



Institute for Legal Research and Advocacy for Justice (ILRAJ)

POSITION PAPER

GENDER EMPOWERMENT BILL 2021

"...gender inequality and denial of women's rights are still prevalent at all levels in Sierra Leonean society even though the women form 50.8 per cent of the population. Despite the significant strides made, many women continue to suffer marginalisation and discrimination, particularly in the areas of education, employment, political participation, and social justice. Issues of unequal opportunities for boys and girls continue to be exacerbated by factors such as early marriage for girls, teenage pregnancies and harmful practices such as Female Genital Mutilation (FGM)."¹

"Women account for 52 percent of the total population in Sierra Leone yet occupy less than 20 percent of elected positions. Their voice, visibility, participation, and representation in elective and appointment positions remain very low compared to men. Some of these challenges include lack of economic independence, high illiteracy and entrenched customs and traditions, and the lack of confidence to vie for public positions."²

A. Introduction

Sixty years since independence, the two quotes above adequately and accurately captures the state of most of our women today. While there has been some progress, the status quo leaves a lot to be desired. Successive Governments have failed to match their nice rhetoric's on women's empowerment with concrete actions suggesting that the requisite political will to bring about genuine reforms to empower women was absent. The meager budgetary allocation for women's empowerment under successive governments is one piece of evidence that illustrates this point. Consequently, progress remains unacceptably slow and Sierra Leone's score in the Global Gender Index remains unacceptably poor.

Sierra Leone is ranked 121 out of 156 countries with a score of 0.655, a drop of 10 places from the previous year (2020) and a total drop of -0.012. The following is an excerpt from the Country's scorecard for the year 2021.



¹ <https://sierraleone.unfpa.org/en/node/6135>

² <https://www.usaid.gov/sierra-leone/gender-equality-and-womens-empowerment>



Thus, the disparity between men and women in economic participation and opportunity, educational attainment, health and survival, and political empowerment is alarming. This is unacceptable, and concrete actions and measures must be taken to address the yawning gap.

We congratulate and commend the Honourable Minister Manty Tarawalli for her leadership and the government for keeping its campaign promise and proposing and drafting this Bill. This is a significant first step. We will keenly follow the progress of the Bill and lobby Parliament to ensure that a Bill is enacted that will make a difference in the lives of women and girls in Sierra Leone. We offer our thoughts and comments in this position paper in good faith to help ensure that an Act that will serve the test of time is enacted.

B. The Constitution and the Gender Empowerment Bill

It is important to reproduce the provisions of section 27 of the Constitution of Sierra Leone, which deals with 'Protection from Discrimination' verbatim.

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

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

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

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

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

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

c. with respect to persons who acquire citizenship of Sierra Leone by registration or by naturalization, or by resolution of Parliament; or

d. with respect to adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law; or

e. for the application in the case of members of a particular race or tribe or customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or

f. for authorising the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency; or

g. whereby persons of any such description as mentioned in subsection (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society; or

h. for the limitation of citizenship or relating to national registration or to the collection of demographic statistics.

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



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

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

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

Section 27 provides for protection from discrimination, including based on sex. There are certain exceptions provided in subsections (4) (5) and (7), respectively. In enacting the proposed Bill, we urge Parliament to consider the provisions of section 27 to ensure that the proposed law does not run afoul of this provision.

Section 171 (15) of the Constitution provides that *"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."*

Section 27 of the Constitution is contained in Chapter III of the Constitution, which according to Section 108 (3) of the Constitution is an entrenched clause 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."*

C. Key Provisions of the Bill

1. The Title - A matter of semantics?

The Bill is entitled the Gender Empowerment Bill 2021. Gender empowerment connotes the empowerment of all genders. This title is limited. The overall objective is to empower women and seek gender equality. This aligns with Goal 5 of the Sustainable Development Goal to achieve gender equality and empower all women and girls. We urge that this title of the Bill be amended to read the Women's Empowerment and Gender Equality Act, similar to the 2013 Act enacted in South Africa. This title is consistent with the purpose of the Bill, which is *"to address the gender imbalances in accessing decision-making positions by providing for a minimum representation of each gender and to provide for other related matters."*

2. Section 2 – Reserved Seats in Public Elections

The Bill provides reserved seats in public elections – 30% reserved exclusively for female candidates contesting parliamentary elections and local council elections. Although public elections is defined to include paramount chieftaincy election, the section does not provide any quota for paramount chieftaincy elections.

Subsection 2 of this section provides that *"Without prejudice to paragraph (a) of subsection (1) a reserved seat in a district or constituency shall rotate within the district or constituency after every 1 term."* The rationale for the rotation is unclear. It is unclear how a reserved seat in a constituency can be rotated.



3. Section 3 – Procedure to Determine Reserved Seats

"The Electoral Commission in consultation with political parties, Political Parties Registration Commission, Council of Paramount Chiefs and representatives of civil society organisations interested in elections shall preside the procedures for securing reserved seats under subsection (1) of section 2."

Assuming the word 'preside' should read 'prescribe,' we are concerned that the crux and a vital aspect of this Bill is being delegated. Consultations may be limited. Parliament as the representative of the people may be best suited to enact a clear procedure to ensure that the provisions of section 2 of the Bill come to fruition.

4. Tenure of Reserved Seats for Female Candidates

"A female candidate elected under a reserved seat during a public election shall be eligible for re-election for not more than one term in reserved seat."

This provision is unclear, especially when examined together with the provision in section 2(2), which provides for the rotation of reserved seats. It raises several questions which need to be clarified – why limit the re-election of female candidates in reserved seats to just one term? During the re-election, will the seat still be reserved?

5. Section 10 – Access to Finance

We welcome the provision dealing with access to finance numbered 10 in the body of Bill but 11 in the index. However, the provision does not go far enough to address women's economic empowerment. There is a need for other provisions such as those dealing with access to and land rights, skills development, especially entrepreneurial skills and capacity building of women, the need to facilitate employment opportunities and access to the markets for women.

6. Section 11 - Monitoring and Evaluation

This section should be expanded to include departments, agencies, authorities, private employers, NGOs, communities, institutions, etc. All employing and appointing institutions in Sierra Leone must "monitor, audit, collect and analyse gender disaggregated data," not just Ministries.

7. Section 12 - Report

We suggest that the Ministry of Gender and Children's Affairs working with the National Monitoring and Evaluation Directorate in the office of the President, develop a report template that will be all-embracing and review the template annually.

Subsection 2 of this section is unclear. Will these challenges amount to an excuse and absolve an employing or appointing authority from meeting the provisions of the Act?

8. Section 13 – Periodic review

"The Political Parties Registration Commission and the National Electoral Commission shall undertake a mid-term review of the implementation of this Act."



The role of PPRC and NEC under the Bill is limited to the provisions of sections 2-5. It is unclear why both institutions should be given the power to undertake mid-term reviews of other aspects of the Act. When is mid-term?

9. Little Teeth

Only Section 10 dealing with access to finance has an enforcement and penalty provision. Most of the sections in the Bill fail to provide a penalty for default. We recommend that Bill be given more teeth to bite defaulters. Heavy mandatory fines should be imposed to act as a deterrent against defaulters.

10. Second Schedule

The second schedule should be titled "30% Ward Reserved Seats" in line with section 2(1)(b). Both the first and second schedule require some clarification regarding how the number of reserved seats was arrived at.

D. Many Rivers to Cross – Many Areas Not Covered

There are many other areas where women continue to face discrimination in our society. They include

- Housing – some landlords still discriminate and refuse to rent to women.
- Women serving as sureties are being treated differently in the justice system.
- In the award of scholarship, awards and bursaries school enrolment – there must be affirmative action in favour of women to make up for long years of discrimination and produce the capacity needed to fill the many roles for women.
- Educational institutions to avoid gender stereotyping roles for boys and girls and teaching methods must emphasize the equality of sexes.
- Require public and private educational institutions to incorporate teaching methods and curricula that promote gender equality in all spheres of life.
- Require the government to allocate adequate resources for women's empowerment.
- Not just quota in employment but eliminating discrimination in employment.
- Elimination of discrimination based on marital status.
- Access to health
- Maternity leave and reproductive health
- Any "law, regulation, custom and practice, which constitute discrimination, shall be null and void and of no effect and shall not be enforceable."

We humbly urge Parliament to address many of these areas and ensure the Bill comprehensively empowers women.

E. Conclusion

Recently the Working Group on the Universal Periodic Review, established in accordance with Human Rights Council resolution 5/1, held its thirty-eighth session from 3rd to 14th May 2021 in Geneva. The review of Sierra Leone was held at the 16th meeting on 12 May 2021. At its 17th meeting, held on 14 May 2021, the Working Group adopted the report on Sierra Leone. During the interactive dialogue, 102 delegations made statements. Many recommendations were made from different countries during the dialogue regarding gender equality and discrimination against women in Sierra Leone. Amongst the recommendations made are to **expedite the enactment of the Gender Equality Bill and eliminate all forms of discrimination against women**, maintain the efforts towards gender equality in education, ratify the Optional Protocol to the



Convention on the Elimination of All Forms of Discrimination against Women, signed in September 2008. We urge Parliament to review the recommendations that emanated from this review and ensure that when enacting this Bill, they also domesticate the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the Convention on the Elimination of All Forms of Discrimination against Women and the optional protocol.

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On behalf of ILRAJ

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