverse finding against any person, which may result in a penalty, forfeiture or loss of status, the report of the Commission of Inquiry 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.

Publica-
tion of
report of
Commis-
sion of
Inquiry
and right
of appeal.

150. Subject to the provisions of this Chapter, the Rules of Court Committee shall, by constitutional instrument, make rules regulating the practice and procedure of all Commissions of Inquiry.

Rules
regulating
Com-
missions of
Inquiry.

CHAPTER X—THE PUBLIC SERVICE

PART I—THE PUBLIC SERVICE COMMISSION

151. (1) There shall be a Public Service Commission which shall consist of a Chairman, not less than two and not more than four other members.

Establish-
ment of
Public
Service
Com-
mission.

(2) The members of the Public Service Commission shall be appointed by the President, subject to the approval of Parliament.

(3) A person shall not be qualified to hold the office of a member of the Public Service Commission if he is a Member of Parliament, a Minister or a Deputy Minister, or if he holds or is acting in any public office.

(4) A person who has held office or who has acted as a member of the Public Service Commission shall not within a period of three years commencing with the date on which he last so held office or acted, be eligible for appointment to any office, power to make appointments to which is vested by this Constitution in the Public Service Commission.

(5) The office of a member of the Public Service Commission, unless he sooner resigns or dies, shall become vacant—

- (a) at the expiration of a period of five years from the date of his appointment or such shorter period not being less than three years as may be specified at the time of his appointment;
- (b) if any circumstances arise that if he were not a member of the Commission would cause him to be disqualified for appointment as such:

Provided that a member of the Public Service Commission shall retire at the age of sixty-five years.

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

(7) Whenever the office of a member of the Public Service Commission is vacant or a member is for any reason unable to perform the functions of his office, the President may appoint a

person who is qualified for appointment as a member of the Commission, and any person so appointed shall, subject to the provisions of paragraph (b) of subsection (5), continue to act until his appointment is revoked by the President.

(8) A member of the Public Service Commission shall, before assuming the functions of his office, take and subscribe before the President the oath as set out in Third Schedule to this Constitution.

Appoint-
ments, etc.
of public
officers.

152. (1) Subject to the provisions of this Constitution, the power to appoint persons to hold or act in offices in the public service (including power to make appointments on promotion and to confirm appointments) and to dismiss and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Public Service Commission.

(2) The President may, subject to such conditions as he may think fit, delegate any of his functions relating to the making of appointments, including power to make appointments on promotion and to confirm appointments, by directions in writing to the Public Service Commission or to a committee thereof or to any member of the Commission or to any public officer.

(3) Before the Public Service Commission appoints to any public office any person holding or acting in any office, the power to make appointments to which is not vested in the Public Service Commission, it shall consult the person or authority in whom that power is vested.

(4) The Public Service Commission shall, upon request made to it by any person or authority having power to make an appointment to an office under this Constitution or in any other public institution, make recommendations to that person or authority for the appointment of any public officer or any other person to any office, the power to make appointment to which is vested by this Constitution or any other law in that person, authority or public institution.

(5) The power to transfer persons holding or acting in offices in the public service from one department of Government to another shall, where such transfer does not involve promotion vest in the Public Service Commission.

(6) The provisions of this section shall not apply in relation to any of the following offices—

- (a) the office of any Justice of the Supreme Court or of the Court of Appeal or a Judge of the High Court;
- (b) the office of the Director of Public Prosecutions;
- (c) the office of Auditor-General;
- (d) any office to which section 141 (which relates to offices within the jurisdiction of the Judicial and Legal Service Commission) applies;
- (e) any office to which section 153 (which relates to the offices of Ambassadors and certain offices) applies;
- (f) any office to which section 154 (which relates to the offices of Permanent Secretaries and certain other offices) applies; and
- (g) any office the remuneration of which is calculated on a daily rate:

Provided that the power of transfer vested in the Public Service Commission under subsection (5) may be exercised in the case of persons holding any of the offices specified in this subsection where such persons express their consent in writing to such transfer.

(7) No appointment shall be made under this section to any office on the personal staff of the President or the Vice-President, unless he signifies his personal approval of the appointment.

(8) The Public Service Commission shall not dismiss or inflict any other punishment on a public officer on grounds of any act done or omitted to be done by that officer in the exercise of a judicial function conferred upon him, unless the Judicial and Legal Service Commission concurs therein.

(9) No member of the Public Service shall be—

- (a) victimised or discriminated against directly or indirectly for having discharged his duties faithfully in accordance with this Constitution, or
- (b) dismissed or removed from office or reduced in rank or otherwise punished without just cause.

(10) The Public Service Commission may, with the prior approval of the President, make regulations by constitutional instrument for the effective and efficient performance of its functions under this Constitution or any other law, and may, with such prior approval

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and subject to such conditions as it may think fit, delegate any of its powers under this section by directions in writing to any of its members or to any public officer.

(11) Save as is otherwise provided in this Constitution, the Public Service Commission shall not be subject to the control or direction of any other person or authority in the performance of its functions under this Constitution or any other law.

Appointment of the Principal representatives of Sierra Leone abroad, Armed Forces Commanders and Inspector-General of Police.

153. (1) The power to appoint persons to hold or act in the office to which this section applies (including the power to transfer from one office to another and to confirm appointments) and to remove persons so appointed from any such office shall vest in the President.

(2) The offices to which this section applies are the offices of Ambassadors, High Commissioners or other principal representative of Sierra Leone abroad, the Commanders of the Armed Forces and the Inspector-General of Police:

Provided that the appointment to these offices shall be subject to the approval of Parliament.

Appointment of Permanent Secretaries and certain other officers.

154. (1) The power to appoint persons to hold or act in any of the offices to which this section applies (including the power to make appointments on promotion and transfer from one office to another and to confirm appointments) and to remove persons so appointed from any such office shall vest in the President acting in consultation with the Public Service Commission.

(2) The offices to which this section applies are the offices of the Secretary to the President, Secretary to the Vice-President, Secretary to the Cabinet, Financial Secretary, Director-General of the Ministry of Foreign Affairs, Establishment Secretary, Development Secretary, Provincial Secretary and Permanent Secretary.

(3) Where any person holding an office mentioned in subsection (2) accepts another such office carrying higher remuneration, he shall, unless a contrary intention appears from the terms of his appointment, be deemed to have relinquished the office he was originally holding; where the second office does not carry higher remuneration, the question whether or not he shall be deemed to have relinquished the original office shall depend on the terms of his second appointment.

(4) Subject to the provisions of section 152 of this Constitution, where any person has been removed under subsection (1) from any office specified in subsection (2) he may notwithstanding such removal—

- (a) remain in the Public Service;
- (b) continue to receive a salary not less than the salary he received before such removal; and
- (c) continue to be eligible for any benefits granted to him in respect of his service as a public officer, including benefits payable under any law providing for the grant of pensions, gratuities or both,

unless by such removal he ceases to be a member of the Public Service.

PART II—THE POLICE FORCE

155. (1) There shall be a Police Force of Sierra Leone, the Head of which shall be the Inspector-General of Police.

Establishment of the Sierra Leone Police Force.

(2) No person shall raise any police force except by or under the authority of an Act of Parliament.

(3) No member of the Police Force shall hold office as President, Vice-President, Minister or Deputy Minister, or be qualified for election as a Member of Parliament whilst he remains a member of the Police Force.

156. (1) There shall be established a Police Council which shall consist of—

Establishment of Police Council.

- (a) the Vice-President who shall be Chairman;
- (b) the Minister of Internal Affairs;
- (c) the Inspector-General of Police;
- (d) the Deputy Inspector-General of Police;
- (e) the Chairman of the Public Service Commission;
- (f) a Member of the Sierra Leone Bar Association who shall be a legal practitioner of not less than ten years standing as a practising Barrister, and shall be nominated by that body and appointed by the President;
- (g) two other members appointed by the President, subject to the approval of Parliament.

(2) Every member of the Police Council shall take and subscribe the oath as set out in the Third Schedule to this Constitution.

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Appoint-
ments in
the Police
Force.

(3) The Permanent Secretary of the Ministry responsible for matters relating to the Police shall be Secretary to the Council.

157. (1) The Inspector-General shall be appointed by the President acting on the advice of the Police Council, subject to the approval of Parliament.

(2) Subject to the provisions of this Constitution, the power to appoint persons to hold or act in an office in the Police Force from the rank of Assistant Superintendent of Police and above, excluding the Inspector-General of Police, (including the power to make appointments on promotion and to confirm appointments), and to dismiss, reduce in rank and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Police Council.

(3) The power to appoint persons to hold or act in any office in the Police Force below the rank of Assistant Superintendent of Police, (including the power to make appointments on promotion and to confirm appointments), and to dismiss, reduce in rank and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Police Council acting on the recommendation of the Inspector-General of Police.

(4) Subject to the provisions of this section and to the control and direction of the Police Council, the Inspector-General of Police shall be responsible for the operational control and administration of the Police Force.

Functions
of Police
Council.

158. (1) The Police Council shall advise the President on all major matters of policy relating to internal security, including the role of the Police Force, Police budgeting and finance, administration and any other matter as the President shall require.

(2) The Police Council may, with the prior approval of the President, make regulations for the performance of its functions under this Constitution or any other law, and for the effective and efficient administration of the Police Force.

(3) Regulations made pursuant to the provisions of subsection (2) shall include regulations in respect of—

- (a) the control and administration of the Police Force of Sierra Leone;
- (b) the ranks of officers and men of each unit of the Police Force, the members in each such rank and the use of uniforms by such members;

- (c) the conditions of service, including those relating to enrolment and to pay, pensions, gratuities and other allowances of officers and men of each unit and deductions therefrom;
- (d) the authority and powers of command of officers and men of the Police Force; and
- (e) the delegation to other persons of powers of commanding officers to discipline accused persons, and the conditions subject to which such delegation may be made.

PART III—RESIGNATIONS, RE-APPOINTMENTS AND PROTECTION OF PENSION RIGHTS OF PUBLIC OFFICERS HOLDING ESTABLISHED OFFICES

159. (1) Any person who is appointed or elected to, or otherwise selected for, any office established by this Constitution, including the office of Vice-President, Member of the Cabinet, Minister or Deputy Minister, may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed, elected or selected:

Resignation and effect of new appointment of a person holding an established office.

Provided that in the case of the Speaker or the Deputy Speaker his resignation from office shall be addressed to Parliament and in the case of a Member of Parliament his resignation from Parliament shall be addressed to the Speaker.

(2) The resignation of any person from any such office as referred to in subsection (1) shall take effect, where no date is specified, when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any person authorised by that person or authority to receive it.

160. (1) Subject to the provisions of this Constitution, where any person has vacated any office established by this Constitution he may, if qualified, again be appointed, elected, or otherwise selected to hold that office.

Re-appointment, etc.

(2) Where by this Constitution a power is conferred upon any person or authority to make any appointment to any public office, a person may be appointed to that office notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection then for the purposes of any function conferred upon the holder of that office the person last appointed shall be deemed to be the sole holder of the office.

Protection
of pension
rights.

161. (1) The law applicable to any benefits to which this section applies shall, in relation to any person who has been granted, or who is eligible for the grant of such benefits, be that in force on the relevant date or any later law that is not less favourable to that person.

(2) In this section "the relevant date" means—

(a) in relation to any benefits granted before the twenty-seventh day of April, 1961, the date on which those benefits were granted;

(b) in relation to any benefits granted on or after the twenty-seventh day of April, 1961, to or in respect of any person who was a public officer before that date, the twenty-sixth day of April, 1961; and

(c) in relation to any benefits granted or to be granted to or in respect of any person who becomes a public officer on or after the twenty-seventh day of April, 1961, the date on which he becomes a public officer.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law specified by him in exercising the option shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) Any benefit to which this section applies (not being a benefit that is a charge upon some other public fund of Sierra Leone) shall be a charge upon the Consolidated Fund or upon such other Special Fund, whether contributory or non-contributory, as Parliament may prescribe.

(5) This section applies to any benefits payable under any law providing for the grant of pensions, gratuities or compensation to persons who are or have been public officers in respect of their service in the public service or to the widows, children, dependants or personal representatives of such persons in respect of such service.

(6) References to the law applicable to any benefits to which this section applies includes (without prejudice to their generality) references to any law relating to the time at which and the manner in which any person may retire in order to become eligible for those benefits.

(7) Notwithstanding any law or custom to the contrary, it shall be lawful for Parliament to enact that a person shall not be entitled to a benefit under this section, unless he has contributed to a specified Fund created for the purpose.

PART IV—POWER AND PROCEDURE OF COMMISSIONS AND COUNCILS, AND LEGAL PROCEEDINGS

162. (1) Where any benefits to which this section applies can be withheld, reduced in amount or suspended by any law, those benefits shall not be so withheld, reduced in amount or suspended—

Power of
Commissions
in
relation to
the grant
of pensions.

(a) in the case of benefits which have been granted in respect of service in the public service of any person who at the time when he ceased to be a public officer was subject to the jurisdiction of the Judicial and Legal Service Commission or for which any person may be eligible in respect of such service,

without the approval of that Commission;

or

(b) in any other case, without the approval of the Public Service Commission or the appropriate Council, as the case may be.

(2) No benefits to which this section applies that have been granted to or in respect of any person who is or has been a Judge of the High Court, a Justice of Appeal or of the Supreme Court, or a former Judge of the Supreme Court or for which any such person or his widow, children, dependants or personal representatives may be eligible, shall be withheld, reduced in amount or suspended on the ground that that person has been guilty of misconduct or misbehavior unless that person has been removed from judicial office by reason of such misconduct or misbehaviour.

(3) This section applies to any benefits payable under any law providing for the grant of pensions, gratuities or compensation to persons who are or have been public officers in respect of their service in the public service or to the widows, children, dependants or personal representatives of such persons in respect of such service whether on a contributory or non-contributory basis.

163. (1) Any Commission or Council established by this Constitution may, with the consent of the President and subject to the provisions of subsection (2) by regulation or otherwise regulate its own procedure and, confer or delegate powers or impose duties on any authority of the Government for the purpose of the discharge of its functions.

Power and
procedure
of Com-
missions.

(2) At any meeting of any Commission or Council established by this Constitution a quorum shall be constituted if three members are present; and if a quorum is present the Commission

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or Council shall not be disqualified for the transaction of business by reason of any vacancy among its members and any proceedings of the Commission or Council shall be valid notwithstanding that some person who was not entitled to do so took part therein.

Protection of Commissions from legal proceedings.

164. The question whether—

- (a) any Commission or Council established by this Constitution has validly performed any function vested in it by or under this Constitution;
- (b) any member of such a Commission or Council or any other person has validly performed any functions delegated to such member or person in pursuance of the provisions of subsection (1) of section 163 or, as the case may be, subsection (10) of section 152; or
- (c) any member of such a Commission or Council or any other person or authority has validly performed any other function in relation to the work of the Commission or Council or in relation to any such function as is referred to in paragraph (b),

shall not be inquired into in any Court.

CHAPTER XI—THE ARMED FORCES

Establishment of the Armed Forces.

165. (1) There shall be the Armed Forces of Sierra Leone which shall consist of the Army, the Navy and the Air Force, and such other branches for which provision is made by Parliament.

(2) 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.

(3) No member of the Armed Force shall hold office as President, Vice-President, Minister or Deputy Minister, or be qualified for election as a Member of Parliament whilst he remains a member of the Armed Forces.

Prohibition of private armed forces.

166. No person shall raise any armed force except by or under the authority of an Act of Parliament.

167. (1) There shall be established a Defence Council which shall consist of—

Establishment of Defence Council.

- (a) the President, who shall be Chairman;
- (b) the Vice-President;
- (c) the Minister responsible for Defence;
- (d) the Chief of Defence Staff;
- (e) the Commanders of the Armed Forces (Army, Navy and Air Force) and their deputies;
- (f) the Minister of Internal Affairs;
- (g) two other persons as the President shall from time to time appoint.

(2) Every member of the Defence Council shall take and subscribe the oath as set out in the Third Schedule to this Constitution.

(3) The Permanent Secretary of the Ministry of Defence shall be the Secretary to the Council.

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

Appointments in the Armed Forces.

(2) Subject to the provisions of this section and to the control or directives of the Defence Council, the Chief of Defence Staff and the Commanders of the Armed Forces shall be responsible for the operational control and the administration of the Armed Forces as a whole.

169. (1) The Defence Council shall advise the President on all major matters of policy relating to defence and strategy including the role of the Armed Forces, military budgeting and finance, administration and the promotion of officers above the rank of Lieutenant or its equivalent.

Functions of the Defence Council.

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

(3) Regulations made pursuant to the provisions of subsection (2) shall include regulations in respect of—

- (a) the control and administration of the Army, the Navy and the Air Force of Sierra Leone;

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- (b) the ranks of officers and men of each Armed Force, the members in each such rank and the use of uniforms by such men;
- (c) the conditions of service, including those relating to the enrolment and to the pay, pensions, gratuities and other allowances of officers and men of each Armed Force and deductions therefrom;
- (d) the authority and powers of command of officers and men of each Armed Force; and
- (e) the delegation to other persons of powers of commanding officers to try accused persons, and the conditions subject to which such delegation may be made.

CHAPTER XII—THE LAWS OF SIERRA LEONE

The Laws
of Sierra
Leone.

170. (1) The laws of Sierra Leone shall comprise—

- (a) this Constitution;
- (b) laws made by or under the authority of Parliament as established by this Constitution;
- (c) any orders, rules, regulations and other statutory instruments made by any person or authority pursuant to a power conferred in that behalf by this Constitution or any other law;
- (d) the existing law; and
- (e) the common law.

(2) The common law of Sierra Leone shall comprise the rules of law generally known as the common law; the rules of law generally known as the doctrines of equity, and the rules of customary law including those determined by the Superior Court of Judicature.

(3) For the purposes of this section the expression "customary law" means the rules of law which by custom are applicable to particular communities in Sierra Leone.

(4) The existing law shall, save as otherwise provided in subsection (1), comprise the written and unwritten laws of Sierra Leone as they existed immediately before the date of the coming into force of this Constitution and any statutory instrument issued or made before that date which is to come into force on or after that date.

(5) Subject to the provisions of this section, the operation of the existing laws after the coming into force of this Constitution shall not be affected by such commencement; and accordingly the existing law shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the provisions of this Constitution or otherwise to give effect to or enable effect to be given to any changes effected by this Constitution.

(6) Every statutory instrument shall be published in the *Gazette* not later than twenty-eight days after it is made or, in the case of a statutory instrument which will not have the force of law unless it is approved by some person or authority other than the person or authority by which it is made, not later than twenty-eight days after it is approved, and if it is not so published it shall be void from the date on which it was made.

(7) Any orders, rules or regulations made by any person or authority pursuant to a power conferred in that behalf by this Constitution or any other law—

- (a) shall be laid before Parliament;
- (b) shall be published in the *Gazette* on or before the day they are so laid before Parliament;
- (c) shall come into force at the expiration of a period of twenty-one days of being so laid unless Parliament, before the expiration of the said period of twenty-one days, annuls any such orders, rules or regulations by the votes of not less than two-thirds of the Members of Parliament.

CHAPTER XIII—MISCELLANEOUS

171. (1) In this Constitution unless a contrary intention appears—

"Chieftom Council" means a Chieftom Council constituted under the Chieftom Councils Act; Interpre-
tation.
Cap. 61

"Commission of Inquiry" includes a committee of inquiry;

"constitutional instrument" means an instrument made under a power conferred in that behalf by this Constitution;

"Court" means any court of law in Sierra Leone including a court martial;

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of any council, board, panel, committee or other similar body (whether incorporated or not) established by or under any law, or in the office of any Paramount Chief, Chiefdom Councillor or member of a Local Court.

(5) In this Constitution, unless a contrary intention appears—

- (a) a reference to an appointment to any office shall be construed as including a reference to the appointment of a person to act in or perform the functions of that office; and
- (b) a reference to the holder of an office by a term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or performing the functions of that office.

(6) Where by this Constitution power is vested in any person or authority to appoint any person to act in or perform the functions of any office, if the holder thereof is himself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions.

(7) In this Constitution and in any other law—

- (a) the power to appoint any person to hold or to act in any office in the public service shall include the power to confirm appointments, to exercise disciplinary control over persons holding or acting in such offices and to reappoint or reinstate any person appointed in exercise of the power in question, unless such power is expressly or by necessary implication conferred upon some other person or authority by this Constitution;
- (b) where a power is conferred or a duty is imposed on the holder of an office as such, the power may be exercised and the duty shall be performed by the person for the time being charged with the performance of the functions of his office.

(8) Reference in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service;

Provided that—

- (a) nothing in this subsection shall be construed as conferring on any person or authority the power to require a Judge of the High Court, a Justice of Appeal or a Justice of the Supreme Court, the Solicitor-General, the Director of Public Prosecutions or the Auditor-General to retire from the public service; and
- (b) any power conferred by any law to permit a person to retire from the public service shall in the case of any public officer who may be removed from office by some person or authority other than a Commission, established by this Constitution, be vested in the Public Service Commission.

(9) In this Constitution, reference to a subsection, paragraph, sub-paragraph or item shall be construed as reference to a subsection, paragraph, sub-paragraph or item of the section, subsection, paragraph or sub-paragraph as the case may be in which the reference is made.

(10) Any provision in this Constitution that vests in any person or authority the power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officers on attaining an age specified by or under that law.

(11) Where any power—

(a) is conferred by this Constitution to make any order, regulation, rule or pass any resolution or give any direction or make any declaration or designation, it shall be deemed to include the power, exercisable in like manner and subject to the like conditions, if any, to amend or revoke any such order, regulation, rule, constitutional or statutory instrument, resolution, direction, declaration or designation as the case may be;

Provided that nothing in this subsection shall apply to the power to issue a certificate conferred by paragraph (b) of subsection (6) of section 50 of this Constitution.

(b) is given to any person or authority to do or enforce the doing of any act or thing, all such powers shall be deemed to be also given as are necessary to enable that person or authority to do or enforce the doing of the act or thing.

"law" includes—

- (a) any instrument having the force of law made in exercise of a power conferred by law;
- (b) customary law and any other unwritten rules of law;

Act No. 20
of 1963

"Local Court" means a Court established by or under the Local Courts Act, 1963;

"Oath" includes an affirmation;

"The President" means the President of the Republic;

"Public Emergency" includes any period during which

- (a) Sierra Leone is at war; or
- (b) there is in force a Proclamation issued by the President under subsection (1) of section 29; or
- (c) there is in force a Resolution of Parliament made under subsection (3) of section 29;

"public office" includes an office the emoluments attaching to which are paid directly from the Consolidated Fund or directly out of moneys provided by Parliament;

"public officer" means a person holding or acting in a public office;

"public service" means, subject to the provision of subsections (3) and (4), service of the Government of Sierra Leone in a civil capacity and includes such service in respect of the Government existing in Sierra Leone prior to the twenty-seventh day of April, 1961;

"Session" means the sittings of Parliament when it first meets after the commencement of this Constitution or after the prorogation or dissolution of Parliament at any time and ending when Parliament is prorogued or dissolved without having been prorogued;

"Sierra Leone" means the territory more particularly described in the First Schedule;

"Statutory Instrument" means any proclamation, regulation, order, rule or other instrument (not being an Act of Parliament) having the force of law;

"the Sierra Leone Police" means the Police Force established under the Police Act, 1964; Act No. 7
of 1964.

"sitting" means a period during which Parliament is sitting continuously without adjournment including any period during which Parliament is in committee.

(2) In this Constitution unless a contrary intention appears—

- (a) words importing male persons shall include female persons and corporations;
- (b) words in the singular shall include the plural, and words in the plural shall include the singular;
- (c) where a word is defined, other parts of speech and tenses of that word shall have corresponding meanings;
- (d) words directing or empowering a public officer to do any act or thing, or otherwise applying to him by the designation of his office, shall include his successors in office and all his deputies or all other assistants;
- (e) words directing or empowering a Minister to do an act or thing or otherwise applying to him, by the designation of his office, shall include a Minister acting for him, or if the office is vacant a Minister designated to act in that office by or under the authority of an Act of Parliament and also his successors in office or all his deputies or other assistants.

(3) In this Constitution unless otherwise expressly provided "the public service" includes service in the office of Chief Justice, a Justice of the Supreme Court, Justice of Appeal, Judge of the High Court or of the former Supreme Court or in the office of Judge of any other court established by Parliament being an office the emoluments attaching to which are paid out of the Consolidated Fund or any other public fund of Sierra Leone, and service in the office of a member of the Sierra Leone Police Force.

(4) In this Constitution "the public service" does not include service in the office of President, Vice-President, Speaker, Minister, Deputy Minister, Attorney-General and Minister of Justice, Deputy Speaker, Member of Parliament, or of any member of any Commission established by this Constitution, or any member

(12) For the purposes of this Constitution a person shall not be regarded as holding an office of emolument under the Government by reason only that he is in receipt of a pension or other like benefit in respect of service in an office under the Government.

(13) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in exercising any functions under this Constitution shall be construed as precluding a Court from exercising jurisdiction in relation to any question whether the person or authority has performed those functions in accordance with this Constitution or any other law.

(14) Where, under any provision of this Constitution, any person or authority is authorised or required to exercise any function after consultation with some other person or authority, the person or authority shall not be required to act in accordance with the advice of that other person or authority, and the question whether such consultation was made shall not be inquired into in any court.

(15) This Constitution shall be the supreme law of Sierra Leone and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void and of no effect.

Legislation

172. (1) Any reference in this Constitution to a law made before 27th April, 1961, shall, unless the context otherwise requires, be construed as a reference to that law as it had effect immediately before the coming into effect of this Constitution.

(2) Any reference in this Constitution to a law that amends or replaces any other law or any provision of any other law shall be construed as including a reference to a law that modifies, re-enacts, with or without amendment or modification, suspends, repeals, adds new provision, or makes different provisions in lieu of that other law or that provision.

(3) It is hereby declared that—

- (a) any power to make laws conferred by this Constitution includes power to make laws having extra-territorial operation;
- (b) any reference in this Constitution to the functions of the President includes reference to his functions as Commander-in-Chief of the Armed Forces of the Republic;

(c) the functions of the Commander-in-Chief of the Armed Forces of the Republic shall be such as may be prescribed by Parliament.

173. The provisions of any Consequential Provisions Act made under this Constitution and of any Act relating to citizenship shall not be amended, repealed, re-enacted or replaced unless the Bill incorporating such amendments, repeal, re-enactment or replacement is supported at the final vote thereupon by the votes of not less than two-thirds of the Members of Parliament.

CHAPTER XIV—TRANSITIONAL PROVISIONS

174. In this Chapter "The existing Constitution" refers to the Constitution of Sierra Leone, 1978.

Existing
Constitution
Act No. 12
of 1978.

175. The transitional provisions of this Constitution shall have effect notwithstanding anything to the contrary contained in this Constitution or any other law.

Effect of
Transitional
provisions.

176. In this Chapter, the expression "existing law" means any Act, rule, regulation, order or other such instrument made in pursuance of, or continuing in operation under, the existing Constitution and having effect as part of the laws of Sierra Leone or of any part thereof immediately before the commencement of this Constitution or any Act of the Parliament of the United Kingdom or Order of Her Majesty in Council so having effect and may be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution as if it had been made under this Constitution.

Existing
Law.

177. (1) The existing law shall, notwithstanding the repeal of the Constitution of Sierra Leone Act, 1978, have effect after the entry into force of this Constitution as if they had been made in pursuance of this Constitution and shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution.

Act No. 12
of 1978.

Applica-
tion of
Existing
Law.

(2) Where any matter that falls to be prescribed or otherwise provided for under this Constitution by Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section), or is otherwise prescribed or provided for immediately before the commencement of this Constitution by or under the existing Constitution, that prescription or provision shall, as

from the commencement of this Constitution have effect with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution as if it had been made under this Constitution by Parliament or, as the case may require, by the other authority or person.

(3) Subject to the approval of Parliament, the President may, by order made after the commencement of this Constitution but before the first dissolution of Parliament under this Constitution, make such amendments to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Constitution or otherwise for giving effect or enabling effect to be given to the provisions of this Constitution.

(4) The provisions of this section shall be without prejudice to any powers conferred by this Constitution or by any other law upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

178. (1) Where any office has been established by or under the existing Constitution or any existing law, and this Constitution establishes or provides for the establishment of a similar or an equivalent office including the office of President, Vice-President, Minister, Member of the Cabinet, Attorney-General and Minister of Justice, Deputy Minister or any person who, immediately before the commencement of this Constitution, holds or is acting in the former office shall, so far as is consistent with the provisions of this Constitution, be deemed as from the commencement of this Constitution to have been appointed, elected or otherwise selected to hold or act in the latter office in accordance with the provisions of this Constitution:

Provided that—

- (a) any person who under the existing Constitution or any existing law would have been required to vacate his office at the expiration of any period or on the attainment of any age shall vacate his office at the expiration of that period or on the attainment of that age;
- (b) no alteration made in the functions, powers or duties of any office by this Constitution shall entitle the holder thereof for the purpose of any law with respect to pensions benefits to be treated as if his office had been abolished.

(2) The person who holds the office of President of the Republic of Sierra Leone immediately before the coming into force of this Constitution shall continue to be the President of the Re-

Preserva-
tion of
existing
offices.

public of Sierra Leone after the commencement of this Constitution until the first Presidential election is held under this Constitution.

Provided that the period served after the commencement of this Constitution shall not count as a term or part of a term for the purposes of subsection (1) of section 46.

(3) The offices of Vice-Presidents under the existing Constitution shall remain in force until the first dissolution of Parliament under this Constitution.

(4) Any person who, by virtue of this section is deemed as from the commencement of this Constitution to have been appointed, elected or otherwise selected to hold or act in any office shall also be deemed as from the commencement of this Constitution to have been appointed, elected or otherwise selected to hold or act in that office, and shall also be deemed to have taken and subscribed any necessary oath under this Constitution.

(5) The High Court of Justice established under the provisions of subsection (4) of section 120 of this Constitution shall be the successor to the High Court in being immediately before the coming into force of this Constitution. Transi-
tional.

(6) The Court of Appeal established under the provisions of subsection (4) of section 120 of this Constitution shall be the successor to the Court of Appeal in being immediately before the coming into force of this Constitution; and accordingly the Court of Appeal as established by this Constitution shall be bound to follow the decisions on questions of law binding on the Court of Appeal as it existed immediately before the coming into force of this Constitution.

(7) The Supreme Court established under the provisions of subsection (4) of section 120 of this Constitution shall be the successor to the Supreme Court in being immediately before the coming into force of this Constitution.

(8) The persons who immediately before the entry into force of this Constitution were Justices of the Supreme Court, or Justices of the Court of Appeal, Judges of the High Court established under Chapter VI of the existing Constitution shall be deemed to have been appointed respectively Justices of the Supreme Court, Justices of the Court of appeal and Judges of the High Court established by this Constitution.

(9) The person who immediately before the entry into force of this Constitution held the office of Chief Justice of the Judiciary established under sections 100 and 101 of the existing Constitution shall be deemed to have been appointed Chief Justice, and a Justice of the Supreme Court under this Constitution.

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(10) A person who is a member of the Public Service Commission established by the existing Constitution may, notwithstanding that by reason of his having held or been nominated for election to any office before the coming into effect of this Constitution, he is disqualified to be appointed as a member of the Public Service Commission established by this Constitution, continue in office under this section as a member of that Commission and be re-appointed thereto upon the expiration of his term of office.

(11) In this Chapter, "pensions benefits" means any pensions, compensations, gratuity, or other like allowances for the holder of that office in respect of his service as a public officer or for the widow, children, dependants or personal representative of such holder in respect of such service, whether or not accruing from a contributory basis.

(12) Reference in this Chapter to the law with respect to pensions benefits includes, without prejudice to their generality, references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended, and the law regulating the amount of any such benefits.

X (13) Notwithstanding anything contained in this Constitution to the contrary, any Commission or Committee of Inquiry in existence immediately before the coming into force of this Constitution may continue in existence until the submission of its report or otherwise dissolved according to law.

Existing
Parliament.

179. (1) The Parliament constituted by the existing Constitution (hereinafter referred to as "the existing Parliament") shall be deemed to be the Parliament at the commencement of this Constitution and the existing Members shall be deemed Members thereof and the said Parliament shall stand dissolved not later than twelve months after the commencement of this Constitution.

(2) The Constituencies into which Sierra Leone was divided immediately before the commencement of this Constitution and until other provision is made in that behalf in accordance with this Constitution shall be deemed to be the Constituencies into which Sierra Leone is divided in pursuance of section 38 of this Constitution; and the persons who immediately before the commencement of this Constitution, are the elected Members of the existing Parliament representing these constituencies shall be deemed as from the commencement of this Constitution to have been elected to Parliament in accordance with provisions of this Constitution as

the elected Members representing the respective constituencies responding to those constituencies and shall hold their offices in accordance with the provisions of subsection (1).

(3) The registers of voters having effect immediately before the commencement of this Constitution for the purposes of elections to the existing Parliament shall, as from the commencement of this Constitution, have effect as if they have been compiled in pursuance of this Constitution.

(4) The persons who, immediately before the commencement of this Constitution, are Members of Parliament appointed by the President pursuant to the provisions in paragraph (c) of subsection (1) of section 43 of the existing Constitution, shall be deemed as from the commencement of this Constitution to be Members of Parliament until the dissolution of Parliament in accordance with the provisions of subsection (1).

(5) The persons who, immediately before the commencement of this Constitution, are the Speaker and the Deputy Speaker of the existing Parliament shall be deemed as from the commencement of this Constitution to have been elected as Speaker and Deputy Speaker of Parliament in accordance with the provisions of this Constitution and shall hold office in accordance with those provisions.

(6) Until Parliament otherwise provides, any person who holds or acts in any office, the holding of which would under the existing law be a disqualification for election to Parliament, shall be deemed not to be so disqualified as though provisions in that behalf had been made in pursuance of this Constitution.

(7) The Standing Orders of the existing Parliament as in force immediately before the commencement of this Constitution shall until it is otherwise provided by Parliament, be the Standing Orders of Parliament, but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution.

(8) Any person who, by virtue of this section, is deemed as from the commencement of this Constitution to have been elected as Speaker or any other Member of Parliament shall be deemed to have taken and subscribed any necessary oath under this Constitution.

180. (1) Any power that immediately before the commencement of this Constitution was vested in an existing public service authority (that is to say, for example, the President or the Public Service Commission) established by the existing Constitution, and

Delegated
Powers
and
inquiries.

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that, under the existing Constitution, is then delegated to some other person or authority shall, as from the commencement of this Constitution and so far as is consistent with the provisions of this Constitution, be deemed to have been delegated to such person or authority in accordance with those provisions.

(2) Any matter that, immediately before the commencement of this Constitution, is pending before an existing public service authority shall, so far as is consistent with the provisions of this Constitution, be continued before the corresponding public service authority established by this Constitution, and any matter that, immediately before the commencement of this Constitution, is pending before a person or authority to whom power to deal with that matter has been delegated by an existing public service authority shall, so far as is consistent with the provisions of this Constitution, be continued before the person or authority to whom that power was delegated:

Provided that, where the hearing of a disciplinary proceeding has begun but has not been completed immediately before the commencement of this Constitution, the continued hearing shall not be held before any person unless the hearing that has already taken place was also held before him; and where, by virtue of this provision, the hearing cannot be continued it shall be recommenced.

181. Where any matter or thing has been commenced before the coming into force of this Constitution by any person or authority having power in that behalf under the existing law, that matter or thing may be carried on and completed by the person or authority having power in that behalf on or after such commencement and it shall not be necessary for any such person or authority to commence any such matter or thing *de novo*.

182. Subject to the provisions of sections 183 and 184 legal proceedings pending immediately before the coming into force of this Constitution before any Court, including civil proceedings by or against the Government, shall not be affected by the coming into force of this Constitution and may be continued accordingly.

183. (1) Any proceedings pending immediately before the entry into force of this Constitution before the existing High Court or any proceedings on appeal from that Court so pending before the existing Court of Appeal or any proceedings on appeal from the Court of Appeal before the Supreme Court may be continued after the entry into force of this Constitution before the High Court or the Court of Appeal or the Supreme Court established by this Constitution as the case may be.

Continuation of matters.

Legal proceedings.

Appeals.

184. (1) On and after the 14th day of June, 1978, no Court exercising jurisdiction under the laws of Sierra Leone shall, by virtue of the Colonial and Other Territories (Divorce Jurisdiction) Act, 1950, have jurisdiction to make a decree for the dissolution of a marriage, or as incidental thereto to make an order as to any matter, unless proceedings for the decree were instituted before the commencement of this Constitution.

(2) Except as provided by subsection (1) and subject to any provision to the contrary which may be made on or after the commencement of this Constitution by or under any law made by any legislature established for Sierra Leone, all courts having jurisdiction under the laws of Sierra Leone shall on and after that day have the same jurisdiction under the said Acts as they would have had if this Constitution had not been passed.

(3) The reference in subsection (1) to proceedings for the dissolution of a marriage includes references to proceedings for such decree of presumption of death and dissolution of marriage as is authorised by section 1 of the Matrimonial Causes Act, 1950.

185. The Public Funds known as the Consolidated Fund and the Contingencies Fund established by the existing Constitution shall respectively continue in being as the Consolidated Fund and the Contingencies Fund established respectively by sections 111 and 116 of this Constitution.

186. Every payment required or authorised to be made out of the Public Fund under any law in force immediately before the commencement of this Constitution is hereby charged on that Fund.

187. The Public Seal, the seals of the High Court, the Court of Appeal and the Supreme Court, together with any duplicates thereof and any other official seal, as well as any prescribed forms in use under any law in force immediately before the commencement of this Constitution may be employed on and after that date by the corresponding authorities under any law in force at the said commencement and contained in the existing law.

188. The Sierra Leone Police Force established by the Police Act of 1964 and in being immediately before the commencement of this Constitution shall continue in being thereafter and be deemed to be the Police Force of the Republic of Sierra Leone and any law in force immediately before the commencement of this Constitution in relation to the said Police Force shall have effect accordingly.

Jurisdiction of Courts.

Finance.

Financial Authorization.

Official. Seals, etc.

Continuation of Police Forces. Act No. 7 of 1964.

1856

Continuation of the Military Forces Act No. 34 of 1961 and Act No. 29 of 1972.

189. The Republic of Sierra Leone Military Forces established by the Sierra Leone Military Forces Act, 1961 in being immediately before the commencement of this Constitution shall continue in being thereafter and be deemed to be the Military Forces of the Republic of Sierra Leone, and any law in force immediately before the commencement of this Constitution in relation to the said Military Forces shall have effect accordingly.

Repeal of Act No. 12 of 1978 and savings.

190. The Constitution of Sierra Leone, 1978 is hereby repealed in so far as it affects the laws of Sierra Leone:

Provided that notwithstanding such repeal, all laws made by virtue of any authority therein contained shall remain in full force and effect to the same extent as if that Constitution had not been repealed.

Reprint.

191. The President may within a period of three years from the coming into force of this Constitution cause these provisions to be reprinted and published without the transitional provisions in this Constitution.

Commencement of Act No. 6 of 1991.

192. This Act shall come into operation on the 1st day of October, 1991, following the issuance of a certificate by the Speaker in the form set out in the Fourth Schedule that the provisions of section 55 of the existing Constitution have been complied with.

FIRST SCHEDULE

TERRITORY OF SIERRA LEONE

The area in West Africa lying between the sixth and tenth degrees of north latitude and the tenth and fourteenth degrees of west longitude and bounded on the north by the boundary line delimited under the provisions of the Anglo-French Convention dated the twenty-eighth day of June, 1882, the Anglo-French Agreement dated the twenty-first day of January, 1895, and the notes exchanged between His Britannic Majesty's Principal Secretary of State for Foreign Affairs and the Ambassador of the French Republic, and dated the sixth day of July, 1911, and on the South by the Anglo-Liberian boundary line delimited under the provisions of the Anglo-Liberian Conventions dated the eleventh day of November, 1885, and the twenty-first day of January, 1911.

1857

SECOND SCHEDULE

PRESIDENT'S OATH

"I do hereby (in the name of God swear) (solemnly affirm) that I will at all times well and truly discharge the duties of the office of the President of the Republic of Sierra Leone according to law, that I will preserve, support, uphold, maintain and defend the Constitution of the Republic of Sierra Leone as by law established, and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will. (So help me God.)

THIRD SCHEDULE

Oath of the Vice-President, Ministers and Deputy Ministers, Attorney-General and Minister of Justice, Secretary to the President, Secretary to the Cabinet, Solicitor-General, Director of Public Prosecutions, Members of the Electoral Commission, the Speaker, Members of Parliament, Auditor-General, Members of the Public Service Commission, The Chief Justice and Judges of the Superior Court of Judicature, Members of the Judicial and Legal Service Commission, Members of the Police Council, Members of the Defence Council.

"I do hereby (in the name of God swear) (solemnly affirm) that I will faithfully and truly discharge the duties of the office of of the Republic of Sierra Leone, and that I will support, uphold and maintain the Constitution of Sierra Leone as by law established. (So help me God.)

OATH OF THE SPEAKER

"I do hereby (in the name of God swear) (solemnly affirm) that I will bear true faith and allegiance to the Republic of Sierra Leone as by law established; that I will faithfully and conscientiously discharge my duties as Speaker of Parliament, and that I will do right to all manner of people in accordance with the Constitution of Sierra Leone and uphold the Laws and customs of Parliament without fear or favour, affection or ill-will. (So help me God.)

OATH OF MEMBER OF PARLIAMENT

"I having been elected a Member of Parliament do hereby (in the name of God swear) (solemnly affirm) that I will bear true faith and allegiance to the Republic of Sierra Leone as by law established; that I will uphold and defend the Constitution of Sierra Leone, and that I will faithfully and conscientiously discharge the duties of a Member of Parliament. (So help me God.)

THE JUDICIAL OATH

"I do hereby (in the name of God swear) (solemnly affirm) that I will faithfully and truly discharge the duties of the office of and that I will support and uphold the Constitution of Sierra Leone as by Law established, and that I will do right to all manner of people after the laws and usages of Sierra Leone without fear or favour, affection or ill-will. (So help me God.)

1858

FOURTH SCHEDULE
DECLARATION OF COMPLIANCE

I WILLIAM NIAKA STEPHEN CONTEH, Officer of the Order of the Republic of Sierra Leone, Speaker of the Parliament of Sierra Leone, do hereby certify that a Bill entitled "THE CONSTITUTION OF SIERRA LEONE, 1991" was first introduced by the Honourable ABDULAI OSMAN CONTEH, Officer of the Order of the Republic of Sierra Leone, Attorney-General and Minister of Justice of Sierra Leone in the Fifth Session of the Third Parliament of Sierra Leone on the 4th day of June, 1991, then passed the First Reading, the Second Reading and the Committee Stage (with certain amendments made thereto) and that on the 1st day of July, 1991 the said Honourable ABDULAI OSMAN CONTEH, Officer of the Order of the Republic of Sierra Leone, Attorney-General and Minister of Justice of Sierra Leone, reported to the House that the Bill entitled "THE CONSTITUTION OF SIERRA LEONE, 1991" passed the House with certain amendments.

I further certify that on the 3rd day of August, 1991, the said Bill entitled "THE CONSTITUTION OF SIERRA LEONE, 1991" in accordance with the provisions of sub-section (3) of Section 55 of the Constitution of Sierra Leone, 1978 (Act No. 12 of 1978), has been submitted to and been approved at a Referendum conducted on the 23rd, 26th, 28th and 30th days of August, 1991 and been approved with the majority required under sub-section (4) of Section 55 of the Constitution of Sierra Leone, 1978.

I further certify that all the appropriate provisions of Section 55 of the Constitution of Sierra Leone, 1978 have been complied with and that the said Bill entitled "THE CONSTITUTION OF SIERRA LEONE, 1991" may therefore be submitted to His Excellency the President for his assent and signature.

GIVEN under my hand this 3rd day of September, 1991.

W. N. S. CONTEH,
Speaker.

Passed in Parliament this 1st day of July, in the year of our Lord one thousand nine hundred and ninety-one.

M. T. BETTS-PRIDDY,
Acting Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correctly printed copy of the said Bill.

M. T. BETTS-PRIDDY,
Acting Clerk of Parliament.

1859

CHAPTER VII

ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION



Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.



Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.



Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.



Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.



Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.
2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.



Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfilment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.



Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.



Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.



Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.
2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.
3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.
4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional sub-committees.



Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of

international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.



Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.



Article 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.



Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

1863



· NEW EDITION

GEOFFREY ROBERTSON QC

CRIMES AGAINST HUMANITY

THE STRUGGLE FOR
GLOBAL JUSTICE

'A FINE WORK, SCHOLARLY AND IMPASSIONED'

ANTHONY JULIUS, *MAIL ON SUNDAY*



1864

PENGUIN BOOKS

CRIMES AGAINST HUMANITY

Geoffrey Robertson QC has appeared as counsel in many landmark human rights cases. He has handled hundreds of death sentence appeals in the Privy Council and led the defence in the Matrix-Churchill trial, which exposed the arms to Iraq scandal, and the prosecution in proceedings against Hastings Banda. He defended dissidents detained by Lee Kuan Yew and served as counsel to the Antiguan Royal Commission which exposed the international plot to arm the Medellin cartel. He was the first (and last) advocate permitted to appear in Mozambique's Revolutionary Military Tribunal. In the 1980s he conducted missions to South Africa and Vietnam on behalf of Amnesty International, and helped to defend the Charter 77 signatories in Prague. In 2001 he led the constitutional challenge by which Fiji's undemocratic government was declared illegal.

Mr Robertson is Head of Doughty Street Chambers. He is a Recorder and Visiting Professor in Human Rights Law at Birkbeck College. He is an executive member of Justice and a Master of the Middle Temple. His books include *Freedom, the Individual and the Law*; *Media Law*; and a memoir, *The Justice Game*, which was published in 1998. He received the 1993 Freedom of Information Award for his writing and broadcasting. He is married to the author Kathy Lette and they live in London with their two young children.



1865

GEOFFREY ROBERTSON QC

Crimes Against
Humanity

THE STRUGGLE FOR
GLOBAL JUSTICE

SECOND EDITION



PENGUIN BOOKS



or designedly to impoverish the subjects'. It followed that there could be circumstances when subjects were entitled to revolt, breaking the compact and renegotiating it:

The end of government is the good of mankind. And which is best for mankind: that the people should be always exposed to the boundless will of tyranny, or that the rulers should be sometimes liable to be opposed when they grow exorbitant in the use of their power and employ it for the destruction and not the preservation of the properties of their people?²

With this rhetorical flourish, although he could scarcely admit it, Locke was providing a justification not merely for the revolution of 1688 but for Cromwell's short-lived republic which in 1649 had executed Charles I on these very grounds, i.e. for warring with and murdering his own subjects. The King's trial provides an interesting historical precedent: the first head of state to be charged with war crimes against his own people. Charles refused to plead, on the basis that as God's anointed, he had the purest form of sovereign immunity and hence the court summoned to try him was unlawful. When prosecutor John Cook began to read the indictment, the King tried to stop him with a poke of his cane: its ornate silver tip fell off, and Cook refused to pick it up. There was a dramatic pause, then the king stooped low to retrieve it himself – the portentous historical moment when divine majesty bowed, powerless before the majesty of human law. The King was not lacking in legal guile, however: his objection to entering a plea ('I would know by what power I am called hither, by what lawful authority . . . ?') was treated, according to the law at the time, as a plea of guilty, so Charles was speedily executed without any public examination of the case against him (which included allegations that he bore command responsibility for pillage, rape and other atrocities committed by Royalist soldiers). The obvious unfairness of deriving guilt from a refusal to recognize the court fostered the posthumous image of Charles as a holy martyr and produced no record to diminish the king in the esteem of the populace, whose short memory permitted a rapturous welcome for the return of his son, Charles II, in 1660. In a belated attempt to counter royalist propaganda, Cromwell published Cook's undelivered opening speech,

TERENCE TERRY

1867

Barrister-at-Law & Solicitor
Marong House, 4th Floor
11 Charlotte Street
Freetown, Sierra Leone
email: theodora@sierratel.sl

23rd October 2003

Mr. Robin Vincent
Registrar
Special Court for Sierra Leone
New England
Freetown.

WITHOUT PREJUDICE
to the Accused right to raise the 2 issues
contained in his Motion of the 23rd day
of July, 2003.

Dear Sir,

RE: **CASE NO. SCSL - 03 - 1**
THE PROSECUTOR
Against
CHARLES GHANKAY TAYLOR also known as

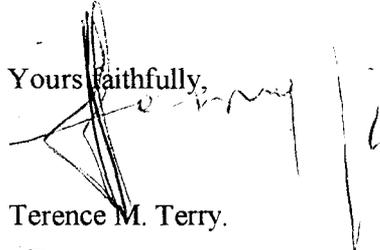
CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR

I act as Counsel for the Accused in the above matter.

I will be grateful if you will graciously confirm to me whether you were the person to whom an Order of the Special Court was directed to execute both the indictment and the Warrant of Arrest issued by Judge Bankole Thompson on the 7th of March, 2003 on the above Accused Charles Ghankay Macarthur Taylor? If that is the case, could you confirm whether you were able to execute that Order involving both the said Indictment and Warrant of Arrest OR either of them ?

In the event you were not able to execute that said Order, could you indicate to me whether you were able to report forthwith your inability to so do to the Special Court and if at all you gave any reasons therefore ?

Yours faithfully,


Terence M. Terry.



SPECIAL COURT FOR SIERRA LEONE
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27 October 2003

Ref: REG/406/03

Mr. Terrence Terry
Barrister-at-Law & Solicitor
Marong House, 4th Floor
11 Charlotte Street
Freetown, Sierra Leone

Dear Mr. Terry,

Re: The Prosecutor against Charles Ghankay Taylor

I refer to your letter dated 23 October 2003 requesting information regarding the Warrant of Arrest and Order for Detention and Transfer issued by Judge Bankole Thompson on 7 March 2003.

The Warrant of Arrest and Order for Detention and Transfer ordered the Registrar to “address this Warrant of Arrest, Decision Approving the Indictment, the Approved Indictment of the Accused and a Statement of the Rights of the Accused to the national authorities of such States, or to the relevant international body, including the International Criminal Police Organisation (INTERPOL), as may be indicated by the Prosecutor in accordance with Rule 56.”

Pursuant to the above provision, the Prosecutor requested the Registrar on 4 June 2003 to address the Decision Approving the Indictment and the Warrant of Arrest to the authorities of Ghana. On the same date, the Indictment, the Decision Approving the Indictment and the Warrant of Arrest and Order for Transfer and Detention were transmitted by the Registry to the appropriate authorities of Ghana.

Yours sincerely,

A handwritten signature in black ink, which appears to read 'Robin Vincent', is written over a horizontal line.

ROBIN VINCENT
REGISTRAR

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR

FOR IMMEDIATE RELEASE

17 October 2003

*Statement by David M. Crane
The Prosecutor
Special Court for Sierra Leone*

Peace Efforts in Liberia Remain in Doubt So Long Taylor is Free

Charles Taylor in Nigeria remains a clear and present danger to this country and this region. As I have told Jacques Klein, the UNMIL mission in Liberia will ultimately fail if Charles Taylor does not face justice.

This is a critical time for Sierra Leone and West Africa. A fragile peace continues to take root throughout the region; Sierra Leone's war ended nearly two years ago, and this week Liberia took another step toward ending the terrible violence there. As the people of Sierra Leone and West Africa turn from surviving brutality to focus on a brighter future, the man most responsible for their suffering threatens to plunge the region back into fear.

Just last weekend, Nigerian President Olusegun Obasanjo again warned Charles Taylor to stop meddling in Liberian politics. President Obasanjo's previous warnings had not stopped Mr. Taylor from continuing to break whatever exile agreement there was with Nigeria.

Nigeria has played a productive and important role in helping to advance the Liberian and West African peace processes. Its assistance in removing Charles Taylor from power, as well as its leadership in both the ECOMIL and UNMIL peacekeeping missions, have been invaluable in creating the current chance for peace in Liberia. Nigeria has also played a leading role in the UNAMSIL mission right here in Sierra Leone.

Yet the current peace in this region is built on sand, and could easily erode so long as this trouble-maker and war criminal remains at large. Charles Taylor has promised to return to Liberia, and his past behaviour ensures that his return would be accompanied by violence throughout the region.

Taylor simply will not stop until he is turned over to the Special Court for Sierra Leone, where he faces 17 counts of war crimes and crimes against humanity. As reflected in the indictment against him, much of his brutality was directed against women. They were raped, sexually enslaved, mutilated, as well as forcibly impregnated and sterilized. This was done to the mothers, daughters, and grandmothers of Sierra Leone, attesting to the ruthlessness of Charles Taylor.

This war criminal cannot be allowed to continue his rampage through West Africa. The people of Liberia deserve stability and peace in their lives, and the people of Sierra Leone are demanding justice.

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GHANA HIGH COMMISSION
13 WALPOLE STREET
FREETOWN
SIERRA LEONE

Ref. No.....

REPUBLIC OF GHANA

Dear Sir,

The attention of the Ghana High Commission has been drawn to the publication of an interview on the July 9, 2003 issue of the Peep Magazine headlined "No Hiding Place for Charles Taylor" in which the Prosecutor of the Special Court, David Crane is quoted as saying that "HE HAD INFORMED THE GHANAIANS SEVERAL HOURS BEFORE HE HELD HIS JUNE 4 PRESS CONFERENCE" to announce President Charles Taylor's indictment.

Prosecutor Crane would have done justice to the issue if had stated exactly what the "several hours" meant in real terms.

For the records and to clarify the situation, the Special Court through its Registrar, Robin Vincent at 10.00 am on June 4, 2003 telephoned the Ghana High Commission to inform us about the imminent indictment of President Taylor. Mr. Vincent followed up the telephone conversation with a personal appearance at our Walpole Chancellery at 10.45 and gave us a copy of the indictment for onward transmission to Accra. The Registrar was duly informed about the breakdown in communication between Freetown and Accra, which he acknowledged because he had faced similar difficulty in getting Accra earlier in the day.

It was no doubt the reality of that problem that made the Special Court to transmit the indictment documents electronically to Accra through the personal

e-mail address of an officer of the Foreign Affairs Ministry of Ghana.

It is pertinent to note that the six Heads of Sovereign States who attended the Liberian peace talks in Accra on June 4 2003 – Presidents John Agyekum Kufuor, Laurent Gbabgo, Thabo Mbeki, Dr. Alhaji Ahmad Tejan Kabbah, Gen. Olusegun Obasanjo and Charles Ghankay Taylor learnt of the indictment only on BBC following the press conference that Prosecutor Crane organised and not through normal diplomatic channels.

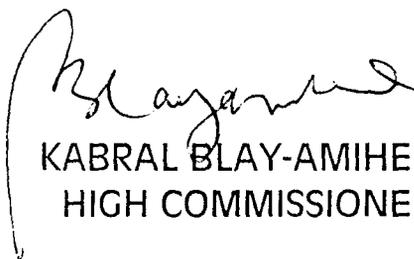
The "several hours" that Prosecutor Crane says he gave Ghana to undertake such a grave responsibility could not have constituted the basis for the action he required of Ghana because the Court's action was procedurally and legally flawed. It must be reiterated that the arrest of any of the indictees of the Special Court in a Third state such as Ghana would require negotiations and necessary contractual agreements either between the Special Court and the Third state or between Sierra Leone and that Third State.

Against such a background, it would have been within normal international and diplomatic procedures for the Special Court to have not only to informed Ghana "several hours" before the announcement of the indictment, but more importantly to have entered into proper negotiations with the Sovereign Government of Ghana for any appropriate action to be taken in the matter concerning the indictment of President Taylor and any other person for that matter.

It is regrettable that the Court has since the events of June 4, tried in many subtle ways to portray Ghana in bad light to the Sierra Leonean populace. It is rather disturbing that the Prosecutor, himself a legal

officer, should descend into the fray to scapegoat Ghana for its (Special Court's) own actions.

Ghana has contributed and continues to contribute towards the search for peace, stability and justice around the world and in West Africa in particular. It is therefore hoped that the Special Court and its officials, both senior and junior, would henceforth refrain from making deliberate statements that have the potential of undermining Ghana's hard earned international reputation.



KABRAL BLAY-AMIHERE
HIGH COMMISSIONER

THE EDITOR
PEEP MAGAZINE
FREETOWN

10/7/2003

