

People's Access to Information: West Africa Regional Workshop

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Accra, 19 – 20 January

People's Access to Information and the Constitution of the Republic of Sierra Leone

Key Provisions

Article 25 of the The Constitution of Sierra Leone, 1991 (Act No. 6 of 1991), which became effective 1 October 1991, includes the freedom to receive and impart ideas and information without interference as part of the right to freedom of speech and expression. Given below is a quick compilation of various constitutional provisions that –

- a) require public authorities and actors to furnish information to an individual or persons directly or
- b) have a bearing on the constitutional imperatives of transparency and accountability.

#	Chapter / Theme / Article
<u>Chapter 2: Fundamental Principles of State Policy</u>	
1	<p><u>Government and the people:</u> Article 5(1) establishes the principles of 'freedom', 'democracy' and 'justice' as the defining values of the constitutional framework. Article 5(2) elaborates on these principles, acknowledging that 'sovereignty belongs to the people'. This formulation clearly implies the recognition of the principle that people are the masters in a democracy and the functionaries of the government are but their servants. When this is the basic principle, all laws rules, regulations and practices that create obstacles in the way of people's access to information held by government bodies are violative of the grundnorm. Effective systems and credible processes must be out in place without further delay in order to restore the power of information to people who are its rightful owners.</p> <p><i>"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–</i></p> <p><i>a. sovereignty belongs to the people of Sierra Leone from whom Government through this Constitution derives all its powers, authority and legitimacy;</i></p> <p>...</p> <p><i>c. the participation of the people in the governance of the State shall be ensured in accordance with the provisions of this Constitution."</i></p>
2	<p><u>Economic objectives:</u> Article 7(1) enjoins upon the Government the duty to ensure that all Sierra Leoneans participate in all spheres of the economy. Participation requires the creation of flow credible and useful information that people may use in a meaningful manner.</p> <p><i>"(1) The State shall within the context of the ideals and objectives for which provisions are made in this Constitution—</i></p> <p>...</p> <p><i>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."</i></p>

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3	<p><u>Foreign policy objectives:</u> Article 10(1)(d) requires the State to ensure respect for international law. Sierra Leone has either acceded or ratified international human rights treaties that are part of the international law such as the International Covenant of Civil and Political rights, the International Covenant of Economic, Social and Cultural Rights, the Convention on the Rights of the Child. All these human rights treaties and their treaty monitoring bodies recognise the value and significance of the basic human right to access information from government and its agencies. In order to fulfil its international human rights law obligations the State is required to put in place effective systems that facilitate information flows to people.</p> <p><i>“(1) The Foreign Policy Objectives of the State Shall be—</i></p> <p><i>d. respect for international law and treaty obligations, as well as the seeking of settlement of international disputes by negotiation, conciliation, arbitration or adjudication.”</i></p>
4	<p><u>Duties of the citizen:</u> Article 13(i) enjoins upon every citizen the duty to participate in and defend democratic processes and practices in the country. Access to information about public processes is indispensable for people's meaningful participation. Unless people know what to defend and why they are not likely to rise to the defence of democratic processes.</p> <p><i>“13. Every citizen shall—</i></p> <p><i>i. participate in and defend all democratic processes and practices...”</i></p>
<p><u>Chapter 3: The Recognition and Protection of Fundamental Human Rights and Freedoms of the Individual</u></p>	
5	<p><u>Fundamental human rights and freedoms of the individual</u> Article 15(b) guarantees every person among other things the right to freedom of expression. In order for a person to be able to express himself/herself properly about affairs of the government he/she should be first and foremost have access to information about such matters. The right to access information is implicit and preceded the right to information.</p> <p><i>“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—</i></p> <p><i>b. freedom of conscience, of expression and of assembly and association;</i></p> <p><i>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, 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.”</i></p>
6	<p><u>Protection from arbitrary arrest or detention</u> Article 17(2) guarantees the right of every person arrested to be informed in writing about the facts and grounds for his/her arrest. Law enforcement officers effecting such arrests have a duty to inform the person arrested that he has a right to legal representation and the right to communicate with his lawyer in confidence.</p>

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	<p><i>“(2) Any person who—</i></p> <p><i>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;</i></p> <p><i>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.”</i></p>
7	<p><u>Provision to secure protection from the law</u></p> <p>Article 23(3) guarantees every person charged of a criminal offence the right to be tried in public, ordinarily. This means that any person could attend the trial and witness the entire proceedings unless the court makes a decision to hold the proceedings behind closed doors.</p> <p><i>“(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:</i></p> <p><i>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.”</i></p>
8	<p><u>Provision to secure protection from the law</u></p> <p>Article 23(5)(a) requires that any person charged of committing a criminal offence be informed of the charge in a language that he/she understands.</p> <p><i>“(5) Every person who is charged with a criminal offence—</i></p> <p><i>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;</i></p> <p><i>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.”</i></p>
9	<p><u>Provision to secure protection from the law</u></p> <p>Article 23(5)(e) ...</p> <p><i>“(5) Every person who is charged with a criminal offence—</i></p> <p><i>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:</i></p> <p><i>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.”</i></p>
10	<p><u>Provision to secure protection from the law</u></p> <p>Article 23(6) states that a person tried for a criminal offence is entitled on his own or</p>

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	<p>through his representative to obtain a copy of the record of the trial proceedings upon payment of reasonable fees.</p> <p><i>“(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.”</i></p>
11	<p><u>Protection of freedom of information</u></p> <p>Article 25(1) clearly states that all persons have the right to perceive and impart information without interference. This implies that Government has a duty to ensure that people receive and obtain information about its working. Access legislation and systems that ensure information flows to the people will have to be put in place.</p> <p><i>“(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:</i></p>
12	<p><u>Public emergency</u></p> <p>Articles 29(1) requires the President to publish the Proclamation of a public Emergency in the Official Gazette for people's information. Similarly a proclamation revoking the State of emergency is required to be published in the Official gazette under clause (4) of the same Article.</p> <p><i>“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—</i></p> <p><i>a. a state of public emergency exists either in any part, or in the whole of Sierra Leone; or</i> <i>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.</i></p> <p><i>(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.”</i></p>
<p><u>Chapter 4: The Representation of the People</u></p>	
13	<p><u>Filling of vacancies:</u></p> <p>Article 39(2) requires that a proclamation for holding an election to fill up any vacancy in Parliament be published in the Gazette for the purpose of informing people.</p> <p><i>“(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.”</i></p>

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Chapter 5: The Legislature

Part IV: Responsibilities, Privileges and Immunities

14 **Immunity for publication of proceedings**

Article 103 immunises from Civil or Criminal liability, any person who publishes a report of the vote or proceedings in parliament. This implies that sessions of Parliament are open for people to attend unless parliament decides otherwise. As the following reports and documents are required to be tabled in Parliament under various constitutional provisions they can in theory be accessed by the people:

- ❖ annual reports on the programme and work of the Electoral Commission [Article 32(12)];
- ❖ reports of a Board created to assess the mental or physical incapacity of the President [Article 50(5)];
- ❖ reports of a Board created to investigate allegations of misconduct by the President [Article 51(3)] (though under Article 51(5) it may be required this be done in a secret session);
- ❖ annual reports of the Auditor-General “[drawing] 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” [Articles 119(4) and (5)];

“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.”

Chapter 5: The Legislature

Part V: Exercise of Legislative Power

15 **Mode of Exercising Legislative Power**

Articles 106(3), (4), (5) require the President to publish in the Gazette the text of any law that has been officially enacted through due constitutional process. Under clause (8) of the same Article where Parliament passes a law by special majority despite the refusal of the president to sign it the Speaker is required to publish its text in the Gazette. A law will not ordinarily come into force unless published in the Gazette.

“(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.

...

(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

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	<i>immediately become law and the Speaker shall thereupon cause it to be published in the Gazette."</i>
16	<p><u>Alteration of this Constitution</u></p> <p>Articles 108(2) requires the texts of all Constitution Amendment Bills likely to be tabled in Parliament to be published at least twice in the Gazette distanced by a period of at least nine days. This is ostensibly meant to give advance notice to the people and the MPs about the Government's intention so that an informed debate may take place over the Bill's provisions. A similar provision regarding advance notice has been made for tax related Bills in Article 110(3).</p> <p><i>"108(2) A Bill for an Act of Parliament under this section shall not be passed by Parliament unless—</i></p> <p><i>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:</i></p> <p><i>Provided that not less than nine days shall elapse between the first publication of the Bill in the Gazette and the second publication...</i></p> <p><i>110(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:</i></p> <p><i>Provided that any such order shall, unless sooner revoked, cease to have effect—</i></p> <p><i>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</i></p> <p><i>b. if, after the introduction of the Bill to which it relates, Parliament is prorogued or dissolved; or</i></p> <p><i>c. if, after the passage of the Bill to which it relates, the President refuses his assent thereto; or</i></p> <p><i>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."</i></p>

Chapter 7: The Judiciary

Part I: The Superior Court of Judicature

17	<p><u>Establishment of the Judiciary</u></p> <p>Article 120(6) requires all courts to hold their proceedings in public unless determined otherwise. This ensures that any person interested in a court proceeding will be able to witness its conduct.</p> <p><i>"(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."</i></p>
18	<p><u>Establishment of the Judiciary</u></p> <p>Article 120(16) requires every court to provide the parties to a case authentic copies of</p>

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its decision no later than three months from the date of its delivery.

“(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.”

Chapter 9: Commissions of Inquiry

19 Powers, rights and privileges of Commissions of Inquiry

Article 148(3) requires every commission of inquiry to hold its proceedings in public unless determined otherwise. This ensures that any person interested in such proceedings will be able to attend it.

“(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.”

20 Publication of report of Commission of Inquiry and right of appeal

Article 149(3) the President is required to publish the report of a commission of inquiry together with a white paper (presumably regards action taken) within six months of submission. However it is not clear as to where such a report will be published- the gazette or the mass media. Article 149(2) requires the President to issue a statement giving reasons if he/she decided that a report of any Inquiry Commission is not to be published. It is not clear as to where such a statement will be published- the Gazette or in the mass media.

“(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 with the report is not to be published.”

Chapter 12: The Laws of Sierra Leone

21 Publication of report of Commission of Inquiry and right of appeal

Article 170(6) requires that all statutory instruments be published in the Gazette within a specific time limit for people's information. Similarly all orders, rules and regulations made by State functionaries are required to be published in the Gazette in a similar manner on or before the day they are laid before Parliament.

“(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—

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b. shall be published in the Gazette on or before the day they are so laid before Parliament;"

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