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HOW MANY TIMES HAS THE CONSTITUTION OF SIERRA LEONE, ACT NO. 6. OF 1991 BEEN AMENDED?

Have you ever wondered how many times the Constitution of Sierra Leone, Act No. 6., of 1991 has been amended? This article will provide an answer regarding how many times the Constitution of Sierra Leone has gone through changes in order to meet and satisfy the needs of democratic governance and the changing political and social circumstances of the country. It is important to provide a brief history of the enactment of the current Constitution of Sierra Leone before delving into the answer about how many times has it been amended.

The Constitution of Sierra Leone Act No. 6., of 1991 like any other law of a state started as a Bill which finally came in force after having survived the processes laid down in section 53 for the passage of a Bill into law in the preceding Constitution of Sierra Leone, Act No. 12. of 1978, otherwise known at the time as 'The One Party Constitution.' The coming into force of the One Party Constitution of 1978 was pioneered by the late Dr Siaka Probyn Stevens, the first executive President of Sierra Leone. The late President Siaka Probyn Stevens wanted to consolidate and keep political power within not only his political party known as the All Peoples Congress, but he wanted to remain the President for life. He succeeded in doing so by staying in office as the President for well over sixteen years.

Meanwhile, in a bid to satisfy the requirements of the Constitutional provision of section 37 and section 55 (3) of the 1978 Constitution, a referendum was conducted in which the people of Sierra Leone were asked if they prefer a new Constitution that will permit multi-party politics.

The question that was put to Sierra Leoneans in the referendum that required only a 'Yes' or a 'No' answer was...*Do you agree that the Republic of Sierra Leone should be governed by the multi-party Constitution already adopted by Parliament?* It was reported that eighty per cent (80%) of the Two Million Five Hundred Thousand registered voters acquiesced to adopt the multi-party Constitution. It was also reported

that One Million Eight Hundred and Seventy Five Thousand voters participated in the referendum and a Seventy Five per cent (75%) voter turnout was achieved. The referendum was said to have been conducted on the following dates: 23rd, 26th, 28th and 30th of August, 1991 in which only Twenty per cent (20%) of the voters voted 'No'.

The people of Sierra Leone overwhelmingly voted to welcome a breath of fresh air in the political landscape that was characterised by despotism, totalitarianism and corruption. The result of the August 1991 referendum was indicative of a 'fed-up-with-bad-governance' attitude demonstrated by Sierra Leoneans who were kept for many years in the wilderness of disenfranchisement. The conduct of the referendum, and the introduction of the Constitutional Bill in Parliament by the then Attorney-General and Minister of Justice, Mr Abdulai Osman Conteh, which was eventually assented by the late President Dr Joseph Saidu Momoh ushered in the Constitution that came in operation on the 1st, October, 1991.

Having provided a cursory narration of the events that prompted the enactment of the current Constitution of Sierra Leone Act No. 6. of 1991, it is expedient at this point to provide an answer to the fulcrum of this article as was promised from the beginning.

The 1991 Constitution experienced its maiden amendment in 1997 under the Armed Forces Revolutionary Council, AFRC military regime who toppled the democratically elected government of Dr Ahmad Tejan Kabbah on the 25th May 1997, barely a year after the first democratic general elections in many years which were conducted in 1996. The AFRC military government that was headed by Major Johnny Paul Koroma amended the 1991 Constitution by way of a decree which saw sections 156 and 167 being repealed. These two amended sections allowed the military government to change the personnel that were listed originally in the established Police Council and the Defence Council.

The Police Council according to the first amendment to the Constitution under section 156 consisted of the following personnel:

- I. The Chief Secretary of State;
- II. The Secretary of State, Department of Internal Affairs;
- III. The Inspector-General of Police;
- IV. The Deputy Inspector-General of Police;
- V. The Chairman of the Public Service Commission;
- VI. A Member of the Sierra Leone Bar Association who shall be a legal practitioner of not less than ten (10) years standing as a practising Barrister, and shall be nominated by that body and appointed by the Chairman, Armed Forces Revolutionary Council;
- VII. Two other members appointed by the Chairman, Armed Forces Revolutionary Council, subject to the Approval of the Armed Forces Revolutionary Council.

In addition, section 167 established the Defence Council whose membership as listed in the amendment consisted of the following personnel:

- I. The Chairman, Armed forces Revolutionary Council, who shall be Chairman;
- II. The Chief Secretary of State;
- III. The Under Secretary of State for Defence;
- IV. The Chief of Defence Staff;
- V. The Commanders of the Armed Forces (Army, Navy and Air Force) and their Deputies;
- VI. The Secretary of State, Internal Affairs;
- VII. Two other persons as the Chairman, Armed Forces Revolutionary Council, shall from time to time appoint.

It is worthy to note that the amendment of sections 156 and 167 made by the AFRC military regime came by way of a decree which is the typical mode of making laws by military governments. The reign of the AFRC in governance though short-lived, but

was clearly unconstitutional and it must be resoundingly made clear that such an amendment made by them was of no legal validity in a democratic state.

The AFRC overthrew the democratically elected government of Dr Ahmad Tejan Kabbah and seized power. It is undoubtedly true that they violated the 1991 Constitution by seizing power from a popular government. Is it correct to assume by every stretch of imagination that the AFRC must have suspended the Constitution soon after they staged the Coup D'état? This is another idiosyncratic characteristic mode of military takeovers who would suspend the Constitution to allow them operate without its provisions. Such an act amounted to a violation of section 108 (8) of the 1991 Constitution of Sierra Leone making it treasonable to suspend, alter, or repeal any of its provisions. It could be recalled that a treason trial was conducted by the Government of Dr Ahmad Tejan Kabbah soon after he was reinstated by the ECOMOG armed forces whereby several military personnel and non-military personnel were charged with various offences related to treason and twenty four (24) soldiers were convicted and executed in 1999 without a right to appeal.

Meanwhile, Since sovereignty belongs to the people, it is clear that the AFRC regime did not derive its legitimacy, authority, and power from the people of Sierra Leone as provided under section 5 (2) paragraph (a) of the 1991 Constitution. In this regard, the regime was neither accepted by the people of Sierra Leone nor recognised by the International Community. In the midst of all this, two questions are worthy to ask: can a law made by an illegitimate regime be recognised and given effect to by a legitimate government? It seems to me that laws made by an illegitimate government must not be recognised and given effect to by a legitimate government. To justify this claim; there are a host of decrees made by the National Provisional Ruling Council (NPRC), military regime between 1992 and 1996, and those laws became defunct soon after the democratically elected government of Dr Ahmad Tejan Kabbah took over the reins of power. The basis for that is clear; rules, or laws made by military governments do not always go through the normal constitutional processes of law making that sees the involvement of a Supreme Legislative Authority in the name of Parliament. Military

governments are characterised by dictatorial machinations and devoid of checks and balances; and any law made by them could be oppressive. The second question is: can a Constitution that has been suspended by a military regime be amended and given effect to? Though it is generally the case that laws made by a military government are always not given effect to when they are removed from office by a democratically elected government, there are exceptional cases where such laws can be recognised and adopted by a legitimate government as was seen in The National Provisional Ruling Council Decrees (Repeal and Modification) Act, 1996.

Now that I have pointed out what is considered to be the first section that was amended in the 1991 Constitution, I will now proceed to highlight the next section that was amended in 2001. Section 38 of the 1991 Constitution provided that Sierra Leone was to be divided into constituencies for the conduct of Parliamentary elections. This presupposes that the appropriate Electoral System that was provided for by default in that section was the 'First-Past-the-Post-System'. Since Sierra Leone was going through a bloody civil war which had intensified in 1996 and the government had lost control of many parts of the country to the rebel fighters of the Revolutionary United Front, RUF, it became impossible for the then Electoral Commission to delimit boundaries and create constituencies. It is upon this basis that the government of Dr Ahmad Tejan Kabbah through Parliament decided to amend section 38 and brought in section 38A which introduced the District Block System also known as the Proportional Representation System which brought about a change to the existing Electoral System. The section 38A amendment to the 1991 Constitution outlined the circumstances that may warrant the President to proclaim the implementation of a District Block Electoral System.

As the country was about to have its general elections that were scheduled to take place on the 14th May 2002, the prevailing circumstances of Sierra Leone at that time justified the actions of the government to have implemented it as the preferred Electoral System.

However, there is no report of a strong objection raised by any opposition politician regarding the legality of the implementation of the Proportional Representation System

for the conduct of the Parliamentary elections of 2002. Even though it was said that a few politicians mounted an objection regarding its implementation, the objection was said to be mild. The amended section came in force in 2002, and the general elections went on as planned and Dr Ahmad Tejan Kabbah of the Sierra Leone Peoples Party won the elections. We must agree that the section 38A amendment to the Constitution, and the introduction of the District Block Electoral System was needed at the time under review. It was pointless for any opposition politician to have objected its implementation in the 2002 elections. Having said that, is it correct for a lay person in law to submit that it is not justified or expedient to implement a District Block Electoral System now that the country is under the euphoria of peace and stability?

The Supreme Court of Sierra Leone was confronted to answer the question on the legality of the government's decision to implement a District Block Electoral System quite recently in the matter between **Honourable Abdul Kargbo and Another vs. The Attorney-General and Minister of Justice and Another (SC APP) SLSC 1 27 January (2023)**. The plaintiff in this case contended that the prevailing political and geographical circumstances of the country do not warrant the President to have preferred the District Block System over the First-Past-the-Post System for Parliamentary and Local Government elections scheduled to take place on the 24th, June, 2023. The first defendant also contended that the Electoral Commission advised the President that it will not be tenable to hold the June 24th 2023 elections on a First-Past-the-Post Electoral System because of the figures of the just concluded national population and housing census. The Supreme Court of Sierra Leone held in favour of the defendants and the elections of June 24th 2023 for Parliamentary and Local Councils were conducted on a District Block Electoral System.

Meanwhile, Section 38A was amended and came in force in 2002 alongside section 43 within the same Bill of amendment. The amendment made to section 43 of the Constitution of Sierra Leone regarding the period during which presidential election shall take place saw majorly the introduction of paragraph (c) which provided for the

continuation in office by the President after a date for the presidential election has been announced and the tenure of the President has elapsed by effluxion of time.

The third amendment to the 1991 Constitution was essentially done in 2008, and sections 64 and 66 were amended primarily to allow the Anti-Corruption Commission prosecute all offences created by the Anti-Corruption Act of 2008. Section 64 of the Constitution vested on the Attorney-General and Minister of Justice the power to prosecute all offences committed against the state. It should be noted that the Anti-Corruption Act came in force in the year 2000 and remained in force until 2008 when a new Anti-Corruption Act was enacted which eventually repealed and replaced the Anti-Corruption Act of 2000.

It was submitted that the fight against corruption can be quite potent when the Commission charged with the responsibility to curb corrupt practices in the public and private sectors is given the authority to not only investigate corruption but to prosecute offenders. It is upon this basis that the Sierra Leone Parliament amended both sections that is, sections 64 and 66 to allow the Anti-Corruption Commission exercise unfettered authority in the prosecution of offences created by the Act.

Consequently, the unfettered prosecutorial powers given to the Anti-Corruption Commission by the amendment of the Constitution in 2008 has seen a rise in the number of cases been brought to court and accused persons convicted for corrupt practices.

As I proceed to unravel the number of times the Sierra Leone Constitution has been amended, let me now consider the fourth amendment which was made to the Constitution in 2013. The Sierra Leone Parliament amended the Constitution in sections 79 and 80. These sections established the offices of the Speaker of Parliament and Deputy Speaker of Parliament. Section 79 established the office of Speaker of Parliament and provides for the qualification of persons who are to be elected as Speaker of the Parliament. The amended section included an age requirement in subsection (1) which was absent in the original section 79 of the Constitution. The original section 79 also

required that a person who is to be appointed Speaker of Parliament should be qualified to be appointed a Judge of the Superior Court of Judicature. However, the amended section did not include the requirement of being a legally minded person to sit as a Speaker of the Parliament. The requirement to sit as a Speaker of Parliament under the amended section only requires that the person is to be a Member of Parliament and must have served in that capacity for not less than five years; or the person being so qualified to be a Member of Parliament must have served in that capacity for not less than ten years.

As for the amendment made to section 80 regarding the Deputy Speaker of Parliament, the person must also be a Member of Parliament and must have been so for not less than five years. Furthermore, the amended sections provided for the election of the Deputy Speaker of Parliament.

The Constitution of Sierra Leone Act No. 6., experienced its fifth amendment in 2016 when the Parliament of Sierra Leone amended section 38 (8). The amended subsection (8) was to allow the Electoral Commission perform the role of registering voters and conduct elections in every constituency of the country. These roles have always been the core responsibility of the Electoral Commission. The Electoral Commission is also responsible to review the voter register, to ascertain the number of voters who are eligible to vote in an election. Having pointed out the amendment of section 38 (8) of the Constitution, the writer of this article believes that the rationale behind this amendment was to reaffirm the notion that only the Electoral Commission established in section 32 of the Constitution has the authority to conduct elections for Presidential, Parliamentary seats, and Local Government and also the conduct of by-elections to fill in a vacant Parliamentary or a Local Government seat.

As I proceed with the task of providing the answer to the question 'how many times has the 1991 Constitution been amended?', let me now consider the sixth amendment that was made to the Constitution in 2022. The Bill for the amendment of subsections (2) and (8) of section 32 was tabled in Parliament on the 12th, July, 2022 by the Attorney-General and Minister of Justice, Mr Mohamed Lamin Tarawalley. The amendment that was

made to subsection (2) of section 32 was quite minor but very important in the sense that, there was a need for the Electoral Commission to have an additional Commissioner to add to the four Commissioners that were provided for in the original section. The population of Sierra Leone is increasing exponentially and the politicians saw the need to have it gerrymandered so as to increase the number of constituencies. The results of previous censuses also saw the creation of a new region known as the North-West Region for administrative purposes.

An increase in the number of the Provinces in Sierra Leone in 2017 precipitated the need for the appointment of a new Commissioner of the Electoral Commission. It follows that such an appointment cannot be lawful without amending the section of the Constitution that provided for the Electoral Commissioners, hence the reason why subsection (2), of section 32 was amended in 2022 to allow the President appoint another Commissioner and make them five Commissioners.

Subsection (8) of section 32 was also amended slightly to remove the word 'misbehaviour' and replace it with 'gross misconduct'.

The seventh and final amendment made to the Constitution of Sierra Leone so far was done in 2022 and came in force on the 22nd December, 2022. Section 34 of the Constitution that established the Political Parties Registration Commission was amended in 2022 primarily to rename the said Commission to the Political Parties Regulation Commission and also to replace the Administrator and Registrar General with the Executive Secretary as Secretary to the Political Parties Regulation Commission. Subsection (1) of section 34 was repealed and replaced with a new subsection which effected a slight change in the composition of the members of the PPRC. The new subsection introduced in section 34 brought in a member of the Institute of Chartered Accountants in Sierra Leone to form part of the members of the PPRC. Also, it appears in the amendment that the chairman of the PPRC need not be a person who has been a judge, or a person qualified to hold office as a judge of the Superior Court of Judicature of Sierra Leone. In addition to this; subsections (3, 5, and 7) of section 35 of the same Constitutional Amendment Bill of 2022 were slightly amended to

rename the Political Parties Registration Commission to Political Parties Regulation Commission.

Conclusively, the Constitution of Sierra Leone Act No. 6., of 1991 has been amended seven times and the amended sections are: 156, 167, 38A, 43, 64, 66, 79, 80, 38 (8), 32 (2, and 8), 34, and 35. The basis for amending statutes of a state is to add, remove, change, and update words or phrases that are used in a statute so as to accommodate and cater for the changing circumstances of a political community. The process of amending the Constitution is, in my view interminable in that, a need will always arise to amend certain sections of the Constitution as the political landscape evolves and the needs of the people of Sierra Leone become abounding. Since these sections of the Constitution which have been amended thus far between 1997 and 2022 are not part of the entrenched clauses, (except for sections 156 and 167), it became easier for the Sierra Leone Parliament to alter them without the Constitutional bottleneck placed on the sections listed in section 108 (3) paragraphs a, b, and c, of the Constitution of Sierra Leone, Act No. 6., of 1991.