



# CHRISTIAN LAWYERS CENTRE LEGAL LINK



Motto: "Defending the Rights of Vulnerable Groups in Society"

## **ADVISORY OPINION**

### **EXAMINING THE STRENGTHS AND WEAKNESSES OF THE MAADA BIO GOVERNMENT WHITE PAPER ON THE CONSTITUTIONAL REVIEW PROCESS AND PROFFERING RECOMMENDATIONS FOR REFORM**

#### **INTRODUCTION**

On the 13th of January, 2022, the Bio - led government of Sierra Leone presented a white paper to the public as a response to the recommendations made by the Technical Committee from their painstaking examination of the report of the Justice Cowan Constitutional Review Committee and the 2017 white paper.

It could be recalled that after the end of the civil war in 2002, and given the collateral damage and huge loss of human lives that occurred, many Sierra Leoneans expressed sentiments for a review of the 1991 Constitution in a bid to foster good governance and re-modelling of our laws to mirror international standards and best practices.

This peculiar interest and clamoring cascaded even to the TRC process. The Truth and Reconciliation Commission (TRC), a mechanism that was set up to unearth the real causes of the war and provide lasting solutions, posited in their report that, "the 1991 Constitution must be reviewed in the interest of justice, promoting principles of the rule of law and protection of fundamental human rights for all Sierra Leoneans."

In response to this call, the Tejan Kabba-led administration formed the Constitutional Review Commission in 2006. This Commission, led by Peter Tucker, was tasked with the responsibility of reviewing the constitution. The Peter Tucker Constitutional Review Commission completed its mandate in 2008 and presented its findings and report to the former president, Ernest Bai Koroma.

The Koroma- led administration however labeled the report to be widely un-consultative and rejected the findings. In addition, former president Ernest Bai Koroma initiated a new constitutional review process led by Justice Edmond Cowan and comprising of civil society organizations, donor agencies, human right groups, constitutional experts, disability groups, women groups, youth groups, governance institutions, political parties, judges and paramount chiefs.

This constitutional review committee, after thorough consultations with the public, reviewed the 1991 constitution and presented a final report to the president on the 24th January 2017. The government thereafter issued a white paper responding to the recommendations made by the Justice Cowan led Constitutional Review Committee, approving just 34 out of the 134 recommendations that were in the report.

# **ANALYSIS OF THE STRENGTHS OF THE WHITE PAPER OF THE BIO- LED GOVERNMENT ON THE CONSTITUTIONAL REVIEW PROCESS**

## **1) Separation of the office of the Attorney General from that of the Minister of Justice**

The recommendation made by the Technical Committee to separate the office of the Attorney-General and that of the Minister of Justice was unequivocally accepted by the government.

This recommendation, LEGAL LINK strongly believes, is quite plausible and commendable as it will not only cause an overhauling in the administration of justice in Sierra Leone but also discourages politicization of the office of the Attorney General and foster a practical approach to the principles of separation of powers and independence of the justice system.

Thus the Attorney General shall now be the principal legal adviser to the government and not a cabinet minister. It is the Minister of Justice that would now exclusively operate as a cabinet minister in charge of policy formulation and implementation.

## **2) Fixed day for the conduct of all elections ( presidential, Parliamentary and local council elections in Sierra Leone).**

Furthermore, the recommendation to have a fixed day of all elections (presidential, parliamentary and local councils elections) preferably in the second Saturday in March of the election year was accepted by the Bio led government in its white paper.

The above recommendation in the opinion of LEGAL LINK is quite commendable as it will create sanity, predictability and certainty in the conduct of public elections in Sierra Leone.

Having all of these elections conducted in one day would also be economical in terms of men and money.

## **3) Fixed date for inauguration**

Also, the recommendation to have a fixed date for inauguration, preferably on the 27th April in the Election year, was accepted by the government.

LEGAL LINK considers this as a good recommendation since April 27th happens to be a national holiday in our country. It is also good because it is only a month away from the date recommended for the conduct of public elections. In the African setting, it is unwise for inauguration ceremonies to be prolonged for fear of insurrection taking place.

The challenge however with this recommendation is where there are runoffs in elections and secondly, whose inauguration are we talking about? - the President's, Parliamentarians, Mayor's or councillors?

## **4) Ensuring free, quality and compulsory education at primary and secondary levels**

In addition, the government approves the recommendation to add “quality” to free education in Section 9 (2) of the 1991 Constitution of Sierra Leone and the merging of paragraphs (b) and (c) to read: “Free, quality and compulsory school education at primary and secondary school levels.”

Acceptance of this recommendation in the white paper is deemed commendable by LEGAL LINK as education is not only an empowerment right but it is also fundamentally critical for the future. In a country where 70% of the populations are illiterate, such a move is welcoming and will help in the enhancement of the human capital development of the nation.

## **5) Review of Section 27 of the 1991 constitution to ensure for equality of persons before the law, equality of men and women to opportunities in political, economic, cultural and social affairs.**

The Government accepted the recommendation that Section 27 (1) of the 1991 constitution which provides for Protection from Discrimination be replaced by a new section 27 which will make express provision for equality of persons before the law, equality of men and women to opportunities in political, economic, cultural and social affairs.

LEGAL LINK is of the opinion that the Proportional Representation system is not necessarily a bad system especially where census data are correct and credible as it will help guarantee the representation of minority groups in parliament and therefore foster inclusivity and broad participation in the democratic process.

Proportional representation is also plausible as it eliminates the need for bye elections which have usually been held at a greater cost to the economy, peace and security of the nation.

#### **7) Introduction of a new chapter on Citizenship**

Government accepts the recommendation to draft a new chapter on citizenship in the constitution as citizenship issues have become topical especially in recent times and have been used to eliminate many from participating in the political landscape of the country.

LEGAL LINK considers these issues as a positive move since a lot of Sierra Leoneans with dual citizenship are currently being deprived of equal participation in the political landscape of the country.

A new chapter will therefore address these challenges and discriminations and further make clear the definition of citizen, how can one become a citizen as well as the rights and responsibilities of a citizen in the country.

#### **8) Introduction of a new chapter on local government**

The Government also accepted to have a local government and decentralization system that should be part of its governance architecture. The government further agrees to provide for a local governance system through an entrenched clause in the new constitution.

LEGAL LINK welcomes this move and considers it positive as it will help established clear cut lines of authority and autonomy between the central government and the local government thereby safeguarding local institutions at the local level.

#### **9) Introduction of a new chapter on the Public Service**

Government accepted the recommendation to create a new chapter on the public service specifying the public service institutions and agencies that forms part of the public service and makes provision for legislation to be enacted for detail matters relating to the governance, functions and membership of the public service.

LEGAL LINK welcomes this recommendation as the Public service usually serves as the engine for the translation of policies, legislations and programmes for the facilitation of the smooth running of the affairs of the state

A new chapter defining the public service, its characteristics, ethical principles, loss of employment status and sanctions for violating the civil service code is key to enhancing democratic good governance in the state.

#### **10) Introduction of a new chapter on national security**

The Government also accepted the recommendation that a new chapter dedicated to defining the structure, principles, coordination, financing, and safeguarding of national security be provided in the new constitution.

**LEGAL LINK** applauds the acceptance of this recommendation since national security is crucial for the survival and sustenance of the peace, security and wellbeing of the citizens of Sierra Leone.

#### **11) The loss of political party membership shall not nullify from office a sitting president or vice president**

The Government, under its white paper also accepted the recommendation that a new section be added to provide that loss of political party membership shall not nullify from office a sitting president or vice president but that following such event, the impeachment procedure in section 51 of the constitution shall apply.

The government further proposes to add a subsection requiring the party under whose ticket the Vice President was elected to send the resignation or expulsion notice to Parliament for a debate and a vote to be taken supported by two third majority of all the members of Parliament for the said Vice President to be removed.

LEGAL LINK appreciates this move by the government to insulate the office of the president and vice president from political manipulation, influence and control.

This recommendation is also important as it seeks to cure the defects of the Supreme court ruling in the Sam Sumana case, where the vice president was unilaterally removed from office by the president without deference to Parliament.

Creating a further parliamentary process to scrutinize loss of political membership of these two important gentlemen in the state is vital as it will help prevent a vacuum in governance as well as the festering of bad politics within our political parties and structures in the country.

#### **12) Reduction of the time for public officials to resign from office to contest from 12 months to 6 months**

The Government accepted the recommendation to reduce the timeframe for public officers to resign from office to contest from 12 months to 6 months in order to qualify for elections as a member of Parliament.

LEGAL LINK welcomes this move by the government since the one year period currently enshrined in the constitution is quite long and does not serve the best interest of the nation in terms of ensuring the smooth administration of governance in the country. Too many resignations for too long a period will starve the country of able men and skills which will ultimately undermine democratic good governance within the state.

#### **13) Members of Parliament and / or Judges of the Supreme court can be elected as Speaker of Parliament**

The Government also favours the recommendation that only persons who are members of Parliament or are qualified to be elected as such and who are qualified to be appointed as judges of the Supreme Court of Judicature can be elected to such office as Speaker.

LEGAL LINK appreciates the acceptance of this recommendation by government and the inclusion of Judges to be elected as Speaker of Parliament. This will certainly help in depoliticizing the office of the Speaker and ensure objectivity and fairness in the running of the affairs of Parliament by a Judge - led Speaker. Such was the case prior to the legislative amendment of the section to restrict the office of the Speaker only to members of Parliament. The present status quo is quite worrying and must therefore be changed.

#### **14) 30% of members of Parliament should be women**

The Government notes the recommendation that not less than 30% of members of parliament shall be women. But while the government agrees to its passing, it however believes that such should be addressed in another legislation and not in the constitution.

LEGAL LINK welcomes the government's acceptance of this TRC recommendation to improve women's access to political institutions and increase political participation of women in the democratic process in the country.

We are however disappointed that such key recommendation is not insulated in the constitution.

#### **15) Parliamentary Committees to have powers to investigate and inquire into the activities and administration of MDA's**

The Government also agrees to the recommendation that Parliamentary Committees have powers to investigate and enquire into the activities or administration of Ministries, Departments and Agencies.

LEGAL LINK sees this recommendation as revolutionary and one that will help Parliamentarians to be effective in their oversight work on Ministries, Departments and Agencies and to hold them accountable where practicable.

## **16) Reducing the detention periods of suspects from 72 hours to 48 hours for misdemeanors and from 10 days to 7 days for felonies.**

The government further accepted the recommendation to amend section 17 (3) (a) and (b) of the 1991 constitution to reduce the detention periods prior to being brought to court to 7 days from 10 days for heinous offences and 48 hours from 72 hrs for misdemeanors.

LEGAL LINK welcomes this move to shorten the timeframe of keeping suspects in detention at the police station as this sits well with international standards on Prisons and detention such as the Mandela Rules, the Luanda Guidelines and best practices.

## **17) Persons unlawfully arrested and detained shall be entitled to compensation and/ or public apology**

Government accepted the recommendation that any person who is unlawfully arrested or detained shall be entitled to compensation and/or public apology.

LEGAL LINK welcomes the re-echoing of this recommendation by the government as such provision already exists within the 1991 constitution. It is only hoped that by this adoption, steps will be taken to ensuring that actual compensation is paid to suspects that are unlawfully arrested and detained by law enforcement agencies.

## **ANALYSIS OF THE WEAKNESSES IN THE WHITE PAPER OF THE BIO- LED GOVERNMENT ON THE CONSTITUTIONAL REVIEW PROCESS**

### **1) The make-up of Bio's technical committee that reviewed the Justice Cowan CRC report and the 2017 white paper lacks inclusivity and was dominated by politicians**

Notable in the make up of the Technical Committee is the absence of representatives from civil society organizations, right groups, political parties, women groups, youth groups, journalists, disability groups, constitutional law experts, the donor community, international human rights groups, independent consultants etc

Almost all of the technical committee members in the review process were either ministers or government appointees selected mainly to advance government's interest throughout the process. It is risky to allow politicians dominate the constitutional review process.

This is the case because the making of a constitution is a socio-legal affair that requires a whole - of - society - approach if acceptance and legitimacy is to given to the review process. This is perhaps the biggest setback to the Bio led review process. The process denied the presence of key experts and rights groups that would have ensured a progressive constitution.

### **2) The standard of the Technical Committee appears to be the 2017 Ernest Koroma White Paper on the CRC process**

A cursory look at the findings of the Technical Committee will reveal that the blueprint or standard that influenced their report and subsequently the white paper appears to be the 2017 white paper of the past government.

Little wonder the repeated mentioning and unnecessary comparison between the 2017 white paper and the Bio government white paper during the launching ceremony by the president Bio in January 2022.

LEGAL LINK asserts that it is the Justice Cowan CRC report that should have been the benchmark and standard and not necessarily the 2017 white paper of the former government. This is the case because the Justice Cowan CRC review report was comprehensive, people driven, all encompassing and all- inclusive in outlook while the 2017 white only accept 34 of the 134 recommendations.

### **3) There's confusion and unclarity as to the number of recommendations rejected or accepted by the BIO- led government**

It is not clear as to how many of Justice Cowan's led CRC recommendations were accepted or rejected by the Bio - led government in its white paper. In some instances, there is even a complete silence on some of the recommendations mentioned in the Justice Cowan Report by the Bio government.

This style of adoption or review makes it difficult to ascertain statistically the amount of recommendations accepted or rejected and also whether the BIO- led government white paper is progressive or not.

In the 2017 government white paper for example, it is clear that over 100 recommendations were rejected out of the 134 that were recommended by the Justice Cowan CRC report. Hence, the reason why it was characterized as a big failure. In the given circumstance however, it may be difficult to characterized the Bio review accordingly.

### **4) The 50% plus 1 recommendation to win presidential elections will create complacency, entrench regionalism and ethnic divide in the country**

The 50% plus 1 recommendation adopted by the government in it's white paper to win presidential election is quite concerning especially so when it tends to hinder and/ or waterdown the requisite 55% threshold needed to win a presidential election as enshrined in the current 1991 constitution.

While the argument of cost reduction and delay is appreciated, LEGAL LINK is of the opinion that it is for good reasons why the framers of the 1991 Constitution and the people of Sierra Leone through a referendum agreed to a 55% percent threshold. Amongst other things, it was to principally ensure that presidential candidates are forced to rally around all the regions and districts of Sierra Leone and also cut across ethnic and regional divide to canvas support for election into political office and not just concentrate on their political strongholds and regions.

Furthermore, the 55% threshold gives legitimacy to whoever may emerge as winner of the presidential election as such an individual would have secured the popular and highest votes in the election. This is key for the smooth governance, legitimacy and acceptance of such a leader by the society.

### **5) Non- acceptance by the Bio government's white paper to guarantee socio- economic and cultural rights under the reviewed constitution**

Apart from agreeing to ensure free, quality education to primary and secondary pupils, the Bio white paper rejected the idea of guaranteeing socio-economic rights such as the right to health, food, water, housing etc in the country.

In a country that is rich in natural endowments and mineral deposits, this rejection is most unfortunate.

It is vital to pinpoint that the guaranteeing of socio-economic and cultural rights was a key recommendation under the Justice Cowan Led CRC Review process. Socio-economic and cultural rights are extremely vital for human survival and existence. Not guaranteeing them therefore amounts to a blatant disregard for the survival and livelihood of the citizens within the state.

LEGAL LINK therefore considers this neglect as a missed opportunity to advance the wellbeing of the citizens in the nation by the Bio government.

## **6) Refusal to amend section 14 of the constitution to make social economic rights justiciable and enforceable in the courts of Sierra Leone.**

Worst still, the recommendation by the Justice Cowan CRC Report to amend section 14 of the 1991 Constitution and make socio-economic rights justiciable and enforceable in the courts was outrightly rejected by the Bio technical committee.

In the estimation of LEGAL LINK, this rejection is worrying especially so when it is considered that Sierra Leone is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), an international treaty that guarantees socio-economic and cultural rights at the International level.

Furthermore, since bulk of the population in the country are living in abject poverty and economic misery, making socio-economic rights enforceable would have incentivise government's intervention in these areas thereby leading to growth and development of the citizens.

## **7) Failure to expunged or amend the term "Supreme Executive Authority" in the 1991 constitution**

This is perhaps the greatest weakness in the Bio led constitutional review process.

The failure of Bio's white paper to accept the recommendation of the Justice Cowan CRC report to expunge the term "Supreme Executive Authority" in the 1991 Constitution is a missed opportunity to effectively limit the powers of the president in a more measured way.

It could be recalled that it was in fact such description of the president in the constitution that led to the former president believing that he has unfettered powers under the constitution to unilaterally sack his vice president without recourse to parliament. Unfortunately, this view was even validated by the Supreme court of the country.

While the Bio led government may not have ventured going down that path, the president has however been notorious for sacking public officials with secured tenures at will without reference to due process, legislative or constitutional injunctions. The sacking of the Auditor General, the Human Rights Commissioners and the Ombudsman are apt examples.

It is the view of many that the president may have done all of these sackings with the mistaken belief that he wields supreme executive authority under the constitution to so do.

LEGAL LINK therefore believes that It would have been a great success if the recommendation **"Chief Executive Officer"** was accepted by the Bio led government in place of **" Supreme Executive Authority"** as was recommended by the Justice Cowan CRC report.

## **8) BIO's constitutional review committee was kept in the dark and their report rushed without public scrutiny**

Apart from the fact that members of the Bio Technical Committee on the constitutional review were unknown until the time of publication of the government white paper, the review process and the subsequent report of the committee was also rushed in fundamental terms. There was little or no time for the Technical Committee to publish its report and get reactions from the public before tabling it to the president through cabinet for adoption of a government white paper.

If such a procedure was followed and an inclusive and open process ensured from day one by this committee, perhaps the weaknesses and gaps currently identified in the white paper could have been picked up and addressed before the passing of a government white paper.

### **9) Reviewing a constitution in piecemeal phases is time wasting and uneconomical**

The piecemeal approach to be adopted by the Bio led government in relation to the passing of key recommendations in the white paper begs the question as to when would the other important recommendations be passed in Parliament.

LEGAL LINK is of the opinion that it is vital that such constitutional reviews are carried out in an holistic form rather than in a piecemeal fashion so that all the changes can be effected at a go and parliament and the people allowed to have their say on the recommendations through a referendum.

### **10) Government's failure to guarantee the 30% women quota for election to Parliament under the constitution is a missed opportunity**

Even though the government in its white paper accepted the 30% quota of women to be elected as parliamentarians, it refused however to guarantee such a laudable recommendation under the constitution. Rather, it agreed to implement same by way of legislation. This choice is quite worrying to say the least as a legislation is usually easier to amend than a constitution.

Further still, it would have been more prudent to place such plausible recommendation under the constitution by making it an entrenched clause that can only be amended by way of two thirds majority and a referendum.

### **11). NEC determining of the percentage threshold in the proportional representation system and not the constitution could be dangerous.**

Even though good argument exists for the adoption of the PR system, it is however problematic and suspecting to leave the determination of the percentage threshold in each district or election area to the discretion of NEC and not factored in the constitution.

This is the case because, there's likelihood for NEC to be compromised to fix the threshold at a percentage that may favour one party as against the other. But with a permanent fixing of the threshold percentage in the constitution, such corrupt acts may be circumvented.

## **RECOMMENDATIONS**

In lieu of the above critical analysis raised, LEGAL LINK hereby makes the following recommendations:

- 1). That the Government, prior to its publishing of the white paper, should have endeavoured to engage and dialogue with key players / bodies like CSO's, political party representatives, donor community, international human rights groups, women's groups., Youth groups, Disable groups etc to get a buying - in of the Technical Committee's report on the constitutional review process before adoption of a white paper.
- 2). That the Justice Cowan CRC report should have been the cornerstone for any further deliberations or review rather than the 2017 white paper of the former government which was an outright rejection in fundamental terms.
- 3) That it is important for the Bio led government to give a statistical analysis of their white paper to the public showcasing clearly the number of recommendations that were accepted and / or rejected by the Bio-led Technical Committee.



- 4). That the 55% threshold for winning presidential elections be maintained as this is key for governance and acceptance of the president by the society.
- 5). That the government should have guaranteed socio-economic rights under the 1991 Constitution as espoused by the Justice Cowan CRC report. Such rights include the right to health, food, water, housing etc.
- 6) That the government should have also made socio-economic rights justiciable and enforceable in the courts of law for the well-being and advancement of the socio- economic conditions of majority of Sierra Leoneans and also to put the country in compliance to her obligations under the International Convention on Economic, Social and Cultural Rights (ICESCR).
- 7) That the implementation of the white paper should be holistic rather than piecemeal so that all the changes can be effected at a go and the people allowed to have their say on the recommendations through a referendum.
- 8) That prior to the report being delivered for adoption by Cabinet, the Technical Committee should have published the report and solicit public reactions to help address ambiguities and further enhance public participation in the process.
- 9). That in order to guarantee a better protection of the 30% quota of women to be represented in Parliament, LEGAL LINK urges that such provision is also provided for within the constitution in addition to whatever legislative measure that may be taken later.
- 10). That the percentage threshold in a Proportional Representation system must be insulated in the constitution and not left to the determination of NEC. With a permanent fixing of the threshold percentage in the constitution, manipulation and corrupt acts by election officers may be circumvented.
- 11) That the compensation agreed to be provided to suspects where they are unlawfully arrested or detained must include monetary compensations and or dismissals of detainers in the police force.

## CONCLUSION

Notwithstanding the weaknesses embedded in the Bio government white paper, it is vital to pinpoint that there are a good number of plausible recommendations in the white paper that are crucial to the democracy, peace and governance architecture of the country. In that regard therefore, LEGAL LINK applauds the Bio government for accepting these plausible recommendations and for also ensuring continuity of the review process at the very least since its stalling in 2017.

LEGAL LINK ends by appealing that due consideration be given to this Legal Advisory Opinion and that practical steps be taken by the Bio government towards addressing the WEAKNESSES as espoused in this piece; in the interest of justice, democratic good governance, rule of law, respect for human rights and a progressive constitution in Sierra Leone.

END

Faithfully Submitted:



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On behalf of the interns, researchers and legal team of LEGAL LINK

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## WHO WE ARE

*Christian Lawyers Centre (a.k.a LEGAL LINK) is registered with the Corporate Affairs Commission of Sierra Leone as a non-profit legal advocacy group comprising of lawyers, law students and human right activists that seeks to provide legal assistance to the religious community as well as vulnerable groups in Sierra Leone through legal advocacy, public interest litigations, state and private sector accountability, enforcement of the rule of law and ensuring respect for domestic and international laws that guarantee fundamental human rights and freedoms.*

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