

# Strengthening Governance and Accountability Processes in Sierra Leone:

A Review of  
Administration of  
Electoral Justice  
in Sierra Leone:  
Challenges and  
Opportunities for  
Reforms

Produced by Centre for Accountability and Rule of Law (CARL).

Funded by Irish Aid





# TABLE OF CONTENTS

Acronyms and List of Abbreviations	3
Acknowledgement	4
Executive Summary	6
1. Introduction	9
2. Background to Elections in Sierra Leone	11
3. Common and Potential Causes of Electoral Disputes in SL	14
4. Elections Management Bodies in Sierra Leone	30
5. Institutional and Legal Opportunities for Resolving Electoral Disputes in Sierra Leone	33
6. Opportunities for Resolving Elections-Related Disputes through Alternative Dispute Resolution Mechanisms	41
7. Ensuring Security as Part of Electoral Justice Framework	49
8. Challenges that Confront the Administration of Electoral Justice in Sierra Leone	52
9. On-Going Efforts and Progress in Addressing Challenges Confronting Electoral Justice Mechanisms	60
10. Conclusions	64
11. Recommendations	66

## **ACRONYMS AND LIST OF ABBREVIATIONS**

<b>AEDR</b>	<b>Alternative Election Dispute Resolution</b>
<b>APC</b>	<b>All People's Congress</b>
<b>APPA</b>	<b>All Political Parties Association</b>
<b>CARL</b>	<b>Centre for Accountability and Rule of Law</b>
<b>CoPPP</b>	<b>Coalition of Progressive Political Parties</b>
<b>ECOWAS</b>	<b>Economic Community of West African States</b>
<b>ECPMWG</b>	<b>Elections Conflict Prevention and Mediation Working Group</b>
<b>ECSL</b>	<b>Electoral Commission of Sierra Leon</b>
<b>EDR</b>	<b>Electoral Dispute Resolution</b>
<b>EPR</b>	<b>Election Petition Rules</b>
<b>IESPC</b>	<b>Integrated Elections Security Planning Committee</b>
<b>IGR</b>	<b>Institute for Governance Reform</b>
<b>IRCSSL</b>	<b>Inter-Religious Council of Sierra Leone</b>
<b>MAC-P</b>	<b>Military Aid to Civil Power</b>
<b>NCRA</b>	<b>National Civil Registration Authority</b>
<b>NEC</b>	<b>National Electoral Commission</b>
<b>NEW</b>	<b>National Elections Watch</b>
<b>NIN</b>	<b>National Identification Number</b>
<b>ONS</b>	<b>Office of National Security</b>
<b>PPRC</b>	<b>Political Parties Registration Commission</b>
<b>SLP</b>	<b>Sierra Leone Police</b>
<b>SLPP</b>	<b>Sierra Leone People's Party</b>
<b>UNDP</b>	<b>United Nations Development Programme</b>

## ACKNOWLEDGEMENT

The Centre for Accountability and Rule of Law is grateful to the Irish Embassy for its financial and technical support to this study and the entire project. In addition to its financial support, the Embassy staff also provided other forms of support that immensely contributed to the successful completion of this study. We deeply appreciate the Embassy's genuine desire and commitment to strengthen democratic institutions and processes.

We are also grateful to the lead researcher and the team of researchers at the Centre for Accountability and Rule of Law for their immense support in completing this study. We are also grateful to the heads and staff of the various organs, departments and agencies of the Government, including the Judiciary, the Electoral Commission of Sierra Leone, the Office of National Security, and the Sierra Leone Police for their invaluable contributions to this study.

We are also grateful for the additional insights provided by some civil society and religious organisations/initiatives, including the Inter-Religious Council and Elections Conflict Prevention and Mediation Working Group (ECPMWG).

# EXECUTIVE SUMMARY

Sierra Leone will organise multi-tier elections in 2023, the fifth round of elections since the country's 11-year civil war ended in 2002. Whilst all the post-conflict elections conducted in Sierra Leone were declared to be largely free, fair, and credible, resolving election-related disputes or complaints in an expeditious and satisfactory manner remains a major challenge. Electoral justice is critical to promoting and consolidating democracy. It safeguards both the legality of the electoral process and the political rights of citizens. It has a fundamental role in the continual process of democratisation and as a catalyst for the transition from the use of violence as a means for resolving political conflict to the use of lawful means to arrive at a fair solution and outcome. Electoral challenges or complaints can be categorised into administrative, judicial, legislative, and international, and such challenges are intrinsically corrective as their effects include the annulment, modification, or recognition of wrongful conduct in order to repair the violation that has been committed and restore the enjoyment of the electoral right involved.

The broad objective of this study is to provide an assessment of the legal and structural environment for the effective administration of electoral justice. It also seeks to assess the capacity of existing electoral dispute resolution mechanisms and make recommendations for reforms that may expand the opportunities for resolving electoral disputes. It is ultimately geared towards supporting an effective electoral justice mechanism in Sierra Leone. Our objective is to help build and strengthen an electoral justice system that resolves election-related complaints through

different legal mechanisms, guaranteeing full compliance with the law, and to help democracy in Sierra Leone thrive. The right to vote is not only a cornerstone of democracy, but it is also a right under both national and international law.

As part of this study, we have identified the common sources or causes of electoral complaints, and discussed how the inadequacies in electoral justice mechanisms undermine access to justice and its impact for peaceful and transparent electoral processes. We have also identified ongoing efforts to respond to the challenges that undermined efforts to access electoral justice in the last three electoral cycles, the persisting challenges that need to be overcome, and have made recommendations for reforms.

We note, for example, that in the 2012 and 2018 electoral cycles, the key election-related grievances were as follows: controversies regarding the accuracy of the 2015 census data and delimitation of boundaries; objections to the legitimacy of parliamentary and presidential candidates; disagreement over the procedures for counting ballots and transmission of results; election-related violence and petitions relating to the validity of election results; the improper use of state resources and undue manipulation of state institutions. The study found that resolving election-related disputes through the Sierra Leonean courts has been anything but seamless. Apart from delays that characterise the proceedings, the laws do not always foster effective and satisfactory resolution of such disputes. After the 2018 general elections, for example, at least 68 petitions challenging

the election of Members of Parliament and the President were filed with the courts. Consequently, the High Court invalidated the elections of nine Members of Parliament representing the main opposition, All People's Congress (APC), on the grounds that they were unduly or improperly elected. The Court ordered that the nine MPs be replaced with the candidates representing the ruling Sierra Leone People's Party, who had polled the second highest number of votes. This was clearly unsatisfactory to the opposition APC, and many commentators have partly attributed the heightened tension in the country and the violence that has characterised the post-2018 bye-elections to those decisions.

We note that the laws of Sierra Leone require primarily the High Court and Supreme Court to resolve petitions relating to the eligibility of candidates and the validity of results. Even though the laws make provision for the establishment of Electoral Offences Court to try elections-related offences, including violence, we note that the police and the courts have not been effective in delivering their mandate of ensuring accountability and justice for electoral offices. Ahead of the 2018 elections, for example, the Electoral Commission discovered 1,539 cases of duplicate registrations, and despite strong efforts by the Commission and civil society, hardly anyone was punished for such clear violations of the law. Similarly, in 2020, the police failed to investigate and prosecute a man who forcefully picked up and destroyed a ballot box in the full view of the public.

In addition, the Supreme Court has not done enough on the substantive electoral complaints filed with the Court on their merit as the Court's decisions have largely been based on technical matters. In addition, investigation and prosecution of electoral offences have been largely slow, selective,

and inconclusive.

Given the challenges that confront the conventional electoral disputes resolution mechanisms, we propose that it is worth thinking about alternative ways of resolving electoral disputes/ challenges. Whilst the formal systems, especially if they are well-funded and operate professionally, are useful in that regard, they ought to be complemented by other means and mechanisms. Such informal or alternative electoral dispute resolution (AEDR) mechanisms need to exist in Sierra Leone primarily not to replace formal dispute resolute systems but to play a supportive role, especially in situations in which the formal systems face credibility, financial or time constraints linked to political or institutional crises or to their inadequate design. The AEDR mechanisms, we recommend, should exist alongside formal mechanisms such as the court, Electoral Commission of Sierra Leone (ECSL), and the Political Parties Registration Commission (PPRC), and must play a permanent supportive and complementary role. We acknowledge that some AEDR mechanisms have come into being over the last decade on an ad hoc basis and in exceptional or extraordinary circumstances, but it is important that we explore the possibility of institutionalizing their role across the full spectrum of the electoral process.

We point out that there has been some progress in the last five years in implementing recommendations by international and local election observers, especially those relating to electoral law and institutional reforms, but significant challenges remain in terms of negative public perception about electoral justice

mechanism, lack of clarity in electoral laws, funding gaps and weak institutional capacity.

We conclude by recommending, among other things, legal reforms to ensure clarity and speed in handling of election-related petitions particularly for presidential elections; the development of and strengthening the capacity of alternative electoral dispute resolution institutions; improvement in the capacity of election management bodies to minimize the chances of electoral challenges, and the need to undertake extensive public education about the opportunities for addressing election-related complaints. Crucially, we hope that these recommendations will be implemented in time for the next election.



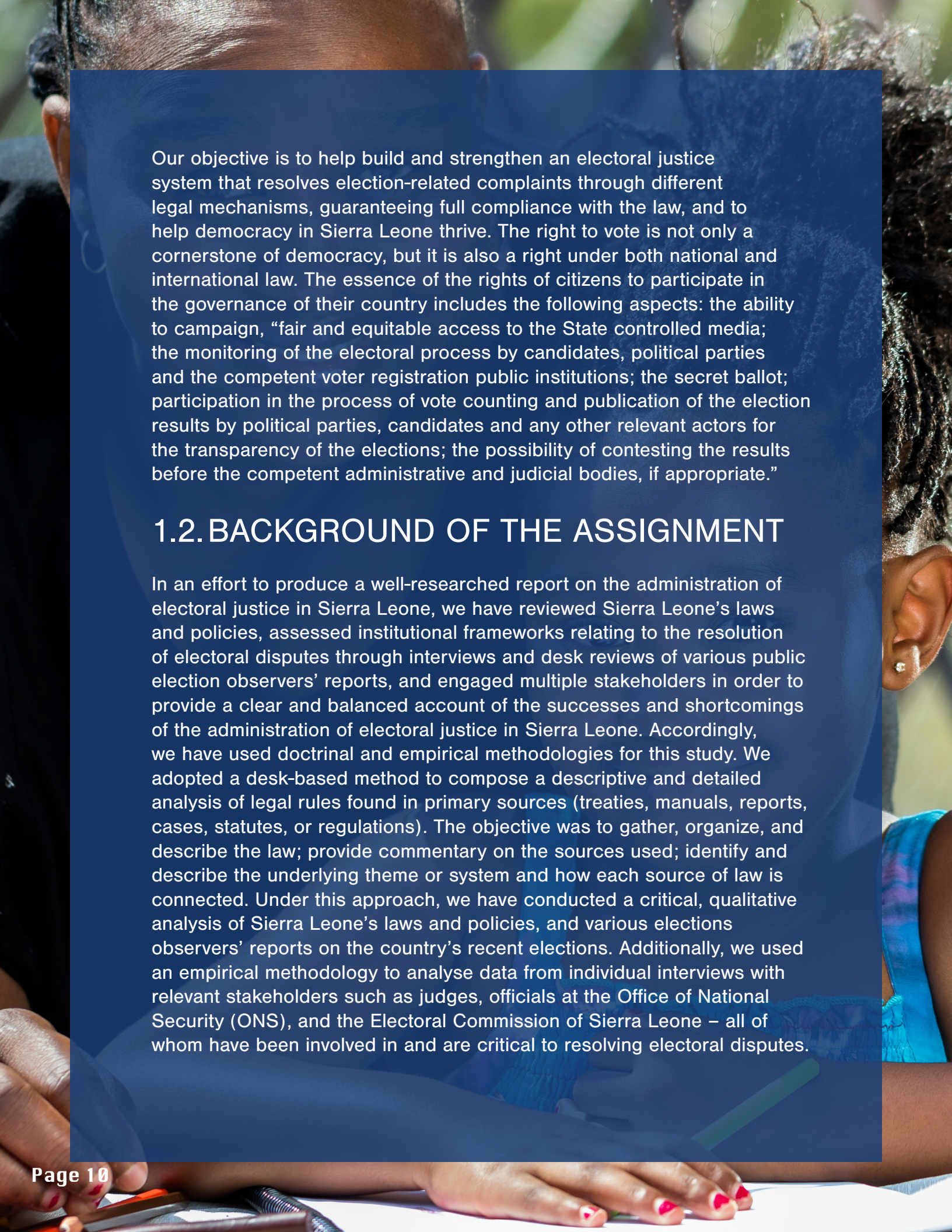
## 1. INTRODUCTION

### 1.1. BACKGROUND OF THE ASSIGNMENT



The Centre for Accountability and Rule of Law (CARL) and Institute of Governance Reform are jointly implementing an Irish Embassy-funded project, “Mitigating the Impact of COVID-19 Responses on Governance and Accountability Processes in Sierra Leone.” The objectives of the project include improving the human rights situation during COVID-19 response measures, enhancing civic space, and contributing to addressing Sierra Leone’s governance challenges, including the organisation of successful elections. As part of the broader objective of the project, this study seeks to provide an assessment of the legal and structural environment

for the effective administration of electoral justice. It seeks to identify the challenges that confront them and make recommendations for reforms. It is also about assessing the efficacy of electoral justice institutions, identify the common sources or causes of electoral complaints, and identify gaps and weaknesses in the electoral legal framework. It also seeks to assess the capacity of existing electoral dispute resolution mechanisms and make recommendations for reforms that may expand the opportunities for resolving electoral disputes. It is ultimately geared towards supporting an effective electoral justice mechanism in Sierra Leone.



Our objective is to help build and strengthen an electoral justice system that resolves election-related complaints through different legal mechanisms, guaranteeing full compliance with the law, and to help democracy in Sierra Leone thrive. The right to vote is not only a cornerstone of democracy, but it is also a right under both national and international law. The essence of the rights of citizens to participate in the governance of their country includes the following aspects: the ability to campaign, “fair and equitable access to the State controlled media; the monitoring of the electoral process by candidates, political parties and the competent voter registration public institutions; the secret ballot; participation in the process of vote counting and publication of the election results by political parties, candidates and any other relevant actors for the transparency of the elections; the possibility of contesting the results before the competent administrative and judicial bodies, if appropriate.”

## 1.2. BACKGROUND OF THE ASSIGNMENT

In an effort to produce a well-researched report on the administration of electoral justice in Sierra Leone, we have reviewed Sierra Leone’s laws and policies, assessed institutional frameworks relating to the resolution of electoral disputes through interviews and desk reviews of various public election observers’ reports, and engaged multiple stakeholders in order to provide a clear and balanced account of the successes and shortcomings of the administration of electoral justice in Sierra Leone. Accordingly, we have used doctrinal and empirical methodologies for this study. We adopted a desk-based method to compose a descriptive and detailed analysis of legal rules found in primary sources (treaties, manuals, reports, cases, statutes, or regulations). The objective was to gather, organize, and describe the law; provide commentary on the sources used; identify and describe the underlying theme or system and how each source of law is connected. Under this approach, we have conducted a critical, qualitative analysis of Sierra Leone’s laws and policies, and various elections observers’ reports on the country’s recent elections. Additionally, we used an empirical methodology to analyse data from individual interviews with relevant stakeholders such as judges, officials at the Office of National Security (ONS), and the Electoral Commission of Sierra Leone – all of whom have been involved in and are critical to resolving electoral disputes.

## 2. BACKGROUND TO ELECTIONS IN SIERRA LEONE

*Poor governance, violence and elections have been closely linked in the post-independence history of Sierra Leone. At independence, Sierra Leone had a thriving multi-party system of government, but the country's experience with elections has been somewhat turbulent. Sierra Leone gained independence from the United Kingdom in 1961 and held its first post-independence general elections in May 1962. This was the first to be held under universal suffrage. The 1962 elections were won by the Sierra Leone People's Party with Sir Milton Margai, the party's leader, serving as the first Prime Minister of an independent Sierra Leone.*

The second post-independence elections were held on 17th March 1967. In this closely contested general election, the All Peoples Congress (APC) won a majority of the parliamentary seats. Sierra Leone's Governor-General Henry Lightfoot Boston (representing the Queen who was still the head of state) declared Siaka Stevens, candidate of the All People's Congress (APC) and Mayor of Freetown as the winner of the election and the country's new Prime Minister. On 21st March, however, four days after the elections, Brigadier David Lansana, the head of the Sierra Leone Army, seized power. This was the first Military coup in Sierra Leone. Two days after seizing power, a second coup took place when senior military officers repudiated Brigadier Lansana. This second coup led to the formation of the National Reformation Council (NRC) headed by Lieutenant Colonel Andrew Juxon-Smith but shortly after this, a group of military officers led by Brigadier John Amadu Bangura in April 1968 overthrew the NRC Government and formed the Anti-

Corruption Revolutionary Movement (ACRM).

The ACRM imprisoned senior NRC members, restored the Constitution, and reinstated Siaka Stevens as the duly elected Prime Minister.

The return to civilian rule led to bye-elections beginning in 1968 and the appointment of an all-APC cabinet. Calm was not completely restored. In November 1968, Siaka Stevens declared a state of emergency after some disturbances in the provinces. In March 1971, the Government survived an unsuccessful military coup and in July 1974, it uncovered an alleged military coup plot. The leaders of both plots were tried and executed.

On April 19, 1971, Parliament declared Sierra Leone a Republic. Siaka Stevens, then prime minister, became the nation's first President, and in March 1976, he was elected without opposition for a second five-year term as President. In 1978, Parliament approved a new Constitution to make the country a one-party state, followed by a referendum that instituted the APC as Sierra Leone's sole legal political party.

“revolution” and the people's frustration with their failure to rein in the Revolutionary United Front (RUF) rebel movement that was waging a brutal insurgency in the country, end the war, establish peace and stability, and revive the economy as they had promised when they overthrew the APC in April 1992, a year after the war started. These elections were, apart from ushering in a 'liberal pluralistic system', also intended as a 'conflict transformative strategy'.

In August 1985, the APC named military commander Major General Joseph Saidu Momoh, as chosen by Stevens, as the party candidate. Momoh was elected President in a one-party referendum on October 1, 1985.

In October 1990, President Momoh set up a Constitutional Review Commission to review the 1978 one-party Constitution. Based on the Commission's recommendations, a constitution re-establishing a multi-party system was approved by Parliament, becoming effective on October 1, 1991.

Before the implementation of the multi-party system introduced by the 1991 Constitution, a group of junior military officers overthrew the Government, suspended the Constitution, and established the National Provisional Ruling Council (NPRC).

In February 1996, the NPRC initiated the democratic transition that returned multiparty politics to the country after almost three decades of one-party rule under the All People's Congress (APC) party, and a four-year military junta rule under the National Provisional Ruling Council (NPRC). The 1996 elections were, however, conducted within the context of an on-going civil war and came in the wake of the unravelling of the NPRC "revolution" and the people's frustration with their failure to rein in the Revolutionary United Front (RUF) rebel movement that was waging a brutal insurgency in the country, end the war, establish peace and stability, and revive the economy as they had promised when they overthrew the APC in April 1992, a year after the war started. These elections were, apart from ushering in a 'liberal pluralistic system', also intended as a 'conflict transformative strategy'.

The 2002 general elections came on the heels of the Lome Peace Accord and were also part of the continuation of the peace building process. Sierra Leone People's Party (SLPP) and its leader, President Kabbah, won a landslide victory. While the elections were widely reported by observers to be generally free and fair, there were several reports of 'irregularities'. The 2007 elections were regarded as a bit complex because they "included four processes at the same time, namely, boundary delimitation, creation of a new electronic voters' register, presidential and parliamentary elections and the presidential run-off election". The 2007 elections were regarded as generally 'free and fair', and without widespread violence. It was, however, one of the most controversial presidential elections in that the Chief Electoral Commissioner was deemed to have exercised powers that she did not have by invalidating votes from 477 polling stations in areas predominantly considered to be the stronghold of the ruling SLPP. The SLPP candidate, Solomon Berewa, however accepted the result in the interest of peace. This resulted in the peaceful change in governing party. Ernest Bai Koroma was elected as President and the APC secured majority seats in Parliament.

The 2012 general elections, which the APC won without a run-off ballot, were also regarded as generally peaceful. Just like in 2007 when the opposition won the elections, the opposition SLPP party won the 2018 general elections over APC ruling party. While there were complaints of voter intimidation and violence against the ruling APC politicians, some of which later became the basis of post-election litigation, the 2018 elections were generally regarded as free, fair, and peaceful.

The post-conflict elections have had great significance for Sierra Leone in a number of ways. First and foremost, their successful delivery ensured that the country did not relapse into civil war. Second, they were able to bring about a change in government and to do so without violence.

“

**Whilst all the post-conflict elections conducted in Sierra Leone were declared to be largely free, fair, and credible, resolving election-related disputes or complaints in an expeditious and satisfactory manner remains a major challenge.**

”



### 3. COMMON AND POTENTIAL CAUSES OF ELECTORAL DISPUTES IN SIERRA LEONE

*From a cursory look at elections conducted in Sierra Leone since independence, including the most recent ones in 2018, there have always been complaints regarding the quality of voter registration and processing of results, intimidation of voters, and allegations of unprofessional conduct of election management bodies. In addition, there have also been complaints about unfair delimitation of constituency boundaries, unfair access to voter registration centers on polling day, as well as delays in delivering voting materials to polling stations. Opposition parties have particularly complained about the unjustified and illegal use of state resources and manipulation of democratic institutions by the incumbent parties to promote their political agenda.*

#### 3.1 Boundary Delimitation:

Boundary delimitation usually follows a population census, especially if the census result shows a dramatic increase or decrease in the population in a ward, constituency, or province. The Electoral Commission of Sierra Leone (ECSL) is mandated by the 1991 Constitution to undertake boundary delimitation. Section 38(1) of the Constitution empowers the Electoral Commission of Sierra Leone to partition the country into constituencies for the purpose of electing Members of Parliament through the first-past the post electoral system. Section 38(a) of the Constitution, however, provides that the President may, in consultation with the Chief Electoral Commissioner, declare that parliamentary elections be conducted on the basis of existing districts or a district block proportional representation system where a date for general election has been appointed but constituencies do not exist. Pursuant to the Local Government Act of 2004, the Electoral Commission of Sierra Leone is also charged with the responsibility of drawing up ward boundaries. Section 15 of the Public Elections Act 2022, provides the legal basis for the allocation of local council seats and delimitation of wards.

In carrying out boundary delimitation, the ECSL is also guided by the Wards (Boundary Delimitation) Regulations 2008, The Local Government (Amendment) Act 2004, The Provinces (Amendment) Act 2017 and Eight Establishment Orders 2017.

Boundary delimitation has always been a contentious issue and a source for electoral disputes. Opposition parties have often accused the ruling party of rigging the boundary delimitation process to create additional constituencies and wards in their strongholds, which invariably leads to an increase in the number of seats won by the ruling party in Parliament. For example the APC-led Government created additional constituencies mostly in the northern part of the country, the stronghold of the APC, based on the 2015 census report. Some opposition politicians and civil society organisations criticised the process and accused the then APC-led Government of manipulating the data to gain political edge over the other political parties. The SLPP strenuously complained at the time that by redrawing the electoral boundaries based on the 2015 census data, the ruling APC would gain unfair advantage at the March 2018 polls.

According to the Carter Center Report on the 2018 elections, stakeholders raised concerns “that the recent census statistics were not accurate and that the population distribution had been politically manipulated to justify the addition of the electoral constituencies, which were mainly in the north, the stronghold of the ruling party”.

The Carter Center Report referenced a local think tank, the Institute for Governance Reform (IGR), which published a paper that presented evidence suggesting that Statistics Sierra Leone, “fully conscious of the prevailing political culture of regional voting patterns and ethnic mobilization of voters by the two leading political parties, allowed partisan interests to influence the census process to favour the ruling party”.

These allegations/misgivings seem to have manifested in the outcome of the 2018 parliamentary results in the following manner: whilst the then ruling APC polled just a total of 24,772 votes more than the total number of votes cast for the then opposition SLPP in the parliamentary elections, the APC ended up winning 68 parliamentary seats, 20 more than the SLPP. In other words, APC won 20 more seats than SLPP even though it polled just 1% more of the votes cast. Ideally, APC shouldn't have won two more parliamentary seats than the SLPP. Some have even wondered about how it was possible, given the pattern of voting of the average Sierra Leonean, that the APC could win 20 more seats than the SLPP and still lose the presidential election during the first ballot and run-off Presidential elections.

Statistics Sierra Leone and even the Electoral Commission of Sierra Leone ought to have addressed the concerns expressed about the census and subsequent

processes before elections were conducted. Pursuant to the Census Act, 2002, Statistics Sierra Leone conducted a mid-term population and housing census in 2021. Opposition parties, including the main opposition APC, criticised it and even urged their supporters to boycott the enumeration. They claimed that the only reason the Government was conducting the census was because it wanted to create more districts and constituencies in their stronghold, thereby unfairly increasing their number of seats in parliament after the 2023 elections. Despite these concerns, Statistics Sierra Leone went ahead with conducting the census. The mid-term census report showed significant increases in population in parts of the country regarded as the stronghold of the ruling SLPP. The report also shows a reduction in population in parts of the country regarded as the stronghold of the opposition APC. Whilst no study has been done to ascertain the reason(s) or accuracy for the significant changes in the population distribution in the country since 2015, some commentators have attributed the changes to one or more of the following:

- a. That the 2015 census data was inaccurate;
- b. Supporters in the stronghold of the opposition heeded the call for a boycott of the process and refused to be counted; or
- c. That the 2021 mid-term census data was deliberately skewed by Statistics Sierra Leone to favour the ruling SLPP.

Regardless of the reasons for the significant changes in the population distribution of the country since 2015, many have argued that the Government should not use the data for the purposes of drawing up new constituency boundaries.

Similarly, many have argued that the 2018 parliamentary election results show that the current constituency boundaries result in an unfair imbalance in parliamentary representation. Evidently, drawing up wards or constituencies with inhabitants who do not accurately reflect the population quota is problematic, and there are clear constitutional provisions that seek to avert it. Section 38(2) of the 1991 Constitution states that, “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[...].” Similarly, the schedule to the Wards Boundary Delimitation Regulations, 2008, stipulates the mathematical formula for the establishment of ward boundaries is as follows: “The seats shall be allocated across the 19 localities such that the number of seats allocated to each locality is as nearly equal to the national population quota as is reasonably practicable, except that no locality shall be allocated less than 12 seats; 11 councillor seats + 1 chairperson seat”.

As it was in 2018, the issue of boundary delimitation is a potential source of electoral dispute for the 2023 elections. The key complaint of the opposition, as emphasised in a press release by the Consortium of Progressive Political Parties (a coalition of some opposition parties) (CoPP) is as follows:

*[w]e consider it to be alarming and a matter of national security concern that the ECSL in the past week, has been sending signals, through its engagements with the press that it is considering boundary delimitation before the 2023 general elections based on the anticipated results of the just concluded*

*catastrophic mid-term census.*

*It is a well-known fact that this census was overwhelmingly rejected by the majority of Sierra Leoneans as indicated by the abysmally low level of public participation. Furthermore, the entire process was marred by so many irregularities including grave technical inadequacies and capacity issues that even the World Bank had to withdraw its support. It is obvious that the data derived from this botched census are contestable, unreliable, and therefore un-useable especially in such an important public exercise as a general election. However, Statistics Sierra Leone (SSL) seems to be hell-bent on using its highly questionable mid-term census population figures to support the SLPP Government’s plans to draw up new boundaries and create new constituencies so as to give it undue advantage over opposition parties in the forthcoming election.*

It should be pointed out, though, that some members of CoPP, including NGC and the main opposition APC, did call for a boycott of the 2021 mid-term census.

In spite of the controversies that characterised the 2015 and 2021 mid-term censuses, there is evidence that the Government of Sierra Leone is capable of conducting a population census that is credible and acceptable to all. In 2004, the Government of Sierra Leone conducted a population census which produced data that was subsequently used both for development planning and the delimitation of boundaries for the 2007 and 2012 elections.

The delineation of electoral boundaries has been a major source of electoral dispute in Sierra Leone since 2015.



In fact, on rare occasions, ruling parties have also complained about the fairness or otherwise of constituency boundary delimitation processes. For instance, in February 2012 the national coordinator of the APC raised grave concerns about what he referred to as “unconstitutional behaviour by the National Electoral Commission, NEC”. Leonard Balogun Koroma said the Electoral Commission of Sierra Leone had embarked on illegal boundary delineation without the knowledge of his APC party, stating that the delineation of Ward 395 in the Bo district was illegal and unacceptable.

To ensure that elections are conducted in a free, fair, and credible manner, it is important that we look into concerns about censuses and boundary delimitations. Otherwise, the reverberations of botched censuses and boundary delimitations may continue long after elections.

### **3.2 Voter Registration: duplicate and under-age registration:**

Voter registration is recognised as an important means of ensuring citizens’ right to vote and as such, it should be made available to the broadest pool of citizens with little or no obstacles to ensure universal and equal suffrage. Voter registration is also an area of potential electoral dispute as opposition parties usually register their mistrust of the institutions charged with the responsibility of conducting voter registration. Political parties have also been accused of undermining the credibility of the process by, among other ways, enticing duplicate or under-age registrations especially in communities considered to be their strongholds. Also, the lack of capacity and resources affects the proper conduct of the voter registration. For example, the 2016 national civil registration was delayed

because of the late arrival of biometric machines and the lack of capacity and resources of the National Civil Registration Authority (NCRA). During this period, opposition parties and some civil society organisations registered their concerns and mistrust in the NCRA’s “impartially in fulfilling its mandate to ensure an accurate civil and voter register, citing a lack of genuine independence of the body from a politicized public service”.

Following the enactment of the National Civil Registration Authority Act, 2016, the then opposition SLPP opposed the idea that the Electoral Commission of Sierra Leone would compile the voter register by extracting data provided by NCRA. At a press conference in Freetown, the Secretary-General of the SLPP said they “viewed the attempt by the All Peoples Congress Government to reduce the Electoral Commission to an entity that should depend upon the data of the National Civil Registration Authority to extract its voter register as unconstitutional and unacceptable as the power to register voters is one given to it directly and exclusively by the National Constitution”. He said, “such moves are likely to undermine and compromise the integrity and independence of NEC.”

When the voter registration commenced in 2017, it was done simultaneously with civil registration, which caused concerns, especially among members of the then opposition SLPP. The Party complained that the process was slow, adding that there was evidence of “people who have been to registration centres for hours and in some cases even days without being registered. Some of these people may have been discouraged to come forward again for registration.

The consequence of this is that total registration will be lower than the targets in most wards or constituencies or districts.”

The party said it was worried that in several registration centres, particularly in Kailahun, Pujehun, Bonthe and Bo districts (its stronghold), the machines were largely dysfunctional. In the end, the civil registration process was separated from voter registration so that the machines were first used to conduct voter registration before the civil registration was done. This helped address the concerns of the then opposition SLPP. Crucially, it was addressed without the need for litigation and provides an example of how administrative bodies can resolve electoral complaints.

Ahead of the 2023 elections, the debate as to who is primarily responsible for the registration of voters reared its ugly head again. The Civil Registration Authority argued that it was their primary responsibility to either register voters or generate data for the voter register, but the Electoral Commission of Sierra Leone disagreed, saying that whilst it is not opposed to using the data compiled by NCRA, the primary responsibility of compiling and/or confirming the register of voters rests with them. In the end, they reached an agreement by which NCRA would provide data from the civil register, which the ECSL will use to compile or update the voter register.

Whilst the disagreement over which institution should take primary responsibility for voter registration seems to have been resolved, the opposition APC expressed concerns about some of the proposed amendments to the Public Elections Act 2012, particularly as it relates to

an additional set of criteria for voter registration. The proposed amendments complained of included, among other things, that anyone seeking to register as a voter must provide their National Identification Number (NIN). The opposition APC opposed the additional criterion, fearing that it could be used to disenfranchise people as there are many potential voters who do not have a NIN. NCRA assured the public that no one will be disenfranchised as they have the capacity to cover every voter registration/verification centre so that persons to whom a NIN has not been assigned will be duly registered with NCRA and subsequently issued a NIN. The ECSL says civil registration is mandatory, and that citizens who have not registered with NCRA should be willing to do so at the same time that they are registering to vote. Although the criterion was removed from the 2022 amended law, the ECSL insists that everyone must first do a civil registration before they are included in the voter register. This would invariably ensure that every voter has a NIN, which may minimise the possibility of fraud or multiple registrations by a voter.

In the first week of the voter registration/confirmation for the 2023 elections, political parties and a number of civil society organisations raised a number of concerns about the voter registration process. In a statement by the opposition NGC, the challenges that confronted the registration process were catalogued as follows: “In addition to the extremely inadequate quantity of equipment available, there are several technical problems which need urgent attention and if not corrected could lead to a total failure and general public rejection of the registration exercise.

These include faulty computers, faulty cameras, faulty thumb print scanners and centre code mismatches. Power source for operating the machines have been unreliable due to time-wasting power outages or faulty generators.” The statement further noted that technical and other difficulties that have been slowing down registration tend to be more prevalent in the Northern and Western regions whereas Eastern and Southern regions appear to be facing less problems. This is causing speculations that there may be a methodical effort to churn out figures that will rhyme with the disputed mid-term census results”. Similar concerns about faulty machines and the slow registration process were expressed by civil society organisations, including NEW and Campaign for Human Rights Development International—CHRD.

The Electoral Commission of Sierra Leone and the NCRA must provide a clear explanation to the people of Sierra Leone as well as political parties for their decision to enforce mandatory civil registration as a precondition for voter registration. Otherwise, it is a potential source of dispute ahead of the 2023 elections.

In addition, intentional voter fraud either through false or duplicate registration is very common in Sierra Leone. The Constitution of Sierra Leone provides that 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. The Public Elections Act, 2022 further provides that a person who has attained the age of eighteen years or who will on the date of the holding of the next election have attained the age of eighteen year can vote. Crucially, the law provides that no person

shall be registered as a voter in more than one ward or more than once in a ward. In addition, the law requires a registration officer, for the purposes of being satisfied that a person is eligible to be registered as a voter, to ask for the following: (a) A birth certificate or other such document issued under the authority of an. enactment; (b) A naturalization certificate; (c) The testimony of a member of the Local council the area of his residence; (d) A statutory declaration giving particulars of the person’s birth; (e) Any other satisfactory evidence of the person’s entitlement to be registered as a voter.

The law, however, empowers the registration officer to reject a claim for registration if he or she is satisfied that the person is not qualified. The decision of the registration officer may be challenged by the affected through an appeal to the Electoral Commission.

In spite of very clear legal provisions that proscribe duplicate registration and registration of minors, the Electoral Commission has had to deal with complaints about the registration of minors and duplicate registration. Duplicate and multiple registrations could cause tremendous damage to the credibility of the voters list and the elections. Prior to the introduction of biometric voter registration in 2017, duplicate registration was commonplace, and the Electoral Commission had no capacity to detect and weed out duplicate registrants. Ahead of the 2018 elections, the Electoral Commission discovered that a total of 1,539 people registered more than once during the voter registration process. The Electoral Commission described duplicate registration as heinous, and urged the Chief Justice to set up a special court to deal specifically with electoral offences relating

to duplicate registration. Unfortunately, there is no evidence that anyone was tried and punished for such malpractice, which is clearly part of the reason it will continue to happen

A week after the commencement of voter registration for the 2023 elections, the ruling SLPP issued a statement to share its observations and concerns about the voter registration exercise. Among other things, the statement expressed concerns about reports of under-age voting. In the statement, The Secretary General of the SLPP said his party was “gravely concerned about multiple cases of identity fraud perpetrated by mainly opposition operatives. Questionable birth certificates and other forms of identification were presented in Bombali, Tonkonli and Kerene at some centers, but the SLPP’s party agents stoutly resisted attempts to use those certificates for the purposes of voter registration”. The statement added that in some cases, local authorities such as local chiefs and councillors were hired to authenticate the clearly forged documents that those opposition party operatives sought to use.” It said many of the alleged perpetrators have been arrested and are being questioned by the police.

The police and the judiciary have a huge responsibility to investigate and punish those who enable and participate in such intentional voter registration fraud, but political parties have an equally compelling duty to discourage their supporters or members from participating in or enabling it. Voters also have a responsibility to play by the rules, knowing that if they enable politicians to acquire power through cheating or dishonesty, they would have lost the moral high ground to demand honesty and probity from their elected leaders.

### 3.3 Electoral Campaign Calendar:

The electoral campaign calendar refers to the scheduling of days that each political party can carry out its campaign activities. This is done to avoid having two political parties campaigning on the same day in the same town or city, which may lead to clashes and violence between supporters of various political parties. However, opposition parties have sometimes accused the Electoral Commission of allotting favourable campaign days to the governing party (such as the last day of public demonstration in major towns and cities). To address this suspicion, the Electoral Commission adopted an ingenuous approach in the last elections whereby political parties were grouped together and then asked to randomly choose campaign days in each of the country’s 16 electoral districts. In spite of this commendable approach of appointing campaign days, some political parties, usually the ruling party, do not strictly comply with the campaign calendar. This has sometimes led to politically-motivated clashes. Ahead of the bye-election in Constituency 056 in Tonkolili District, for example, there were clashes between supporters of the ruling SLPP and the opposition APC on the 7 June 2022. The opposition APC accused the ruling party of disrupting their campaign on a day that had been allotted to them. The UN in Sierra Leone condemned the acts of violence and called for prompt investigation of the clashes that occurred during the APC rally. In a joint press statement following the clashes, PPRC and ECSL banned all political parades ahead of the bye election, even though the campaign calendar it had issued remained valid. It stated that political parties were only allowed to hold rallies or meetings on the days allotted to them in town halls, community centers, or open

fields, following a 24-hour notice to the police.

The intervention of the PPRC and ECSL in disturbances in Tonkoili is a perfect example of how some electoral disputes can be addressed by election management bodies without the need for litigation or unnecessary tension.

### **3.4 Delivery of voting materials at polling stations:**

The late delivery of electoral materials at polling stations can also be a source of electoral dispute as it invariably leads to delays in the commencement of voting at the affected polling stations. When this happens in the opposition stronghold, the opposition parties would attribute the delay to a calculated plot by the ECSL to disenfranchise their supporters. Even though the Public Elections Act 2022 empowers the ECSL to extend the time for close of poll until every registered voter who has joined the queue before the time scheduled for close of voting has voted, the late arrival of voting materials may turn off some voters, who may decide to leave without voting. To avoid this, NEC should work with the security sector to ensure that polling materials are delivered well in advance of polling day. There has not been any major controversy in this regard in recent history, but in a context of deep-seated suspicion and mistrust between opposition parties, especially, and the election management bodies, this could easily degenerate into a security issue.

### **3.5 Disagreement over the procedures for processing and counting votes and transmission of results:**

The Public Elections Act 2022 clearly provides a set of guidelines for the counting of votes and transmission and declaration

of results. Sections 52 and 84-96 are quite helpful. In summary, the law provides that as soon as is practicable after the Presiding Officer has declared the polls closed, he shall, in the presence of the polling staff, counting agents and observers open each ballot box, take out the ballot papers and separate those cast in respect of the election of Members of Parliament from those cast for the election of a president. The Presiding Officer shall also count the votes separately for each election and ensure that the ballot papers for the candidates and those for any other election held on the same day are kept separate. The power to cancel votes or results for over-voting was included in the electoral laws, following the controversial decision of the Chief Electoral Commissioner Christiana Thorpe to cancel votes from 477 polling stations without a legal basis in 2007. The law provides strict rules for such cancellation. It provides that where the votes cast at an election, whether a presidential or parliamentary election, at a polling station exceed the number of registered voters in that polling station, the result of the election for that polling station shall be declared null and void by the Electoral Commission and another election may be conducted at a date to be fixed by the Commission, where the result at that polling station may affect the overall result in the electoral area, in the case of parliamentary or local council elections. The cancellation of results for over-voting was included in the electoral law after the 2007 elections, when Chief Electoral Commissioner Christiana Thorpe cancelled votes from 477 polling stations without a legal basis.

The law further provides that upon receipt of the copies of the summary of results compiled by each of the District Returning Officers in the electoral area, the Regional

Returning Officer shall compile a summary of all the results received from the District Returning Officers and shall supply certified copies of his summaries to the National Returning Officer and the details of any observers or counting agents present. Upon receipt of the summaries from the Regional Returning Officer, the National Returning Officer shall ensure that the summaries are tallied and computed and shall immediately thereafter declare the result of the election or elections as follows: -

(a) In the case of an election of the ordinary members of Parliament, the number of votes cast for each constituency candidate; and (b) In the case of the election for a President held the same day, tally and compute the results certified to him by the various Presiding Officers and immediately thereafter declare the result of the election.

The National Returning Officer ensures that the statements of the result of the polls and the sealed packages containing the voting papers and all other documents relating to the election, including all forms whether used or not, are securely kept by the Electoral Commission.

In spite of these detailed and clear guidelines for the counting, transmission and declaration of results, the 2018 presidential run-off election was marred by disagreement between the political parties regarding how the votes were to be tallied. The then ruling APC insisted that the results were to be manually computed. Essentially, they were against the use of computers in tallying/processing the results. This caused a delay in the counting/processing of the ballots.

It should be noted that the law does not clearly state whether computer or electronic

devices can be used to process results, but in the interest of efficiency and speed, the Electoral Commission has since 2012 used computers and other electronic devices to process election results.

Similarly, as clear as the procedure for processing ballots appears, the process of counting and transmitting results has not been free from controversy. Following the announcement of the 2018 presidential election results, a number of political parties questioned the accuracy of the results and urged the Electoral Commission to recount the ballots across the country. In response to their complaints and as part of efforts to enhance the credibility of the outcome, the Electoral Commission recounted ballots from 247 polling stations across the country.

Also in November 2021, a staff member of the Electoral Commission was accused of having tampered with a bye-election result in Ward 091 by fraudulently changing the figures in favour of the governing Sierra Leone People's Party (SLPP). The issue raised tension and concerns about the integrity of the electoral process. In fact, the opposition APC threatened to institute legal proceedings against the Electoral Commission. In a letter written by the party's retained Solicitor, the party said its observers "detected that the Electoral Commission's Information Communication and Technology team made an inaccurate/ and or fraudulent entry, inconsistent with the particulars on NEC's Results Reconciliation Form ("RRF")". Many demanded that the ad hoc staff member of the Electoral Commission be arrested and brought to justice. Efforts to do so have been unsuccessful.

### 3.6 Nomination of Candidates/Declaration of Intention to Contest:

Section 46 of the Public Elections Act 2022 provides that “when a time is appointed for a general election, the Electoral commission shall, by Government Notice, require that nominations of candidates be delivered to the Electoral Commission or the Returning Officer designated by the Commission before four o’clock in the afternoon of the day specified in the Government Notice, which shall not be more than sixty and not less than thirty days before the day appointed for voting in the elections.”

Section 63(1) of the Act further provides that “a voter of the electoral area in which a candidate intends to contest an election may at any time up to five o’clock in the afternoon of the last appointed day for the receipt of nominations, object to the nomination of that candidate”. An objection could be based on any of the following grounds:

- (a) that the particulars of the candidate or his nominators are not as required by law;
- (b) that the paper is not subscribed as so required;
- (c) that any one of the nominators is not a voter;
- (d) that the candidate has not paid the nomination fee;
- (e) that the candidate is a person disqualified from being a Member of Parliament under Section 76 of the Constitution.

It is the responsibility of the Returning Officer, in the first instance, to decide on the validity of the objection to a candidate nominated to contest in a general or parliamentary election.

Section 63(5) of the Act provides that a candidate who is aggrieved by the decision of the Returning Officer in regard to the

nomination objection may appeal to the Electoral Commission, which may uphold the decision of the Returning Officer or reverse it. The decision of the Returning Officer or, in the case of an appeal, the Electoral Commission, on the validity of a nomination shall be final and shall not be questioned in any proceeding whatsoever, except by way of an election petition. In other words, once an objection to the nomination of a candidate has been dismissed by both the Returning Officer and the Electoral Commission, the issue can only be heard by the court after the election. This allows NEC to proceed with the elections without the need to wait for the courts to hear and determine the action. This standard should probably be applied to objections to the nomination of Presidential candidates.

Similarly, Section 44 of the Public Election Act provides for the eligibility criteria of presidential and vice presidential candidates as well as the guidelines for their nominations. The law provides that any citizen of Sierra Leone may lodge an objection against the nomination of a presidential candidate but that the objection shall be lodged with the Supreme Court within seven days of the publication of the Government Notice. Any objection against the nomination of a presidential candidate shall be heard by the Supreme Court made up of three Justices whose decision shall be given within thirty days of the lodging of the objection. Where the Supreme Court upholds an objection against a nomination, it shall declare the presidential candidate concerned to be disqualified from contesting the presidential election.

Although objections and petitions relating to the nominations and eligibility of presidential and parliamentary candidates are infrequent, there have some major ones in the last 12 years.

In 2018, an objection was lodged against the nomination of Dr. Kandeh Yumkella as a candidate for a parliamentary seat in Kambia District on the grounds that he was a dual citizen of Sierra Leone and the United States of America. The objection was subsequently dismissed both by the Returning Officer for Kambia District and on appeal, by the Electoral Commission of Sierra Leone.

In the same year, Dr. Yumkella was nominated as a presidential candidate. For the same reason, a petition was also filed with the Supreme Court challenging the legal basis of his candidature as he was a dual citizen, which they argued, “offended section 76(1a) of the Constitution of Sierra Leone Act No 6 of 1991 and the Public Elections (Act No 4) of 2012”.

The Supreme Court could not hand down a final judgment before the election, but Dr. Yumkella was allowed to contest both the presidential and parliamentary elections. He was later duly elected as a Member of Parliament, but he performed badly in the presidential election. Many have attributed his poor showing in the 2018 presidential election to the doubts created about his eligibility to contest the election.

When the Court gave a final decision three years later, it concluded that Dr. Yumkella was eligible to have contested as a presidential candidate.

The cases against SLPP candidates, Ansu Lansana of Constituency 05, and Capt. Hafiju Kanja of Constituency 15, instituted by Hon. Macarthy and Dr B.M. Kamada, respectively, are also worth discussing. In the case against Ansu Lansana ESQ, Hon. Macarthy filed a petition with the High Court on the grounds that Mr. Lansana was

not properly, regularly, or lawfully selected by their party (the SLPP) to contest the Parliamentary Elections in November 2012. The plaintiff further claimed that the award of the SLPP symbol to Ansu Lansana “was not fairly or properly considered” by the SLPP. To be sure, the case against Ansu Lansana could not have been handled by the Returning Officer or the Election Commission by way of a nomination objection because none of the grounds on which his candidature was challenged is amongst those provided in Section 63(2) (a-d).

Similarly, a former SLPP Member of Parliament for Constituency 15, Hon. B.M. Kamanda, also filed a petition against an SLPP parliamentary candidate, Captain Hafiju Kanja, on the grounds of being “wrongfully and unlawfully deprived of the SLPP symbol” in favour of the Capt. Kanja. Kamanda claimed that Captain Kanja was given the symbol in breach of section 76(i) of the 1991 Constitution.

In both cases, the Court ultimately dismissed the petitions on the grounds that they lacked merit. Strangely, though, the court annulled the votes cast for the Respondents (Ansu Lansana ESQ. and Capt. Kanja, both of whom had polled the most votes) and then ordered that the petitioners (Leonard S. Fofanah and Regina Marrah Constituency of Constituency 015 in Kenema and Constituency 05 in Kailahun, respectively) as duly elected. The petitioners were subsequently sworn in as Members of Parliament.

Section 146(3) of the Public Elections Act, 2012, however, provided that “Where the High Court has determined that a candidate was duly returned or elected, or that the election was void, and no notice of appeal



has been given against that determination within fourteen days, or where on appeal the Court of Appeal has determined that a candidate was duly returned or elected, or that the election was void, then the Speaker shall publish by notification in the Gazette whether the candidate whose return or election is questioned is duly returned or elected or whether the election is void.” Crucially, Section 146(4) stipulates that if an election is declared void, another election shall be held. In the light of the Justice Showers’ decision, one would have expected the Court to uphold the election results or at worst, declare that fresh elections be conducted in those constituencies. Instead, the Court nullified the results of the SLPP candidates who had clearly won both elections and ordered the Chairperson of the Electoral Commission of Sierra Leone to declare the APC candidates Leonard S. Fofanah of Constituency 015 in Kenema and Regina Marrah of Constituency 05 in Kailahun, as the elected representatives of those constituencies. The candidates were then sworn in as Members of Parliament in less than the 14 days stipulated by the law.

The decisions in the above-mentioned cases were bad for a number of reasons:

1. First, it was the first time ever for a court of law to declare the election of a Member of Parliament void and instead of ordering fresh elections, the court directly replaced the elected officials.
2. Second, in both cases, the court held that the complainants had no merit, and that the nominations of the Respondents as candidates were consistent with the law. It then seemed quite unjustifiable and legally wrong to have annulled their elections.

3. In the case of Capt. Hafiju Kanja, the Court ought not to have entertained the petition because the Electoral Commission of Sierra Leone would have been the proper place or institution to have raised such an objection.

Unfortunately, the decisions were enforced, and it seems that Judges who adjudicated election petitions in 2019 relied on the precedent to replace 9 elected parliamentarians representing the opposition APC.

On both occasions (2013 and 2019), the Court should have done better. Apart from the fact that the orders for replacement of the elected candidates in the Ansu Lansana and Hafiju Kanja cases were clearly unjust, the Judges in the subsequent petitions should not have relied on them. The doctrine of judicial precedent provides that the decisions of the High Court are binding on all subordinate courts. However, the decision of one High Court is not binding on other High Court Judges. This means that the Judges who decided the 2018 election petition cases were not bound by the reasoning and orders of the decisions in the 2013 cases.

Another legal issue that is worth discussing is that whilst Section 146(4) requires that a fresh election is conducted in the event that an election is declared void, the law does not expressly provide grounds on which an election can be declared void. In the Ansu Lansana case, for example, the Court ruled that the votes cast in favour of Ansu Lansana cannot be recognised and are “declared invalid” but the Judge did not go as far as declaring the election itself void. Similarly, in the 2019 decisions against the opposition APC Members of Parliament,

whilst the High Court did declare as void some of the elections that were overturned, the judgments do not include any guidance on the set of circumstances that can give rise to the invalidation of an election. It is recommended that the electoral laws are revised to provide clear grounds for declaring an election void. That way, whether a Judge declares an election void or not, it would be obvious from the decision that fresh elections need to be conducted. The example below from legislation in India, can provide some guidance as to how such a provision could be drafted:

The Kerala Panchayat Raj Act 1994

Chapter 10. Disputes Regarding Election

102. Grounds for declaring election to be void

1. Subject to the provisions of subsection
2. if the court is of opinion –
  - a. that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under this Act; or
  - b. that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
  - c. that any nomination has been improperly rejected; or
  - \*\*[(ca) that the details furnished by the elected candidates under sub-section (1A) of section 52 were fake; or]
  - d. that the result of the election, in so far as it concerns a returned candidate, has been materially affected –
    - i. by the improper acceptance of any nomination, or
    - ii. by any corrupt practice committed in

the interests of the returned candidate by an agent other than his election agent; or

iii. by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

iv. by any non-compliance with the provisions of this Act or of any rules or orders made there under, the court shall declare that the election of the returned candidate to be void.

3. if in the opinion of the court a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the court is satisfied. –

a. that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

b. that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

c. that in all other respects the election was free from any corrupt practice on the part of the candidate or any of its agents, then the court may decide that the election of the returned candidate is not void.

### **3.7 Disagreement over electoral system: Proportional Representation or First-past-the-post:**

Sierra Leone has tried only two electoral systems since independence: First-Past-the-Post and Proportional Representation. There has never been any disagreement or contest over the preferred electoral system for parliamentary and presidential elections. Until 1996, the First-Past-the-Post electoral system had been used for all public elections. In 1996 and 2002, the Government of Sierra Leone conducted

parliamentary elections based on the Proportional Representation (PR) system because it was almost impossible to draw up constituency boundaries whilst the country was at war. A decree was passed in 1996 to enable the use of the PR system. The PR system was also used for the 2002 parliamentary elections, but only after an amendment to Section 38 of the Constitution, 1991. The amendment essentially provides that parliamentary elections can be conducted by the PR system where no constituencies exist, and the Government is unable to draw up constituency boundaries after a date for elections has been announced.

In 2007, however, the country reverted to the First-Past-the-Post electoral system after constituencies were drawn up using the 2004 national population census data. Unlike the 2015 and 2021 mid-term population censuses, the 2004 census did not generate any controversy or at least, not on the same scale as the 2015 and 2021 population censuses. Consequently, constituency boundaries were drawn up using the 2004 census data, and those boundaries were used for both 2007 and 2012 elections.

In 2015, as required by the Constitution of Sierra Leone, a national population census was conducted by Statistics Sierra Leone. As noted earlier, the then opposition SLPP and some civil society organisations expressed serious concerns about the quality of the process and its outcome. Opposition SLPP claimed that the process had been rigged by unduly inflating a population increase in the then ruling APC stronghold in order to secure majority seats in Parliament. In spite of those concerns, there was little effort to undertake a constructive engagement with the view to

addressing those concerns. The outcome of the process, albeit questionable, was used to conduct the delimitation of constituency boundaries. In the parliamentary elections that followed the 2017 boundaries delimitation, the then ruling APC secured 20 more seats than the SLPP, even though the combined number of votes polled by the elected APC MPs was just about 25,000 more than what SLPP had polled. All things being equal, that difference should have given the APC just a two-seat - instead of a 20-seat - advantage over the SLPP.

Although Statistics Sierra Leone has repeatedly told the public that the decision to conduct a mid-term census in 2021 was theirs, many believe it was part of an effort by the current administration to address the “imbalance” created by the 2017 constituency boundary delimitation that the 2015 census data was “generated”. The unannounced objective of the mid-term census, some have argued, was to draw up new constituency boundaries and reverse what looked like a “gerrymandering project” in 2015. The mid-term census was largely supported by development and bilateral partners, including the World Bank, UNFPA and the Government of Kenya.

There may be a debate about the credibility of the data, but there is no doubt that the process was fraught with a number of challenges: in addition to the withdrawal of financial support by the World Bank, the main opposition APC also urged its supporters to boycott the enumeration. We do not know the extent to which this impacted the data, but many believe that a host of their supporters heeded the call and abstained from participating in the enumeration. In addition, there were also technical and funding challenges,

including reports that trained enumerators had disappeared with quite a number of tablets/devices issued to them for enumeration.

Given the challenges that confronted the process, many non-state actors and political parties have advised the Government against using the mid-term census data for the purposes of drawing up new boundaries ahead of the 2023 elections.

It is unclear whether the Government has heeded to the calls against using the 2021 mid-term census data, but there are proposals for the Government to use the PR system for the 2023 elections. Some commentators suggest that it would help address the “imbalance in parliamentary representation” created by the 2015 census data and the subsequent boundary delimitation. The Government and some civil society actors argue that the PR system would help ensure fair representation Parliament, promote national cohesion, increase representation of women and minority groups, and address the imbalance in delimitation of boundaries. Some opposition parties, including the main opposition APC and sections of the Sierra Leonean population, are opposed to the PR electoral system. They believe it is detrimental to democracy as it could make political parties more powerful than voters and further widen the gulf between citizens and their elected representatives. They further argue that there is no legal basis for the adoption of the PR system at this point.

The debate raises a critical legal question: those opposed to the PR system argue that it would be illegal to conduct the 2023 parliamentary elections on the basis of the PR system. Relying on Section 38(a) of the 1991 Constitution as amended, they

argue that there were valid constituencies in the country at the time that the President and the ECSL announced the dates for presidential and general elections. Section 38(a) provides that the President may, in consultation with the Chief Electoral Commissioner, declare that elections be conducted on the basis of existing districts or a district block proportional representation system where a date for general election has been appointed but constituencies do not exist. They, therefore, argue that Section 38(a) can only be invoked where constituencies did not exist at the time that the date for general elections was appointed. In response, some Government officials have argued that the so-called constituencies that existed at the time that the date for the 2023 general elections was announced have ceased to exist by operation of law in that those constituencies are untenable in light of the new census data.

The debate or disagreement over whether to use the existing boundaries or the mid-term census data to draw up new constituencies boundaries is perhaps relevant only to the type of electoral system we choose to use: First-Past-the-Post/Majoritarian System or Proportional Representation System. This is clearly a thorny issue ahead of the 2023 elections and may wind up in court.

### **3.8 Appointment of polling officers and placement of polling stations:**

Decisions on the appointment of polling officials and the placement of polling stations, both of which are part of the remit of the Electoral Commission, are essential to the holding of elections and referendums. The purpose of appointing polling staff and fairly placing polling stations is to ensure that votes are cast and counted by an official body made up according

to the requirements of the law and in a place or places fixed according to the law. In some systems, citizens are chosen at random and provided with training to work as polling station officials. In others, they are proposed by the political parties or are civil servants. It is important that this is done in a fair and transparent manner so that it does not reinforce the existing suspicion that usually characterises the relationship between the opposition parties and election management bodies. In Sierra Leone, national polling staff – whether ad hoc or permanent - are recruited exclusively by the Electoral Commission. Political parties, especially opposition parties, have sometimes questioned the integrity or neutrality of staff members of the Commission. In 2019, for example, the opposition APC said it had lost faith in the then Chief Electoral Commissioner who the party described as “incompetent, partial and lacking credibility”. The party warned that the activities of the then Chief Electoral Commissioner posed a threat to national unity, security, and stability. Whilst it is rare for political parties to directly accused staff of the Electoral Commission as biased or partisan, the relationship between opposition parties and the Electoral Commission is often characterised by suspicion and mistrust. It is hard to establish one’s political leaning in the absence of clear evidence that the person is formally registered with a political party or has previously campaigned on behalf of a political party. The Electoral Commission must, however, ensure that the code of conduct for polling staff is strictly enforced to ensure that the integrity of the electoral processes is enhanced.

“

**The Carter Center Report referenced a local think tank, the Institute for Governance Reform (IGR), which published a paper that presented evidence suggesting that Statistics Sierra Leone, “fully conscious of the prevailing political culture of regional voting patterns and ethnic mobilization of voters by the two leading political parties, allowed partisan interests to influence the census process to favour the ruling party.**

”

## 4. ELECTION MANAGEMENT BODIES IN SIERRA LEONE

***There are two major electoral management bodies in Sierra Leone: the Electoral Commission of Sierra Leone (ECSL) and the Political Parties Registration Commission (PPRC). The security institutions, including the police, military (through the declaration of MAC-P protocol) and also support the electoral process. Both the ECSL and PPRC derive their legitimacy from the 1991 Sierra Leone Constitution. The primary mandate of ECSL is to supervise the registration of voters and conduct all public elections and referenda. It also has the power to make regulations by statutory instruments, undertake registration of voters, conduct presidential and local government elections and referenda, and other electoral related matters. Additional functions of the Electoral Commission are spelt out in the Public Elections Act 2022, which include the power to conduct civic electoral education and to promote sound democratic knowledge in electoral processes.***

Under the 1991 Constitution, the primary responsibility of Political Parties Registration Commission (PPRC) is to register political parties in Sierra Leone.

The Electoral Commission is empowered by the Public Elections Act to accredit any group or institution to act as an election observer, such the African Union (AU), Economic Community of West African States (ECOWAS), National Elections Watch (NEW), European Union. Such accreditation is for the purpose of observing any or all aspects of electoral process, including voter registration, nomination for election, campaigning, polling, counting and the announcement of results, conducted by Electoral Commission, without

interference in the process. Additionally, it appears from the 1991 Constitution and statutes establishing both commissions that the Electoral Commission of Sierra Leone is the only statutory body responsible for civic electoral education.

Other institutions, including the security sector, also play a fundamental role in elections. As public elections have since independence been characterised by complaints of fraud, voter intimidation and violence, the role of the security sector cannot be overemphasised. Combatting violence before, during and after elections has always been a major concern for voters and other election stakeholders, but it has become even more serious with the increasing penetration of internet and misuse of social media. It is estimated that 3 million Sierra Leoneans now access to internet and sadly, a lot of misinformation and incendiary messages are now peddled via social media. There is need for both state and non-state actors to work cooperatively and develop strategies to minimize incidents of violence inspired by misinformation and incendiary messages on social media. Government and non-state actors need to develop and implement strategies aimed at providing instant and trusted counter information to misinformation on social media.

In the context of Sierra Leone, the security sector includes the Sierra Leone Police (SLP), the Republic of Sierra Leone Armed Forces (RSLAF), and the ONS. Institutions such as the National Disaster Management Agency (NDMA), Sierra Leone Correctional Services and the Sierra Leone Fire Force are also relevant in responding to emergencies associated with elections.

To underline the role of the security sector in the electoral process, an Integrated Elections Security Planning Committee (IESPC) has been established and is coordinated by the Office of National Security. The IESPC, which comprises officials from the ONS, SLP, RSLAF, and correctional services, is responsible for “developing elections security strategy, mobilising resources on behalf of the security sector that are elections specific, developing a training manual for security apparatus, developing a communications strategy, and a national elections threat assessment or district risk mapping”. Through a national elections threat assessment or district risk mapping, the IESPC identifies hotspots and individuals likely to cause violence and unrest during elections. This helps the Committee to make informed decisions on which areas to deploy more resources and where more engagement with communities is required.

Since the primary responsibility for all security aspects of the voting process itself is clearly vested in the National Electoral Commission, the Police only intervene in the electoral process when called upon by election staff, unless a crime is about to be committed or there is intelligence regarding a potential crime

***Both the ECSL and PPRC derive their legitimacy from the 1991 Sierra Leone Constitution. The primary mandate of ECSL is to supervise the registration of voters and conduct all public elections and referenda. It also has the power to make regulations by statutory instruments, undertake registration of voters, conduct presidential and local government elections and referenda, and other electoral related matters. ”***



The police play a useful role in the investigation and prosecution of electoral offences. The police are mandated to investigate electoral offences and related crimes, arrest and prosecute alleged perpetrators of such offences. There have, however, been some criticisms against the police’s handling of electoral offences. The two main criticisms relate to poor investigations and failure to conclude prosecutions as a result of limited resources and political interference.



“

*...the Public  
Elections Act  
2022 empowers  
the Electoral  
Commission of  
Sierra Leone to  
resolve complaints  
or challenges  
relating to voter  
registration.*



## 5. INSTITUTIONAL AND LEGAL OPPORTUNITIES FOR RESOLVING ELECTORAL DISPUTES IN SIERRA LEONE

*Electoral challenges or disputes are generally categorized into administrative, judicial, legislative, and international. A key criterion for determining whether an electoral complaint falls into any of these categories depends on the nature of the institution and organ that hears and resolves the complaint. In most cases, an administrative resolution is pursued before a judicial one. Legislative and international channels are generally pursued long after the issue or complaint arose.*

### 5.1 Administrative Challenges

Administrative challenges are complaints that are resolved by the election management body (EMB) in charge of directing, organizing, administering, and overseeing election procedures. In the case of Sierra Leone, it is the Electoral Commission of Sierra Leone. Administrative challenges offer an opportunity to those affected (it could be political parties, candidates, and ordinary citizens) to oppose an electoral action or decision using a procedure in which either the same organ of the EMB that issued the action or decision being challenged or another of a higher rank decides the dispute. In Sierra Leone, administrative challenges could be pursued through the following institutions:

#### A. ELECTORAL COMMISSION OF SIERRA LEONE:

The Public Elections Act 2022 empowers the Electoral Commission of Sierra Leone to resolve complaints in respect of the nomination of candidates for parliamentary and local council elections. The law provides that a voter of the electoral area in which a candidate intends to contest an election may at any time up to five o'clock in the afternoon of the last appointed day for the receipt of

nominations, object to the nomination of that candidate on a number of grounds, and the Returning Officer (a staff of the Electoral Commission of Sierra Leone) shall decide on the validity of the objection. It provides that the Returning Officer shall be entitled to hold a nomination paper invalid on any of the following the grounds:-

- a) That the particulars of the candidate or his nominators are not as required by law;
- b) That the paper is not subscribed as so required;
- c) That any one of the nominators is not a voter;
- d) That the candidate has not paid the nomination fee;
- e) That the candidate is a person disqualified from being a Member of Parliament under section 76 of the Constitution.

It provides that a Returning Officer shall give his decision on an objection to a nomination paper as soon as practicable after it is made, but in any event before six o'clock

in the afternoon of the last day appointed for the receipt of nominations. Where the Returning Officer decides that a nomination paper is invalid, he shall endorse and sign on the paper the fact and the reasons for the decision. A candidate aggrieved by the decision of the Returning Officer as to the validity or otherwise of a nomination shall file an appeal with the Electoral Commission of Sierra Leone. The law states that the decision of the Returning Officer or, in the case of an appeal, the Electoral Commission, on the validity of a nomination shall be final and shall not be questioned in any proceeding whatsoever, except by way of an elections petition.

Similarly, the Public Elections Act 2022 empowers the Electoral Commission of Sierra Leone to resolve complaints or challenges relating to voter registration. Section 30 of the Act provides that a person whose name has been omitted from a copy of the provisional list of voters or part of the list prepared and exhibited, and who claims to have satisfied the Registration Officer concerned of his entitlement to be registered shall, during the period of exhibition of the copy or part of it, apply or present himself to the Electoral Commission to have his name inserted in the copy as provided for by law.

Also, the law provides that a person whose name appears in a copy of the provisional list or part of it may object to another person whose name also appears in the provisional list as not being entitled to be registered as a voter, and shall, during the period of the exhibition of the copy or part of it, give notice of his objection to the Electoral Commission, and to the person objected to, giving reasons for his or her objection.

To resolve complaints relating to the registration or insertion of ineligible names



**Judicial challenges can be brought by an interested party against the Electoral Commission, representatives of political parties, or against other person(s). Under the laws of Sierra Leone, the filing of a challenge does not suspend the effects (even if they are provisional) of the decision or action challenged.**



in the provision voter registration, the law empowers the Revising Officer of the ECSC to hold a public hearing at Ward level for the purpose of revising the provisional register. At the public hearing, the Revising Officer can either insert in any list the name of every person who is proved to be entitled to have his name inserted in the list and shall strike out of the list the name of every person who, upon the application of an objector or of the Registration Officer, is proved to not to be entitled to have his name retained in the list or to be dead. An objection shall be overruled if the objector or the Registration Officer fails to appear in person, the name of the person objected to shall be retained as a voter in the provisional list. Although an appeal from the decision of the Revising Officer lies with the High Court, the law states that no appeal or notice of appeal shall be received or allowed against the decision of the Revising Officer upon any question of fact or upon admissibility or effect of any evidence or

admission adduced or as the case may be, made in a case to establish a matter of fact.

It should be noted, though, that it is an offence for a person who knowingly causes his name to be included in a copy of a provisional list whilst not entitled to be registered or a Registration Officer who knowingly includes the name of a person who is not entitled to be registered.

## B. THE POLITICAL PARTIES REGISTRATION COMMISSION (PPRC)

The PPRC is mandated to register and supervise the conduct of political parties by, among other things, monitoring the affairs or conduct of political parties to ensure their compliance with the Constitution and the PPRC Act. The Commission can also mediate, when approached by persons or parties concerned, any conflict or disputes between or among the leadership of any political party. Therefore, challenges or disputes relating to the eligibility of political parties to contest elections either by reason of their questionable registration or unlawful or inappropriate conduct may be resolved by the Commission.

Crucially, Section 35 of the Constitution of Sierra Leone, 1991 empowers the Commission to register all political parties. In exercise of its power to register political parties, it can also refuse the registration of political parties if it is satisfied that the membership of the political parties is restricted to one tribal or ethnic group or religious faith; or that it is set up to promote the interest of one tribal or ethnic group or a religious group; if the proposed political party does not have regional offices or is deemed to have violated the Constitution of Sierra Leone.

The PPRC Act provides that an association

that is aggrieved by the decision of the Commission to register it as a political party may appeal to the Supreme Court, but instead of doing so, may first appeal to the Commission to review or reconsider its decision not to register the association as a political party.

The PPRC Act also provides guidelines for the source of funding for political parties. It stipulates that contributions in cash or kind to the activities of political parties shall only be made by persons who are entitled to be registered as voters in Sierra Leone. The Commission is also mandated to make regulations that limit the amount of contributions or donations to a political party and for disclosure in respect of same.

Consequently, where there are challenges relating to the refusal to register an association as a political party or where there are concerns about the campaign resources of a political party, the PPRC could investigate those concerns and help resolve them.

## 5.2 Judicial Challenges

A judicial challenge means the process of bringing electoral disputes before a judicial body, that is, a judge or a court. Such challenges may, inter alia, relate to the illegal nomination of candidates, irregularities in voting and/or processing of results, breach of standards/laws, general wrongful conduct in relation to the election, or a deficiency or illegality in a certain electoral action, decision, or outcome. Accordingly, the laws that relate to public elections and provide for the resolution of electoral complaints and elections-related offences include, the Constitution of Sierra Leone 199; Public Elections Act, 2022 as amended, the Children and Young Persons Act, CAP 44;

the Public Order Act 1965; the Criminal Procedure Act 1965; the Political Parties Act 2002; the Local Government Act 2004; the High Court Rules 2007; the Election Petition Rules 2007; the Chieftaincy Act 2009; the Local Courts Act 2011; and the National Civil Registration Act 2016.

Judicial challenges can be brought by an interested party against the Electoral Commission, representatives of political parties, or against other person(s). Under the laws of Sierra Leone, the filing of a challenge does not suspend the effects (even if they are provisional) of the decision or action challenged. If the period provided for challenges to be brought has lapsed without the same having been filed, the corresponding action or decision becomes final. If, however, the challenge is brought within the prescribed time, the judicial body, as an organ of the state, decides on the dispute in a final and impartial manner.

There are various judicial forums for electoral disputes, including the regular courts, the constitutional court, an administrative court, a specialised electoral court, or some combination of jurisdictions. In Sierra Leone, the Constitution and other laws establish mechanisms for judicial challenges in respect of electoral disputes. All judicial challenges are primarily handled either by the High Court or Supreme Court. It is a standard electoral rule that the court can only declare an election annulled when the irregularity affected the outcome of the election or causes clear bias.

There are currently 9 Justices of the Supreme Court, 12 Justices of the Court of Appeal, and 14 Judges of the High Court. The Supreme Court and Court of Appeal sit mainly in Freetown, the capital but there are five High Court Judges ordinarily based in the provinces and 9 others in the

Western Area. There has been significant improvement in the number of judicial officers, which should bode well for efforts to enhance access to justice.

#### A. THE SUPREME COURT

The laws of Sierra Leone confer immense powers on the Supreme Court to resolve electoral complaints. Section 46(3) of Public Elections Act, 2022 governs objections to the nomination of individuals as presidential candidates. It states that: an objection against the nomination of a presidential candidate shall be heard by the Supreme Court made up of three Justices whose decision shall be given within thirty days of the lodging of the objection. Where the Supreme Court upholds an objection against a nomination, the Court shall declare the presidential candidate concerned to be disqualified from contesting the presidential election

Section 55 of the Public Elections Act provides for challenges to presidential elections. It states that a person who is a citizen of Sierra Leone and has lawfully voted in a presidential election may challenge the validity of that election by petition to the Supreme Court within seven days of the declaration of the result of a presidential election.

The law further provides that any question which may arise as to whether any provision of the Constitution or any law relating to the election of a President has been complied with, or whether any person has been validly elected as President, shall be referred to and determined by the Supreme Court.

Also, whereas the Political Parties Registration Commission (PPRC) Act empowers the Commission to cancel the registration of political parties, it provides that no political party can be wound up

unless it is so ordered by the Supreme Court.

## B. THE HIGH COURT AND COURT OF APPEAL

The High Court's mandate is enshrined in Section 132 of the 1991 constitution of Sierra Leone. The High Court of Justice has jurisdiction in civil and criminal matters and can also act as a court of appeal for decisions made by the Magistrate Court. The High Court also exercises supervisory jurisdiction over lower-level courts and administrative bodies, including the executive and parliament. The High Court has enormous powers to adjudicate and resolve election-related disputes. It acts as a court of first instance for challenges relating to the nomination of candidates, to the determination of the validity or otherwise of election results or electoral processes in general. It also exercises its supervisory jurisdiction by reviewing decisions made by electoral officers in regard to voter registration. The High Court is mandated to try all electoral offences under the Public Elections Act, 2022.

Section 78(1) of the Constitution of Sierra Leone provides that 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 b) the seat of a Member of Parliament has become vacant.

The Public Elections Act (PEA), 2022, provides that every election petition shall be tried by a Judge of the High Court in open court. Section 144 of the PEA, 2022, provides that all questions which may arise as to the right of a person to be or remain a Member of Parliament shall be referred to and determined by a Judge of the High Court on a petition presented by a voter

and in accordance with the procedure prescribed for the trial of an election petition. Where the High Court decides that a person is not entitled to remain a Member of Parliament, that person shall then cease to be a Member of Parliament. The High Court also has a jurisdiction to hear complaints emanating from voter registration processes. It has the power to reverse or alter the decision of the Revising Officer and require an alteration or correction in a provisional list of the Register of Voters. The Court of Appeal has the mandate to hear and determine, subject to the appeals from any judgment, decree, or order of the High Court of Justice. It is the final court of appeal for petitions relating to whether any person has been validly elected as a Member of Parliament. Section 145 of the Public Elections Act provides that an appeal shall fall to the Court of Appeal from the determination of the High Court upon an election petition, or a proceeding of the High Court taken under section 138 at the suit of a Party to the petition or proceedings, and the decision of the Court of Appeal on the appeal shall be final to all intents and purposes. Pursuant to Section 146, if the High Court determines that a candidate was not duly elected and that the election was void, then the candidate's seat shall become vacant from the time of the notice of decision of the High Court, and if notice of appeal from that decision has been given within fourteen days, the seat shall remain vacant for the period until the Court of Appeal is made a determination on the appeal, or the appeal is abandoned.

In the event the election is declared void by the Court, another election shall be held.

The law provides, however, that no election shall be invalid by reason of non-compliance with the PEA if it appears to the High Court that the election was conducted in

accordance with the principles laid down in the Act or that the non-compliance did not affect the result of the election.

### C. ELECTORAL OFFENCES DIVISION OF THE HIGH COURT

In addition to the jurisdiction that the Supreme Court and the General Civil Division of the High Court have to hear election-related petitions and/or objections, Section 144 of Public Elections Act, 2022, as amended, also establishes the Electoral Offences Court as an ad hoc body to try electoral offences. Accordingly, the Court has jurisdiction to try any election offence under the Public Elections Act. It provides that a trial before the Election Offences Court shall be by summary procedure. All trials by the Electoral Offences Court shall be by judge alone and shall be concluded not later than six months after the establishment of the Court. Cases handled by the Court are expected to be concluded within 6 months. It provides for the right of persons found in violation of the Public Elections Act by the Electoral Offences Court to appeal to the Court of Appeal. The Public Elections Act 2022 creates about 40 electoral offences, including, inter alia, offences relating to registration of voters, such as multiple registrations of the same voters; the register of voters; unlawful transfer of voter registration cards; unauthorised modification of computer material; offences in respect of nomination papers, and ballot papers; and bribery.

#### **5.3 Time periods for filling challenges and for their resolution**

Since Parliament needs to always have the full complement of personnel to continue the business of Government, there is need to renew or reconstitute it in a timely fashion. This is why there is a trend towards shorter

election campaigns. Along the same line of argument, the time frames for filing and resolving electoral challenges are very short – and the time periods for resolving them are expressly provided in most cases, although it has not always been adhered to in Sierra Leone.

The Public Elections Act, 222 provides that no election petition founded on acts amounting to an offence under Part X or Part XI of the Act, which relate to electoral offences and the defences thereto, shall be brought unless those acts occurred between the last day appointed for the delivery of nomination papers and the result of the election is declared. All electoral offences need to be resolved within six months after the constitution of the Electoral Offences Court.

Additionally, the law provides that a petition complaining of an undue return or undue election of a Member of Parliament or a member of a local council, may within twenty-one days from the date of the publication of the result of the election in the Gazette be presented to a Judge of the High Court.

Section 55 of the Act provides that a person who is a citizen of Sierra Leone and has lawfully voted may in a presidential election challenge the validity of that election by petition to the Supreme Court within seven days after the declaration of the result of a presidential election. Section 120 (16) of the Constitution of Sierra Leone, 1991 provides that every Court established under the 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.

Section 78(1) of the Constitution of Sierra Leone provides that 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 b) the seat of a Member of Parliament has become vacant. Section 78(2) requires the High Court to determine any question brought before it and give judgement thereon within four months after the commencement of the proceedings before that Court. Section 78(3) provides that an appeal shall lie to the Court of Appeal from the decision of the High Court on any matter determined in respect of the validity of an election and whether a parliamentary seat has become vacant, save that no appeal shall lie in respect of any interlocutory decisions of the High Court in such proceedings. The reason that appeals for interlocutory decisions are not allowed is to ensure that the matters are expeditiously disposed of.

Crucially, Section 78(4) states that the Court of Appeal before which an appeal is brought in respect an election petition shall determine the appeal and give judgement thereon within four months after the appeal was filed. The decision of the Court of Appeal on any matter brought under Section 78 shall be final and not be inquired into by any Court.

The Public Elections Act, 2022, however, provides that any challenge to the nomination of a presidential candidate must be resolved within 30 days.

Apart from the fact that the time limits are scarcely respected, if respected at all, there are concerns that the time period provided by the Constitution for the adjudication of election petitions under Section 78 is too long. It needs to be revised to provide

for no more than four months for both trial and appeal of petitions relating to the determination of the question of whether a Member of Parliament has been duly elected.

#### 5.4 Legislative Challenges

There are legal instruments provided for in the Constitution or statutes of some countries which grant powers to legislative bodies or other political assemblies to formally resolve certain electoral challenges or issue the certification or the final result of an election. This is a political process not only because of the political nature of the body in charge, but also because of the lack of controls to ensure that its decision is consistent with the laws of the country. It is often political interests or negotiations between those who constitute the majority in such assemblies that tend to prevail. There is no evidence of a legislative resolution of an electoral challenge in Sierra Leone, but it may be useful for the Attorney-General and Minister of Justice to work with the Electoral Commission of Sierra Leone and Members of Parliament to explore how that works and whether it is applicable in our context. There are a number of parliamentary committees such the Transparency Committee, the Human Rights Committee, and the Political and Public Affairs that may be helpful in resolving certain electoral complaints relating to boundary delimitation and the registration of political parties, for example.

#### 5.5 International Challenges

Electoral rights are human rights, and several have been enshrined in various international instruments. Some of these universal or regional instruments have agencies and procedures for reinforcing, on the basis of subsidiarity and complementarity means, for protecting and defending that which is established

domestically. The subsidiary nature of international challenges means that domestic means and mechanisms must be exhausted first before recourse is had to a universal or regional mechanism. In addition, the complementary nature of such challenges emphasises the fact that international mechanisms do not replace, but at best are additional to the means of protection provided for domestically. The jurisdiction of international bodies in charge of overseeing the implementation of electoral and human rights needs to be specifically recognised by the state party to the corresponding international instrument, treaty, covenant, or convention .

The international means for bringing electoral challenges are those legal instruments provided for in international treaties and conventions by which those with the standing to do so may have recourse, on a subsidiary and complementary basis, to the competent body. For example, the United Nations Human Rights Council addresses situations in which human rights, including political and electoral rights, have been violated, and makes recommendations on the promotion and protection of human rights. It maintains a system of special procedures and a complaints procedure and presents an annual report to the General Assembly. Also, the African Charter on Human and Peoples Rights (ACHPR) has the right and duty to interpret the Charter on request, as well as a mandate to promote and protect human rights in Africa, including the electoral rights established in Article 13 of the Charter. The Commission receives and decides on complaints, called communications, from anyone, including member states, individuals, and NGOs. Representation by legal counsel is not required and an NGO may complain on behalf of itself or others. Enforcement

of the Commission's decisions depends entirely on the goodwill of the offending state. International justice mechanisms can also provide an avenue for addressing election-related challenges, including respect for and protection of human rights. In July 2021, the African Court on Human and Peoples' Rights gave a considered advisory opinion on an advisory opinion on the right to participate in the government of one's country in the context of an election held during a public health emergency or a pandemic, such as the COVID-19 crisis. The Court advised that all member states of the African Union have a duty under international law to guarantee fairness and transparency in elections during the COVID-19 pandemic. The Court found that the pandemic demands that measures are taken to prevent transmission of the virus, "without undermining the integrity of the electoral process." According to the Court, measures that may affect the integrity of the process include restrictions on rights during the election period, such as the right of movement of candidates and voters, to register, to obtain the documents necessary for the submission of candidatures, to participate in meetings related to elections, or to access information related to the electoral process, as well as the observation of the elections by national and international observers. The Court also ruled that when a country decides to postpone elections because of the pandemic, political actors, health authorities, and representatives of civil society must be consulted to ensure an inclusive approach to the process. According to the Court, the consultation should focus on the measures necessary to ensure that elections are conducted in a transparent, free, and fair manner. This decision helped address complaints relating to the scheduling of dates for presidential and general elections.



## 6. OPPORTUNITIES FOR RESOLVING ELECTIONS-RELATED DISPUTES THROUGH ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

*In addition to the formal election dispute resolution (EDR) mechanisms (such as the courts and legislative processes), there are other means and mechanisms for resolving electoral disputes. Informal or alternative electoral dispute resolution (AEDR) mechanisms play a critical role in resolving electoral disputes. They are not meant to replace the formal electoral dispute resolution bodies, but in situations where formal systems are perceived to be, or are in reality, slow, ineffective or discredited, AEDR mechanisms can help resolve a number of electoral disputes.*

*Essentially, AEDR mechanisms provide for one or more parties in a dispute to initiate a process to resolve it, which can be done unilaterally (by withdrawing an electoral petition or complaint), bilaterally, or through a third party or agency. Recognition or acceptance of guilt by the respondent can also lead to the dispute being resolved. Unlike formal systems that are mandatory and its outcome binding on parties and non-parties to a dispute, AEDR is by nature voluntary, and parties are not bound by it unless they agree to submit to a conciliation, mediation, or arbitration process.*

*Whilst not formally recognised as part of our EDR mechanisms, there are some institutions or initiatives that have helped or could help to resolve electoral disputes outside the formal systems. With adequate resources, tools and knowledge, these structures could help resolve electoral disputes in ways that are faster and acceptable to all parties. The AEDR mechanisms may exist alongside formal EDR mechanisms and play a permanent supportive and complementary role. Institutions like the Inter-Religious Council, All Political Parties Association (APPA), the National Peace and Cohesion Commission, the Council of Churches Sierra Leone, and other civil society organisations, could serve as effective AEDR mechanisms as mediators and platforms for dialogue.*

### 6.1 The Religious Community: Inter-Religious Council and Body of Christ

The Inter-Religious Council (IRC) is comprised of members from the two main religions (Islam and Christianity) in Sierra Leone. There is no law that empowers the Council to mediate or resolve disputes at the national level, but the Council largely derives its moral authority from the role it played during the Lome Peace conference that resulted in the signing of the agreement that ended the decade-long civil war in Sierra Leone. The Council enjoys the

privilege as a moral guarantor in settling conflicts and disputes among different bodies in the country, including political parties.

The IRC has been actively involved in mediation of conflicts among political parties, particularly during and after elections in the country. Following the 2012 presidential and general elections, for instance, the opposition SLPP, led by its Presidential candidate Rtd. Brig Julius Maada Bio, rejected the outcome

of the elections on the grounds that the process was allegedly rigged or flawed. There was genuine fear that the situation could deteriorate into widespread violence. Although a petition against the election was pending before the Supreme Court, a religious group known as “Body of Christ”, intervened to broker peace and reduce the pervasive tension that had gripped some parts of the country. Although the Supreme Court later looked into the petition and handed down a decision, the IRC’s “Body of Christ” had done a good job of helping to diffuse the tension and help restore a sense of peace.

Lastly, the IRC has also engaged political parties to denounce hate speech, and violence before, during and after elections. They have also repeatedly called for political tolerance across the country. The Council has recently signed a Memorandum of Understanding with the various political parties as part of the Council’s effort to ensure that there is peace and national cohesion in the country. The Council is also working with Eminent Women and the Campaign for Human Rights and Development International on an Election Conflict Prevention and Management project. This is aimed at preventing election conflicts, by identifying early warning signs and taking preventive measures.

These are quite promising efforts, which could be supported and mainstreamed into the regular EDR architecture either on a permanent or ad hoc basis.

## **6.2 The Political Parties Registration Commission (PPRC)**

The Political Parties Registration Commission is a creature of the Constitution of Sierra Leone, Act No. 6 of 1991. Pursuant to section 34(1) as amended, “there shall be

a Political Parties Registration Commission which shall consist of four members appointed by the President”. Pursuant to section 35(1), the Commission has the mandate to register political parties. The Political Parties Registration Commission is established by the Political Parties Act, 2002 and Part II of the Act talks about the Establishment and Functions of the Political Parties Registration Commission. Section



**There was genuine fear that the situation could deteriorate into widespread violence. Although a petition against the election was pending before the Supreme Court, a religious group known as “Body of Christ”, intervened to broker peace and reduce the pervasive tension that had gripped some parts of the country.**



6(1) of the Act deals with the object of the Commission, which is the registration and supervision of the conduct of Political Parties in accordance with the Constitution and the 2002 Act. Section 6(2) mandates the Commission to settle conflicts between and amongst political parties. The law provides that “when approached by the persons or parties concerned”, the PPRC can “mediate any conflict or disputes



between or among the leadership of any Political Parties or between or among Political Parties”.

Where the PPRC is seen to be an independent and professional actor, it is also possible for the Commission to use its convening powers to resolve not only intra-party disputes but also inter-party and election-related disputes. The PPRC has developed and works with a number of structures that help bring political parties together. It is, therefore, easy to imagine that once those processes are managed effectively, the PPRC could be a key player in resolving election-related disputes. The PPRC could also help prevent and/or diffuse political tension.

Ahead of the 2018 elections, for example, the PPRC held several meetings with the leaders of the major political parties to discuss the need for a peaceful electoral process. It sought and received the commitment of all parties to a peaceful and fair process, which was largely respected.

The PPRC can also help in clarifying the position of the law and prevent litigation by political parties. In 2006, for example, the opposition People’s Movement for Democratic Change (PMDCh) wrote a letter, dated 16th June 2006, to the PPRC challenging the eligibility of the then Vice President Solomon E. Berewa to contest the presidential election scheduled for 2007.

Relying on various sections of the Constitution, the PMDC petition referred to Section 14(1) of the Political Parties Act No. 3 of 2002 (as amended) which provides that “A political Party shall not have as a founding member or as a leader of the party or a member of its executive body whether national or otherwise, a person who is not qualified to be elected as a member of parliament under the constitution”; Section 35(4) of the Constitution of Sierra Leone Act No. 6 Of 1991 which states “no political party should have as a leader a person who is not qualified to be elected as Member of Parliament;” and Section 76 (1) (h) which states no person shall be qualified for election as a Member of Parliament “if he is for the time being the President, the Vice President, a Minister or a Deputy Minister under the provisions of this constitution.” In dismissing the petition, the Commission went to great length in explaining why the then Vice President was eligible to contest. The letter stated as follows: “As an ordinary citizen, Solomon Ekuma Berewa is qualified to become a Member of Parliament. But while serving as Vice President of the Republic of Sierra Leone, he cannot become a Member of Parliament at the same time,” adding that, “this is so because of the existence of the separation of powers; as no one individual citizen can become a member of any two or all three arms of government simultaneously, that is the Legislature which comprises the Speaker of Parliament and Members of Parliament, the Executive comprising the President, Vice President and Cabinet, the judiciary comprising the Chief Justice and members of the Superior Court of Judicature.” Although the PMDC disagreed with the PPRC decision and filed a suit with the Supreme Court, which was dismissed, the detailed and respectful response of the PPRC to its complaint did help to clarify a

number of issues to members of the public and could have helped resolve the matter.

The PPRC, however, faces a number of legal and resource-related challenges that should be addressed before it can effectively deliver on its mandate.

Accordingly, the Commission is seeking a raft of legal amendments that may, among other things, expand the Commission’s mandate and empower it to effectively regulate the activities of political parties. For example, the Commission is seeking powers to intervene suo moto and mediate in both intra and inter party disputes. The exercise of such powers, the proposed amendment provides, may be subject to an appeal process by the Parties, to the High Court, in exercise of its supervisory jurisdiction, as a matter of course.

The Commission is also seeking additional amendments that would proscribe certain conduct by members of political parties, including the prohibition of the use of thugs or private militia in the guise of guards/ private security by political parties; ensuring accountability for political party leaders who solicit and procure young persons for the purposes of perpetrating violence; holding political party officials accountable for supplying narcotics and other intoxicants to young people for the purpose of perpetrating violence; criminalizing politically-motivated hate speech; proscribe the use of politically-motivated profane and obscene language during political rallies and other activities; punish political parties for the violent conduct of their supporters; hold political parties responsible for obstructing meetings and rallies of other political parties; and holding political parties for the conduct of their supporters who maliciously damage the properties of their opponents.

### **6.3 All Political Parties Association (APPA)**

The All Political Parties Association (APPA) came into being in the 1990s. It was set up at a time that political parties were fighting for the restoration of democratic rule as a platform to coordinate efforts to establish a new democratic dispensation. Although it was a loose coalition of all registered political parties in the country, it also served as a kind of pressure group against the Government and more importantly, provided a forum to foster dialogue, share feedback on national issues, and address key challenges confronting political parties.

In 2021, however, a number of political parties, including the main opposition All People's Congress (APC), withdrew their membership from APPA. The splinter group then set up the Consortium of Progressive Political Parties (CoPPP). Members of CoPPP said they were leaving the Association because its leadership had been co-opted by the Government as it has stopped being the "pressure group" it was set up to be. The leadership of APPA refuted the allegation, insisting that APPA should be a progressive association that is able to constructively engage the Government, criticize its policies when it is necessary, and applaud its actions for the right reasons. APPA says it is wrong to transform the Association into a tool of the main opposition APC for unjustified attacks on the Government.

Since it was established, APPA has contributed to resolving conflicts among political parties and supported conflict prevention and mitigation efforts before and during elections. The Association was working very closely with both the National Electoral Commission (NEC) and the Political Parties Registration Commission

(PPRC) in promoting the welfare of all political parties in the country, and equally support Government where and when necessary.

### **6.4 The Independent Commission for Peace and National Cohesion**

Established by the Independent Commission for Peace and National Cohesion Act, 2020, the Independent Commission for Peace and National Cohesion is mandated to undertake "measures to prevent, manage and resolve conflicts, to build, promote and maintain sustainable peace in Sierra Leone and to advise the Government of Sierra Leone on all aspects of conflict resolution and peace". Section 12 (2) paragraph (k) deals with the management of conflict among political parties at the national level. The Commission is tasked to "develop procedures and mechanisms at the national level to facilitate dialogue among political parties, communities, organisations and other groups in order to prevent conflict." challenges confronting political parties.

To deliver on its peace and cohesion mandate, but more importantly serve as a credible AEDR mechanism, the Commission would require the resources, skills, and a high degree of confidence in its work by political actors. The Commission just recently commenced operations, and there is a general acknowledgement that it faces a number of challenges, including the need to build a positive relationship with political actors. The Chairperson of the Commission recently resigned for health reasons, and while his replacement is being considered, it is fair to say that the Commission has not had a perfect start. In addition to the controversy that surrounded the appointment of some staff members, there are rumours about an unhealthy working

relationship between the Board and the administrative section of the Commission. In addition, the Commission has not received from the Government the total amount of resources required to fund its annual work plan. Ultimately, the Commission would need an effective and sustained engagement with political parties as well as other stakeholder to promote dialogue and consensus on a broad range of issues.

## 6.5 Civil Society-Led Initiatives

Following his appointment and extensive consultation with key stakeholders in 2020, the Chief Electoral Commissioner and Chairman of the Electoral Commission Sierra Leone (EC-SL) signed a Memorandum of Understanding (MoU) with three civil society organisations, including the Inter-Religious Counsel of Sierra Leone (IRC-SL), the Eminent Women Peace Mediators Sierra Leone (EMPM-SL) and CHRDI to set up a multi-stakeholder group as part of efforts to promote understanding among political party officials as well as enhance the integrity of election stakeholders. The objective of the MoU was to promote a peaceful electoral process through mediation and dialogue. Consequently, the Elections Conflict Prevention and Mediation Working Group (ECPMWG) was established with a key objective of strengthening and preventing violence in electoral processes before, during and after elections in Sierra Leone. The Group was further charged with the responsibility of investigating threats, identifying conflict zones, and carrying out advocacy in a bid to mitigate conflict factors and find a peaceful solution of disputes before election results are announced.

Since it was set up, the ECPMWG has supported the conduct of all by-elections

since November 2020, and all of them been deemed to be largely peaceful and the outcome acceptable to all parties. In 2020 and 2021, the Group supported the conduct of the parliamentary by-elections in various constituencies across the country.

As part of its work, the Group developed an Action Plan and timeline for the Constituency 110 re-run elections and the village head elections in the Western Area Rural District in 2020. As part of its intervention strategy, it engaged political parties, the various candidates, as well as community stakeholders. It also identified community structures that could serve as a liaison in facilitating advocacy and mediation in the potential hotspot communities. Additionally, town hall meetings, radio and TV discussion programmes were sponsored to enhance public education and promote tolerance among the voters

The Group has played a critical role in providing a trusted platform for dialogue among political parties and community stakeholders. There is need to strengthen such initiatives and ensure that it is mainstreamed into the dispute resolution framework in the country. Given the potential of such mechanisms to promote dialogue, resolve disputes and prevent conflict between political parties and in communities, is important that it is integrated into the national electoral justice mechanism. It could be a veritable tool for resolving disputes in an informal and accessible manner.

There is need to strengthen and better utilise such informal bodies not only because formal EDR systems are sometimes weak and unresponsive, but also because they present an opportunity to foster speedy and cost-effective dispute resolution.

In general, informal dispute resolution systems and the formal mechanisms described above could co-exist and complement each other. For example, political parties, especially the opposition, may resort to these alternative dispute resolution mechanisms in order to fill a credibility gap that exists in the formal EDR system. Disputes related to the conduct of elections, or their outcome, could be dealt with by trusted AEDR mechanisms, including religious groups and other civil society organisations. In Kenya and Zimbabwe, for example, mediation was used to promote peace and create governments of national unity in order to resolve political-electoral conflicts that erupted following disputed elections in the two countries in 2008 and 2009, respectively

Clearly, AEDR and the formal dispute resolution mechanisms are ultimately useful only when they are trusted, and the parties come to it in good faith. They are even less useful where the parties are unnecessarily disagreeable. Even when this trust is broadly present, they are still part of an overall electoral process in which the participants are political actors. Politicians make political judgements – and the electoral justice system has to be an attractive enough option to encourage them to use it. The success of AEDR mechanisms depends as much on their credibility and effectiveness as well as the willingness of the opposing parties to resolve their disputes.

## **6.6 Development Partners/International Election Observer Missions.**

There is no gainsaying the importance of the international community in the successful conduct of elections. Since the return of multi-party politics to Sierra Leone in 1996, the international community, including the

UN and bi-lateral missions, have been actively involved in supporting the country's democratic and development aspirations. Since the 2007 elections, in particular, the international community has played a critical role in strengthening electoral institutions, processes and laws. They have contributed to strengthening the capacity of civil society organisations as well as enhancing dialogue among political parties. Between 2007 and 2018, the international community provided significant support to the electoral process, and they are expected to provide same to the 2023 electoral process. In 2007, for example, it would have been difficult for the NEC to effectively discharge its functions without the considerable technical assistance provided by the United Nations Development Program (UNDP) and financed by a basket of donor funds. For the 2007 general elections, for example, it is reported that development partners contributed \$25m to the NEC. After the 2008 elections the remaining funds were used for electoral capacity building initiatives in 2009. The international community in Sierra Leone is tightly networked, and have always contributed immensely to funding electoral processes, providing technical assistance, rebuilding key state institutions, and offering its moral suasion, where needed.

The international community can leverage its access to important stakeholders and considerable influence to convene meetings with government, opposition, and civil society leaders. But it requires skills, patience, and a fair understanding of the political context to continue playing its role as a moral guarantor. The tight networking of the diplomatic and development community in Sierra Leone is critical around the elections not only in terms of persuading political actors in times of tension and potential conflict but also provided technical

support to the electoral process.

For example, the breadth and depth of the networking of the international community was apparent when the SLPP leadership needed to be persuaded that it needed to accept the outcome of the 2007 election. Equally, the enforcement of NEC's decisions and the election results were further facilitated by the major international effort, led by the United Kingdom (UK) and the United Nations (UN), in reorienting the country's armed forces and police.

Similarly in 2018, a disagreement over the mode of tallying results for the presidential run-off election delayed the announcement of the results. It then required the intervention of the international community, including the UN, the UK, the European Union, and international election observer missions, to resolve the impasse. Such broad, consensual networks of the international community are central to the effectiveness of international support for good governance, resolving electoral disputes and consolidating peace.



## 7. ENSURING SECURITY AS PART OF ELECTORAL JUSTICE FRAMEWORK

*The Office of National Security (ONS) is one of the key security apparatuses responsible for the conduct of free and fair elections. It is responsible for the security sector coordination in terms of policy guidance and development of security sector institutions. The ONS mobilises resources on behalf of the security sector and ensures that those resources are judiciously expended for its intended purposes. It advises the President and the people of Sierra Leone on all matters relating to national security. It is a mechanism that ensures civilian control of the security sector and is placed directly under the Office of the President.*

By virtue of that mandate, in 2011, the National Security Council, which consists of the President and key cabinet ministers, gave a directive for the establishment of Integrated Election Security Planning Committee. The Committee which is headed by ONS is given the following responsibilities:

- To develop strategies for the elections and mobilises funds for the security sector during elections. It rolls out training manuals of security apparatus during the elections.
- Develop the national election threat assessment ahead of elections and to identify hotspots for potential election violence.
- The committee coordinates military intervention in cases where the police are overwhelmed, through the Military Aid to Civil Authority (MACA).

In terms of the latter, intervention will only be made after a request is made by the police to the Chief of Defence Staff and the Office of the National Security. This is followed by a declaration from the President for the military to intervene. There are,



**There seems to be a sense of disappointment in the manner that law enforcement officers have carried out investigation into electoral offences such as destruction of polling materials and disruption of voting. In addition to allegations of selective investigation, there is evidence that the investigations are characterised by delays...**



however, exceptional cases where MAC-P can be invoked without going through the official processes. If it is unlikely, due to communication difficulties, for the President to be reached, the military can intervene and later a retrospective declaration can be made to that effect.

Since elections are a civil exercise, there are limitations placed on the army by ONS when they are required to help in the process:

1. They are not allowed around polling station as their presence might intimidate civilians from exercising their franchise.
2. Armed Operation Support Division (OSD) personnel are similarly prohibited from going to polling stations during the voting process.
3. They are used for border patrols and transporting of NEC materials

To avoid clashes between the police and the military under MAC-P, the military is placed under the command structure of the police. The police are responsible for maintaining law and order, which includes the investigation of alleged electoral offences. They are useful in maintaining law and order so that citizens can peacefully vote. Security forces have a responsibility to respond to acts of violence that may disrupt the smooth functioning of the process, including by arresting perpetrators of crimes.

In spite of the progress over the last two decades, significant challenges remain in terms of the professionalism and capacity of the police to respond to electoral offences. There seems to be a sense of disappointment in the manner that law enforcement officers have carried out investigation into electoral offences such as destruction of polling materials and disruption of voting. In addition to allegations of selective investigation, there is evidence that the investigations are characterised by delays. It is believed that ruling party politicians in particular have always meddled with investigations relating to electoral offences and have protected

persons, belonging to or supporting the party, accused of having committed an offence. These interferences have affected the general administration of justice, thereby undermining the quality and speed of investigations. This has often provoked outrage and dissatisfaction among members of the public, especially victims. It has led to concerns about the ability of the police to provide security for elections and ensure that electoral offences are punished.

In addition, there have sometimes been complaints of over-securitization of elections by the huge presence of armed security personnel at on the streets and polling stations. Commentators and opposition parties, in particular, have previously complained about how the huge presence of security personnel adversely affected voter turnout and undermined the integrity of the process. For example, the presidential candidate for the then opposition SLPP, Rtd. Brig. Julius Maada Bio, the presence of security personnel at polling stations for the low voter turnout during the second round of elections. In August 2019, the police confirmed that they deployed at least 300 personnel to provide security for a bye-election in Constituency 110. In spite of the huge presence of the police, it did not stop election in one polling centre to be disrupted. Ironically, the police could not arrest a man, believed to be a supporter of the ruling SLPP, who forcefully picked up and destroyed a ballot box in the full view of the public. This incident only further reinforced the long-held claim that the police are a pro-government institution.

The police have also imposed and enforced some controversial security policies as part of its election security strategy. In 2018, for example, the police imposed a vehicle ban on election, which was criticized by

opposition parties. In a statement released by nine political parties, which did not include the then ruling APC, the parties called on the Electoral Commission and the police to reverse it, saying that the ban “would undermine voter turnout especially among the aged and people living with disabilities”.

include the then ruling APC, the parties called on the Electoral Commission and the police to reverse it, saying that the ban “would undermine voter turnout especially among the aged and people living with disabilities”. They argued that the ban would limit the people’s inalienable right of freedom of assemble and movement guaranteed by the Constitution. The ban was, however, enforced. In a decision handed down in April 2022, four years after a Sierra Leonean lawyer affected by the ban instituted an action, the Supreme Court ruled that the vehicular movement ban was “unconstitutional, unlawful and violates the right of the plaintiff”.



## 8. CHALLENGES THAT CONFRONT THE ADMINISTRATION OF ELECTORAL JUSTICE IN SIERRA LEONE

### 8.1 Legal and institutional framework:

#### A. LOOPHOLES IN ELECTORAL LAWS

In 2012, the Sierra Leone Parliament replaced the Electoral Laws Act, 2002 with the Public Elections Act, 2012, a detailed document regulating the conduct of elections in Sierra Leone. The Public Elections Act, 2012 has also been repealed and replaced by the Public Elections Act, 2022. In addition, the Election Petition Rules (EPR), 2007, was made by the Rules of Court Committee to regulate electoral

petitions relating to the validity of the election of a Member of Parliament (MP) and when the seat of an MP becomes vacant.

The judiciary has jurisdiction to hear election-related disputes ranging from nomination of candidates, allegations relating to flawed processes, and election petitions against results. Petitions or objections relating to presidential and parliamentary elections are primarily resolved by two separate courts in Sierra Leone:

challenges to the nomination of parliamentary candidates must be filed with the High Court of Sierra Leone, while the Supreme Court is the only court competent to hear and determine presidential election grievances. A petitioner challenging a presidential candidate's nomination must do so within seven days of formal nomination and the Court has an obligation to determine it within 30 days. Section 45(2) of the 1991 Constitution of Sierra Leone provides that all presidential election petitions shall be determined by the Supreme Court of Sierra Leone, but there is no timeline within which such petitions must be determined.

This is problematic for the election process for a number of reasons. Firstly, the deadline stipulated in the law is not in harmony with the Supreme Court Rules of Procedure and does not ensure that grievances associated with the nomination of candidates are resolved before election day. Additionally, the law is unclear as to what the Electoral Commission of Sierra Leone can do in the event that a candidate is disqualified during nomination, whether before or after elections.

To illustrate the seriousness of the gaps in the electoral laws, three cases filed in the Supreme Court in the 2018 pre-election period challenging the nominations of three presidential candidates were not satisfactorily resolved within a reasonable timeframe before elections were conducted. The most prominent case was lodged on February 5, 2018, challenging the eligibility of NGC's presidential candidate, Kandeh Yumkella to contest the presidential election on the grounds that he was a dual citizen, thus, not eligible to contest for presidential elections. This case raised some serious legal and factual questions. The first hearing

was held on February 28, 2018, three weeks after the case was filed, and was subsequently unduly protracted, which was problematic in view of the time sensitive nature of the election. The case was further adjourned to the 28 March 2018, a date that coincided with the last day assigned for the run-off elections in the calendar of the Electoral Commission. The timeframe of the case was in clear breach of the 30 days deadline. The judgment was only recently handed down, nearly four years after it was filed.

In another case, an application was filed by the National Grand Coalition to challenge the nomination of the APC's presidential candidate. The case alleged that the APC candidate was ineligible to contest the presidential candidate as he was a dual citizen and a public official who had not stepped down more than 12 months before the election. The application was first heard on 1 March 2018 and adjourned to 5 March on technical grounds. To date, no decision has been made on those questions raised.

The third case filed at the Supreme Court was a case challenging the nominations of NDA's presidential candidate. The petition stated that he had been nominated at the party's convention in November 2015 in contravention of an injunction that barred the party from holding a convention, pending the hearing and determination of case between the party's rival factions. The case was first heard on 2 March 2018, more than a month after the case was filed. The application was later dismissed on the grounds that it was related to another case pending before the High Court.

These cases show that there is need to review the laws and rules to ensure that timelines and deadlines are established in

ways that promote access to justice and fair competition in elections.

ways that promote access to justice and fair competition in elections.

Secondly, although the outcome of every presidential election in Sierra Leone since 2012 has been challenged in court, there are no rules that specify the procedure for hearing petitions in respect of presidential elections. There is need for a comprehensive Election Petition Rules that guide both General and Presidential Elections.

Thirdly, although the Public Election Act, 2022, provides that an election can be declared void by the High Court, it does not expressly stipulate the grounds on which an election can be declared as such. In 2013 and 2019, a number of election results were overturned by the High Court without necessarily declaring the elections void. The relevance of declaring an election void is that fresh elections will need to be conducted after such a declaration. In the 2012 and 2018 cases, though, the results were overturned for reasons that would normally require the court to declare the elections void. Instead, the courts ordered the replacement of the elected MPs by those who took second PLACE IN EACH OF THE CONSTITUENCIES.

#### B. PERCEPTION GAP BETWEEN THE JUDICIARY AND THE PUBLIC

Beyond the gaps in the legal framework, the judiciary also needs to do a lot to address the perception gap that exists in respect of its independence and commitment to ensure access to all in a fair and speedy manner. Members of opposition political parties are always suspicious of the judiciary, especially in terms of adjudicating election petitions.

Instead of taking a defensive position, the judiciary needs to work collaboratively with development partners, civil society, and political leaders to address the deep-seated mistrust that exists between political actors and the judiciary. It is fair to state that some of the decisions handed down by the judiciary especially between 2007 and 2018 in respect of electoral disputes or petitions have only widened that perception gap. Starting with the less than satisfactory manner in which the 2012 presidential run-off elections were handled, the infamous decisions in the Ansu Lansana and Captain Kanjawho election petition cases, and the 2018 election petitions in which 9 Members of Parliament representing the opposition APC were directly replaced by the courts, the judiciary has done little to bolster public confidence in its commitment to fairly and expeditiously adjudicate electoral disputes.

In 2018, 16 elected MPs of the All People's Congress were petitioned against in the High Court by mostly candidates representing the ruling SLPP for issues ranging from election malpractices, irregularities, and failure of the elected MPs to have resigned within 12 months prior to the date on which they sought to be elected. As the petitions were not heard and determined within 4 months, one of the Respondents applied that for the proceedings to be halted and for the interpretation of Section 78(4) of the 1991 Constitution to be referred to the Supreme Court. The applicant argued that Section 78(4) of the Constitution of Sierra Leone requires all petitions challenging the validity of the election of a MPs to be heard within 4 months. The Court overruled the objection on the basis that no question of law had been raised to warrant a case to be referred to the Supreme Court and the law is unclear on whether the computation of time should

start immediately after the filing of petitions or after the commencement of trial (when all interlocutory applications would have been resolved).

In truth, the numerous objections raised by counsel on both sides somewhat delayed the proceedings. But perhaps the judges could have done better in minimizing delays and resolve the petitions in a speedy manner. The High Court finally heard the substance of the matter and handed down a decision nearly a year after the elections. The petitions were determined as follows:

i. Five (5) MPs lost their seats after the High Court ruled that they had violated section 75(1)(b) of the 1991 Constitution in that they failed to resign their respective public offices a year before the elections were scheduled to be held. The Court declared that the Respondents were not duly elected and declared the candidates who had polled the second highest number of valid votes as their replacements. In arriving at this decision, the Court relied on the precedent established in the Sam Lamin Macarthy vs Ansu Lansana and the Captain Kanjawho case.

ii. Four (4) MPs lost their seats after the court declared that some of the Respondents had engaged in election malpractices which affected the outcome of the results to the extent that it gave them an undue advantage over the Petitioners. Accordingly, the Court held that the MPs had not been duly elected. The Court then declared the Petitioners (who had polled the second highest number of valid votes) as winners.

iii. In the petition against the election of Hon. Kadie Davies, the Court ruled that she was not duly elected and declared the election

void. Interestingly, the court ordered fresh elections in line with Section 145(4) of the Public Elections Act, 2012. The petition against Kadie Davies was similar to the facts in other cases handled by the Courts during the same period. Strangely the orders were completely different in that the Court declared that a fresh election is conducted in the Kadie Davis case, while the courts replaced the elected MPs in the other cases. Consequent upon the decisions of the High Court, which were handed down on May 31, 2019, the Respondents filed appeals with the Court of Appeal. The appeals were eventually struck out on the grounds that the Appellants had failed and/or neglected to file their synopsis within the stipulated time. Counsel for the Appellants apparently refused to file the synopsis because they believed that the 4-month period required to determine the petitions, as stipulated in Section 78 (4) of the Constitution, had lapsed. They subsequently filed an application to the Supreme Court for an interpretation of that constitutional provision. To date the Supreme Court has not heard the matter.

It should be noted, though, that several other petitions filed by candidates representing the ruling SLPP were dismissed by the High Court, and by the Court of Appeal on appeal after appeals were filed against those decisions.

The judiciary did not redeem itself when a judge also granted an injunction restraining the Electoral Commission from conducting the presidential run-off election. The restraining order was granted after a complaint was filed by a person believed to be a supporter of then ruling APC. The suspected member, Ibrahim Sorie Koroma, filed for the injunction, claiming “there was evidence of electoral fraud that needed to

be investigated before the poll could go ahead.” Consequently, the run-off election was unnecessarily delayed by a few days. Several years later, though, the Supreme Court handed down a decision stating that the injunction was granted in contravention of established legal rules and procedures. The injunction caused doubt and unnecessary tension across the country. These decisions have only weakened public confidence in the judiciary with respect to handling electoral petitions.

was unnecessarily delayed by a few days. Several years later, though, the Supreme Court handed down a decision stating that the injunction was granted in contravention of established legal rules and procedures. The injunction caused doubt and unnecessary tension across the country. These decisions have only weakened public confidence in the judiciary with respect to handling electoral petitions.

### C. DELAYS IN ADJUDICATING PETITIONS

A critical challenge that confronts the resolution of electoral disputes through the courts is the inordinate delays that characterise the process. In 2012 and 2018, for example, it took the High Court of Sierra Leone at least one year to hear and determine parliamentary election petitions. In 2019, the Court ordered the removal of 9 elected officials who had already served as MPs for a year. The controversial nature of the decisions, and the fact that they were handed down after the MPs had already established strong ties with their communities, created an uneasy calm in the country. Some have attributed the seeming tension in the country to those controversial decisions.

Similarly, in the 2018 presidential election petitions, it took the Supreme Court nearly three years to hand down a decision in a petition filed against the election of President Julius Maada Bio. A decision in respect of the petition filed against the re-election of former President Koroma in 2012 was delivered several months later. As the Constitution of Sierra Leone does not provide for any intervening period between the announcement of results in a presidential election and the swearing in of the President-elect, the longer it takes to resolve these petitions, the less likely it becomes to reverse such decisions for public policy considerations.

These delays do not only undermine access to justice, they also further minimize public confidence in the administration of electoral justice. Where members of the public do not feel confident in the electoral dispute resolution mechanisms, they may be tempted to take the law into their own hands, which may undermine peace and security of the state.

### D. PAUCITY OF JURISPRUDENCE ON PRESIDENTIAL ELECTION PETITIONS

Although every presidential election result since 2012 has been challenged, the Supreme Court has repeatedly failed to resolve the petitions based on their merit or lack thereof. Following the 2012 presidential elections, for example, the flag bearer of the opposition Sierra Leone People’s Party and others petitioned the Supreme Court seeking an invalidation of the election results. The petition claimed that the process and its outcome were flawed. Instead of hearing and determining the matter on its substance, the Supreme Court preferred to focus on technical issues. The petition was struck out for non-compliance



“with certain mandatory provisions” of the Election Petition Rules, 2007: Rule 5(1), failure to present the election petition within 7 days from declaration of the result; Rule 12, service of the petition within 5 days and same by personal service; Rule 13, failure to file affidavit of service within 3 days; and Rule 14, failure to give security for costs. Ironically, whereas the Supreme Court dismissed the petition filed by the then opposition SLPP for failure to comply with the Election Petition Rules 2007, the same Court dismissed the petition filed against the 2018 presidential election result because the petitioners relied on the 2007 Rules. It is quite confusing and does little to guide practitioners and petitioners alike.

2018 presidential election result because the petitioners relied on the 2007 Rules. It is quite confusing and does little to guide practitioners and petitioners alike.

Also in 2018, the presidential candidate of the opposition APC, Dr. Samura Kamara, along with members of his party filed a petition against the election of President Julius Maada Bio on the grounds that the process and its outcome were flawed. Another citizen, Dr. Sylvia Blyden, separately filed a similar petition. The petitions were subsequently consolidated, but the Supreme Court struck the consolidated petitions out on the following grounds:

i. That Petition was presented pursuant to the Election Petition Rules (EPR), 2007, which is not applicable in the Supreme Court, and only in the High Court. The Court ruled that it lacks jurisdiction to adjudicate a complaint filed under the EPR 2007 because the “rules shall have effect in relation to all proceedings, brought in the High Court to hear and determine whether— (a) any person has been validly elected as a

Member of Parliament; and (b) the seat of a Member of Parliament has become vacant.” (emphasis added)

ii. The incorrect originating process was used by the Petitioners, which the Supreme Court lacks jurisdiction to entertain. The Court said the petitioners ought to have commenced the action by way of an Originating Notice of Motion. By using the incorrect process, the matter falls outside the Supreme Court’s jurisdiction. Despite the provisions of Section 55 (1) of the Public Elections Act, 2012, which stated the mode of commencement, the Court said the process used by the petitioners was inconsistent with the provisions of Section 45 of the 1991 Constitution, the grundnorm. The non-compliance, the Court held, could not be salvaged by the purposive interpretation of the rules regarding non-compliance with the laws.

In what has been deemed to be a purely academic exercise, the Court made comments on the substance of the petitions filed; pointing out that the Petitioners’ claims had not been substantiated with evidence by way of documents attached to their respective affidavits. The affidavits contained mere allegations without proof, and it was on this basis that the court ruled that the Petitioners had failed to produce evidence to rebut the fact that Brg. Rtd. Julius Maada Bio had not been validly elected. The question is whether the Court really needed three years to simply strike out the petition?

In the absence of a Presidential Election Petition Rules and clear guidelines emerging from decisions handed down in presidential election petitions, it is almost impossible to expect an acceptable resolution of grievances emerging from presidential elections. In the interest of justice, the Court

could have struck out the petition and even order that a fresh process be filed with costs. Ultimately, the court processes should be geared towards resolving disputes or claims on their merit, even if it means making accommodations for claimants or petitioners. Even though the decisions may be legally sound, they have done little to enhance access to electoral justice and clarify a number of questions regarding the conduct of elections, processing, and announcement of results.

Given the current trend, every presidential election may be followed by a petition. It may be that politicians are increasingly willing to resolve disputes through the judicial system (which is positive). It may also be the case our electoral processes need to be improved or strengthened to engender trust and acceptability in the electoral process and outcomes. Some have also blamed the proclivity of candidates to challenge the outcome of presidential elections on the failure of the Supreme Court to hear and determine the petitions on their merit. As previously noted, every petition filed against a presidential election since 2012 has been resolved/ dismissed on technical – rather than – on their merit. This has adversely affected the development of the jurisprudence on electoral disputes in respect of questions such as:

- a. What constitutes fraud in a presidential election?
- b. What is the scale of irregularity that should warrant the reversal of the outcome of presidential election?
- c. What is the standard of proof for alleged irregularity in a presidential election?
- d. What's the obligation of the

Electoral Commission and political parties in preventing, identifying, and reporting irregularities?

The Supreme Court could help introduce clarity, improve standards of electoral management, and possibly minimize the frequency of Presidential election petitions if they start looking into the merit of the petitions – rather than – dismissing each petition on technical grounds.

## 8.2 Inadequate funding to electoral justice mechanisms

Elections are nationally-owned processes. Some have even argued one of the ways governments can protect the sovereignty of a State is by supporting national electoral processes. Accordingly, the Government of Sierra Leone bears the primary responsibility of providing funds for electoral processes, including by supporting and strengthening the capacity of national electoral justice mechanisms. Granted, Sierra Leone faces serious economic challenges, but it is also fair to say that successive governments seem to rely on the financial and technical support of international partners for electoral processes, including the conduct of census, voter registration and voting, and processing of results. The judiciary and the security sector have never received adequate funding to support their election budget. The Electoral Commission had limited funds to conduct the 2007 elections, which prompted the Director of Operations at the Commission in 2009 to demand increased funding from the Government to conduct the 2012 elections. There were similar challenges in respect of the 2018 elections. For instance, of “Le72.9 billion approved allocation for the first quarter of 2017, NEC had only received Le 53.04 billion by September 2017, with an outstanding balance of Le19.8 billion”

This led to fears among civil society and members of the public that there was a deliberate plan to deprive the Electoral Commission of much needed funds to conduct the elections. Ahead of the 2023 elections, a number of election management bodies, which also play a critical role in resolving election-related complaints, presented their election-specific budgets to the Ministry of Finance. Unfortunately, the Ministry of Finance revised the budget and recommended that the budgets be slashed, in some cases, by more than 90%. For instance, the Judiciary proposed a budget Le48,556.7 but the Ministry of Finance approved only Le4,000.0. Similarly, the budgets for the Office of National Security and the Sierra Leone Police were slashed. Of the Le331.9 million proposed by the election management bodies, only Le68.9 million was approved by the Ministry of Finance. The Ministry of Finance may be amenable to reviewing the revised budgets, but it may require the assistance of international partners to support the institutions.

only Le4,000.0. Similarly, the budgets for the Office of National Security and the Sierra Leone Police were slashed. Of the Le331.9 million proposed by the election management bodies, only Le68.9 million was approved by the Ministry of Finance. The Ministry of Finance may be amenable to reviewing the revised budgets, but it may require the assistance of international partners to support the institutions.

### **8.3 Growing concerns about the capacity of security agencies to enforce the laws in a professional manner:**

The security agencies, including the police and military, play a critical role in maintaining law and order. With respect to elections, the security sector is

responsible for providing security, including by investigating and prosecuting those responsible for electoral offences. To do so would require not only the technical and financial support of the Government and its development partners, but also the collective support of election stakeholders, including political parties and members of the public. Unfortunately, there seems to be an ever growing negative perception about the Sierra Leone Police. In particular, the police have often been criticized for their poor handling of politically motivated clashes between supporters of rival political parties. Since 2007, there is a persisting perception that the police are unprofessional and ineffective in discharging their mandate. Members of the public have repeatedly accused the police of being agents of the government in power, and not of the state and its laws, as they sometimes intentionally intimidate persons deemed to be opposition members, inhibiting them from freely participating in election-related activities such as campaigns. In addition to the delays in investigating electoral offences, their response to riots and public order offences is generally deemed to be high-handed and unprofessional. Worse still, there seems to be limited opportunity for accountability and transparency for such violations. These have contributed to a lack of confidence, especially among some sections of the population, in their capacity to provide security for elections and investigate electoral offences. To help address the negative public perception about the police, it is important that the Government and the leadership of the police work collaboratively to revive community policing structures such as the Local Police Partnership Board, ensure accountability for police brutality, and continue to provide technical and financial support to the institution to improve their riot control tools.



## 9. ON-GOING EFFORTS AND PROGRESS IN ADDRESSING CHALLENGES CONFRONTING ELECTORAL JUSTICE MECHANISMS

### 9.1 Efforts to address gaps in the electoral laws

Following the 2012 and 2018 elections, local and international election observer missions, including the European Union, the Carter Foundation, the African Union, and the National Elections Watch (NEW) made several recommendations for reforms in the electoral legal framework. With support from the European Union, the priority legal reforms have been identified by both local and international actors. In 2022, the Government made some amendments to the Constitution of Sierra Leone, repealed

the Public Elections Act, 2012 and passed a new Act, Public Elections Act, 2022. Some of the key proposed amendments to the 1991 Constitution of Sierra Leone and the Public Elections Act, 2012, relate to the eligibility of dual citizens for election as MPs; the need for increased women's representation in Parliament; and to review the criteria for voter registration.

In response to these proposals, a number of amendments have been made to the electoral laws. In addition to providing for additional electoral commissioners in the Constitution, new Public Elections Act, 2022

makes provisions for an election financing regime by the Government, provides for an increased representation of women in parliament by imposing an obligation on political parties to nominate at least 30% of female candidates, preferably in their strongholds, expands electoral offences and imposes stiffer sentences for offenders.

Additionally, the leadership of the judiciary, in collaboration with the Rules of Court Committee, has revised the Election Petition Rules to provide for presidential election petitions. This is a significant step forward in addressing the gaps in our electoral laws. The new rules introduce clarity in the mode of filing presidential elections and provide a timeline of procedural rights.

These reforms are commendable, but the work is not done yet. There are still some progressive recommendations for constitutional changes that need to be passed. For example, the recommendation for the period of resignation to be reduced from 12 to 6 months was rejected by parliament. The recommendation for an amendment to the Constitution to allow Sierra Leoneans with dual citizenship to contest for parliament or the Presidency has not been passed, which is simply unfortunate.

#### A. INCREASED COMMITMENT OF THE GOVERNMENT OF SIERRA LEONE TO FUND THE ELECTORAL COMMISSION OF SIERRA LEONE:

Although funding to other institutions responsible for resolving election-related complaints and challenges has not improved significantly, the Government of Sierra Leone has since 2018 shown more commitment to provide funds to the Electoral Commission of Sierra Leone

and strengthen the funding regime for electoral processes. The Public Elections Act, 2022 provides for the establishment of a National Elections Sustainability and Trust Fund (NEST), which shall be managed by the Electoral Commission of Sierra Leone. The objective is to ensure that the Government takes the lead in funding electoral processes and ensures that the Electoral Commission fully implements its annual electoral calendar. In addition, the Government has demonstrated increased commitment to funding the activities of the Electoral Commission. For example, as of 31st August 2022, the Government of Sierra Leone had transferred 47% of the Electoral Commission's budget for the 2022 Financial year and had promised to increase its disbursement by additional 24%. In other words, by 1 October 2022, the Government will have disbursed 71% of the approved budget of the Electoral Commission for 2022, which is a significant improvement when compared to previous years.

Government funding may be inadequate to support a successful and peaceful electoral process, which is why international development partners have also intervened to support the Government. As of 30 August 2022, international development partners (donors), including Irish Aid, European Union, United Nations Development Programme United Nations Peace Building Fund, had contributed a total sum of 7.5 million Euros to the Election Basket Fund for the 2023 elections.

**B. INSTITUTIONAL AND OPERATIONAL REFORMS AT THE ELECTORAL COMMISSION OF SIERRA LEONE:**

In addition to electoral legal reforms, the Electoral Commission has also made some reforms to enhance its capacity to effectively deliver on its mandate. In order to meet the current demands on the Commission and to bring their operational standards in line with international best practices, the Commission has since 2019 re-organised and increased the number of departments from 10 to 15 departments. As part of the re-structuring agenda, the Directorate of Media was split into Directorate of External Relations and Directorate of Media and Communication in order to engage more effectively with members of the public and election stakeholders. Also, in order that the Commission can more effectively and professionally manage data and the voter register, the Directorate of Information Communication and Technology (ICT) was divided into the Directorate of Data Management and Voters Roll and the Directorate of ICT. In addition, a district-level result management system has been created across the 16 districts of the country to help process and transmit results in a seamless and fast manner. An Electoral Inclusion Department has been established by transforming the Department of Electoral Inclusion. Its main task is to address issues relating to the participation of minority groups and persons who have been traditionally excluded from political processes. An election risk management system also been set up to help identify, prevent, and address risks associated with the electoral process. The Commission is also increasing its use of technology to manage some of the key processes relating to elections, such as developing a voter

register and accreditation of observers for elections. To that end, it has for the first time extracted data in the civil register compiled by the NCRA to produce a national register of voters. In addition, the Commission has established an online accreditation system that enables it to quickly process applications for accreditation.

**C. A ROBUST AND COMPREHENSIVE ELECTION SECURITY MANAGEMENT STRATEGY FOR 2023 ELECTIONS:**

As previously noted, the Office of National Security (ONS) is one of the key security apparatuses responsible for the conduct of free and fair elections. It is responsible for the security sector coordination in terms of policy guidance and development of security sector institutions. The ONS mobilises resources on behalf of the security sector and ensures that those resources are judiciously expended for their intended purposes.

Ahead of the 2023 elections, the ONS has developed a strategy and taken concrete steps aimed at ensuring free, peaceful, and transparent elections. In that regard, an Elections Security Committee, which is chaired by the National Security Coordinator and Co-chaired by the Chief Justice, has been established as a separate cluster, no longer integrated into the National Steering Committee. One of the decisions and deliverables of the Committee is that election petitions, including investigations for electoral offences, are now required to be done within a short timeframe, no more than 4 months. As part of the Strategy, deliberate efforts have been made respond to most of the recommendations in the European Union Mission Observers' Report on the 2018 elections relating to elections security, such as the need to remove the

restriction on vehicular movement on polling day.

For example, in light of the decision of the Electoral Commission to increase the number of polling stations/centers for the forthcoming elections, the ONS recommended the recruitment of approximately 3,000 additional police personnel, which will bring the total number of police personnel to 17,000. Having learnt from the experiences of previous elections and in order for elections not to be over-securitised to the extent of scaring voters away, the ONS's Election Security Management Strategy provides that on personnel from the Correctional services, Fire Force and Metropolitan personnel would be required to support the SLP in providing internal security. The military will not be part of the security personnel who will man the polls. This is a critical reform that responds to some of the recommendations by election observers' reports. Thanks to funding from the Irish Aid, the ONS has also concluded a nationwide 2023 National Security Threat Assessment. Unlike the threat assessment for 2018 elections which was done at the regional level, the threat assessment for the 2023 elections covers all the 16 districts of the country.

The security sector and ONS, however, face a number of challenges. Despite the additional recruitment of police personnel, there is paucity of security personnel to respond to election-related security issues, especially in the face of rising tension influenced by increasing misuse of social media. Additionally, the sector faces funding challenge not only in terms of limited funding but also with respect to the delays in disbursing funds. Unfortunately, donor support to the security is not as

strong as it was in 2018. There is increasing high level of lawlessness, caused largely by drug abuse among young people. The fear of politically-motivated violence has gotten worse with the increasing penetration of social media, especially where it seems there is a lack of strategy to deal with it.

## 10. CONCLUSIONS

Elections are a keen contest in Sierra Leone largely between two main political parties – the Sierra Leone People’s Party and the All People’s Congress. Sierra Leone’s post-independence journey to democratic governance is marred by election-related violence, autocracy, and military coups. Common and potential causes of electoral complaints include controversies relating to the quality of data generated by national population census and the implications for the delimitation of constituency boundaries; the processing of ballots and transmission of election results; challenges to the eligibility of parliamentary and presidential candidates; intentional fraud during voter registration, including duplicate and under-age registration. Opposition parties in Sierra Leone have traditionally complained – and still complain - about the unjustified and illegal use of state resources and institutions such as the police by the incumbent party to promote its political agenda. Ahead of the 2023 elections, a potential source of electoral dispute is the type of electoral system for parliamentary elections that may be used.

An effective electoral dispute resolution mechanism is critical to promoting and consolidating democracy. It safeguards both the legality of the electoral process and the political rights of citizens. It has a fundamental role in the continual process of democratisation and serves as a catalyst in the transition from the use of violence as a means for resolving political conflict to the use of lawful means to arrive at a fair solution.

Sierra Leone has a set of formal electoral

**“ In addition to undertaking reforms in electoral laws, there are efforts to strengthen the funding regime for the Electoral Commission by the establishment of a Sierra Leone Government National Elections Sustainability Trust Fund. ”**

dispute resolution institutions, including the judiciary and the Electoral Commission of Sierra Leone. Despite their best efforts, these institutions have not always been successful in resolving electoral complaints or disputes in a speedy, transparent, and satisfactory manner to all sides. There is need to strengthen the formal electoral dispute resolution mechanisms in Sierra Leone, but there is also a role that alternative dispute resolution mechanisms can play in not only averting electoral conflicts, but also in helping to resolve disputes in more effective, efficient, and inexpensive ways. There has, however, been little effort to institutionalise alternative dispute resolution as a mode of resolving election-related disputes. There is evidence, though, that international development partners, religious and civil



society organisations may be very useful agencies for resolving inter-party and election-related disputes through dialogue and mediation. In Sierra Leone, the IRCSL development partners, and civil society initiatives such as ECPMWG, the APPA, and the Independent Commission for Peace and National Cohesion could be very effective in preventing and resolving electoral disputes. development partners, religious and civil society organisations may be very useful agencies for resolving inter-party and election-related disputes through dialogue and mediation.

In the last two electoral cycles, the Inter-Religious Council of Sierra Leone and leaders of international election observer missions played a significant role in resolving disputes or grievances that had the potential of undermining the successful conduct of elections. The role of non-state and even state actors in providing an accessible and trusted mechanism to resolve complaints associated with the electoral process will be key ahead of the 2023 elections. It must be emphasized, though, that alternative dispute resolution mechanisms only exist to complement the formal dispute resolution mechanisms, which is why there is the ever-critical need of strengthening the formal mechanisms as well.

The role of law enforcement agencies in providing citizen-led security is a critical element in ensuring transparent, free, and peaceful elections. Post-conflict elections in Sierra Leone have been marred by incidents of violence, which usually take the form of attacks on opponents and disruption of campaign and voting activities, very little has been done over the years to hold those responsible to account. With an increase in access to internet and social media, the

fake news and hate message could pose a threat to peaceful elections in 2023. It is estimated that 3 million Sierra Leoneans now access to internet, which is why the need exists for both state and non-state actors to work cooperatively in developing strategies to minimize incidents of violence inspired by misinformation and incendiary messages and hold perpetrators to account.

The key challenges that confront the resolution of electoral disputes include weaknesses in electoral justice and law enforcement institutions as well the electoral legal framework, delays in investigating electoral offences and adjudicating electoral complaints, inadequate capacity of and resource allocation to election management and dispute resolution bodies, as well as negative public perception particularly about the security and electoral dispute resolution bodies. This negative perception is largely the result of history of unsatisfactory resolutions of electoral disputes.

It is worth pointing out, though, that there are on-going efforts to address these challenges. In addition to undertaking reforms in electoral laws, there are efforts to strengthen the funding regime for the Electoral Commission by the establishment of a Sierra Leone Government National Elections Sustainability Trust Fund. Part of the objective is to ensure that the Sierra Leone Government is able to contribute significantly to national elections budget. The Electoral Commission has also introduced some changes in its institutional arrangement by increasing the number of departments and introducing technology in the way it works. These efforts are commendable, but there is a long way to go in addressing the key challenges that confront these institutions.

# 11. RECOMMENDATIONS

***As previously noted, electoral justice is critical to promoting and consolidating democracy. It has a fundamental role in the continual process of democratisation and as a catalyst in the transition from the use of violence as a means for resolving political conflict to the use of lawful means to arrive at a fair solution. Although Sierra Leone has made some progress in resolving electoral disputes, including by reviewing the laws relating to public elections, establishing an electoral offences court, training law enforcement and justice officers, significant challenges remain. There is need for the Government and non-state actors to work cooperatively in addressing the challenges that confront access to electoral justice.***

Accordingly, we make the following recommendations to:

## **A. The Chief Justice of the Republic of Sierra Leone**

### *i. Minimize delays*

To address the delays that characterise election-related petitions, there is need to set up a Special Electoral Petitions Court to hear and determine petitions relating to the validity of the election of Members of Parliament. Consistent with the powers conferred on the Chief Justice by subsection (3) of Section 131 of the Constitution of Sierra Leone, 1991, the Chief Justice should give orders for the setting up of a special division for electoral petitions. Judges selected to preside over electoral petitions should be trained and fully supported to hear and determine cases in a fair and expeditious manner. To expedite proceedings, the Court/Judges should be supported with stenographers and legal researchers to be able to deliver judgments in no more than 4 months.

Additionally, the Chief Justice should work with the Rules of Court Committee to review the Elections Petitions Rules and develop case management guidelines for the

“

**...the police have consistently been accused of bias in favour of the ruling party either by selectively applying the law or using disproportionate force against opposition actors.**

”

speedy disposal of electoral petitions and offences. The guidelines should also cover the adjudication of presidential election petitions. The goal is to ensure that every election petition is heard and determined within four months. The guidelines should provide for the hearing and determination of interlocutory applications.

### *ii. Address loopholes in the legal framework*

The Elections Petitions Rules, 2007, only

govern petitions filed with the High Court. There is no set of rules that governs presidential election petitions. The absence of such rules has accounted for the dismissal of two petitions filed against two presidential elections, in 2012 and 2018. There is need for clear guidelines on the mode of initiating a petition, timelines, and rules of evidence, among others. Furthermore, although the Public Elections Act 2022 provides that presidential election petitions shall be determined by the Supreme Court of Sierra Leone, there is no timeline within which such petitions must be determined. The deadline stipulated in the law is not in harmony with the Supreme Court Rules of Procedure and does not ensure that grievances associated with the nomination of candidates are resolved before election day. Additionally, the law is unclear as to what the Electoral Commission of Sierra Leone can do in the event that a candidate is disqualified during nomination, whether before or after elections.

Accordingly, it is recommended that the Chief Justice work with the Rules of Court Committee to expedite the development and approval of presidential Election Petition Rules to resolve the loopholes in the laws.

### *iii. Resolve petitions on their merit*

Additionally, the Supreme Court should endeavour to hear and determine presidential election petitions on their merit. Resolving such petitions on their merit is important for the purposes of developing the jurisprudence on electoral disputes as well as resolving any legitimacy gap that may exist as a result of either delays in resolving the petitions or unsatisfactory resolution of the same. The courts should remain committed to their mandate of delivering justice, even if it means making provisions to

accommodate petitioners who are guilty of technical missteps.

### *iv. Address public perception gap through increased engagement*

Finally, it is recommended that the Chief Justice take steps to address the perception gap between the public and the judiciary. In truth, it is more than just a perception. The delays associated with electoral petitions and the fact that presidential petitions have hardly been disposed of on their merit cannot be a matter of mere perception. The Judiciary should take concrete steps, including by undertaking massive public education and dialogue on its efforts to resolve electoral justice in a timely manner. It should also develop rules to guide such proceedings to ensure that they are conducted in a transparent and fair manner, having regard to the rights of voters to choose their elected representatives.

## **B. The Electoral Commission of Sierra Leone**

The ECSL is the primary election management body. It is responsible for boundaries delimitation, registration of voters and vetting of voter register, presiding over the nomination of candidates, scheduling of campaign days for political parties, and more importantly, conducting elections and declaration of results. It is critical that the Electoral Commission remains transparent, accessible, and open to all the players. It is even more important that the ECSL demonstrates commitment to work with all the key players in resolving complaints from the various stakeholders.

Therefore, the ECSL should ensure that it provides adequate training to all its staff members, including ad hoc staff hired to support voter registration and conduct

elections. They need to understand the importance of professionalism, integrity, and fairness. Since the Electoral Commission has a responsibility of resolving complaints relating to the eligibility of candidates for Parliament and local council elections as well as for vetting voter register for ineligible voters, it is critically important staff members who handle such matters are given adequate training in both the law and skills for discharging such duties.

It is commendable that the Electoral Commission is working with a civil society-led initiatives (such as the Election Conflict Prevention and Management) to prevent and address elections-related disputes or violence. Such partnerships are useful. It is, therefore, recommended that additional support is provided to such initiatives as we approach the general elections.

Further, the ECSL should be receptive to alternative ideas, remain open and accessible to all actors in the electioneering process. The Electoral Commission should ensure a participatory and inclusive process so that everyone understands and tracks each activity of the Electoral Commission. It should also work with other state actors to expand alternative dispute resolution bodies. The security and youth management bodies across the country, including the PROSEC, DISEC, CHIEFSEC, are important players in resolving elections-related disputes.

### **C. The Political Parties Registration Commission**

The Political Parties Registration Commission's (PPRC) effort in strengthening its capacity and expanding the scope of its mandate is commendable. We urge Parliament to expedite the process of reviewing the PPRC's legal framework.

Beyond the important effort that the PPRC is making to strengthen its capacity, it should work cooperatively with all the political parties and help resolve intra-party and inter-party conflicts. The PPRC should help create and sustain a trusted forum where critical election-related issues or concerns can be raised and discussed with the view to finding an amicable solution. To do so, the PPRC should lead a process of re-uniting APPA and CoPPP so that there will be one APPA that freely, fearlessly, and collaboratively discusses and addresses elections-related concerns of political parties.

### **D. The Government of Sierra Leone**

Elections are an extremely expensive process, which is why it is vital that the Government demonstrates immense commitment to it. From the delimitation of boundaries to the announcement of results, election management bodies require huge resources to ensure that every aspect of the process is conducted in an effective and credible manner. We commend the Government's establishment of the National Elections Sustainability Trust Fund, which has helped address the uncertainty that previously characterised the Government of Sierra Leone's funding to electoral processes. We urge the Government to work with development partners to raise the required funds to support the ECSL, the Judiciary as well as informal electoral justice mechanisms. Unless grievances associated with electoral processes are fully investigated and addressed, consolidating peace and democracy would be extremely difficult.

It is further recommended that a legal framework governing the boundaries delimitation process, including measures

for transparency and safeguards against gerrymandering, is developed. There is need for an amendment to the Constitution and other relevant laws to create a Boundary Delimitation Monitoring Committee that presides over the delimitation of boundaries. The Committee should comprise representatives of election management bodies, political parties, local councils, civic groups, and professional associations should also be established through that legal framework. That way, any doubts or concerns relating to the delimitation of boundaries will be addressed without delay.

### **E. The Police**

The police play an important role in ensuring electoral justice and security. Responding to acts of violence and other electoral offences is a critical responsibility of the Sierra Leone Police. Unfortunately, the police have consistently been accused of bias in favour of the ruling party either by selectively applying the law or using disproportionate force against opposition actors.

It is important that the police remain an independent professional body that is guided by law and the ethos of professional policing. Accordingly, it is recommended that regular training on professional policing, including independent, speedy, and fair investigation standards, is conducted. The police should develop and/or strengthen mechanism aimed at rebuilding public trust in the institution. Among other things, it should strengthen community policing structures like the Local Police Partnership Boards, ensure accountability for unprofessional conduct by police officers, and be more responsive to

concerns or complaints from members of the public about the police.

### **F. Office of the Attorney General and Minister of Justice**

The Office of the Attorney General has done a commendable job of working with the Sierra Leone Parliament to have amended the Constitution of Sierra Leone as well as pass a new Public Elections Act, 2022. The Public Elections Act, 2022 introduces some progressive reforms, but a lot more is required. It is recommended that the Office of the Attorney General and Minister of Justice undertake a full review of the compendium of electoral laws, including the newly passed Public Elections Act, 2022, to ensure that matters relating to timelines for filing challenges to presidential candidates, guidelines for declaring an election void, among others, are included.

### **G. Development Partners**

The role of the international community or development partners in ensuring a peaceful electoral process, as well as the amicable resolution of electoral complaints or concerns cannot be overemphasised. Since 2007 the development community in Sierra Leone has played a critical role in consolidating democratic initiatives as well as consolidating peace through the seamless transfer of power from one administration to the other; a role which will be continuously needed in the years ahead.

To this end, it is recommended that the development community remain networked and committed to the important task of supporting the

Government and people of Sierra Leone to deepen democracy and good governance standards. The international community should remain a trusted and independent actor, whilst at the same time providing financial and technical support to the Government, civil society, democratic institutions, political parties, and other informal groups to deliver successful elections and resolve grievances related to elections. In this sense, it is worth commending the efforts of the Irish Embassy for its continuing support to strengthening electoral processes and institutions in Sierra Leone. For example, as part of its support to the electoral process, the Irish Embassy continues to support civil society and government institutions to respond to election-related security, human rights and justice issues. It has also supported initiatives to enhance women's participation in elections. In addition, other partners have also supported efforts to address electoral legal reforms.

## H. Civil Society

Civil Society Organisations (CSOs) should remain apolitical and committed to supporting a free, fair, and transparent electoral process. It is important that CSOs develop and implement a robust monitoring, data collection and analysis as well as effective communication programme for the elections. To do so will require training and coalition building. CSOs should, therefore, seek technical support to develop and implement an effective monitoring, data collection and analysis tool as well as effective reporting to corroborate any claims or allegations of electoral fraud or violence. CSOs should remain committed, accountable, and professional in their support to the electoral process.

The 2018 electoral process showed that the courts play such a significant role not only in adjudicating electoral complaints but in providing oversight of the Government through judicial review. It is, therefore, recommended that a network that undertakes court monitoring incident reporting is established and commences work at least 3 months before the elections in order to provide regular and reliable updates on incidents of violence, objections to nominations, petitions, among others.

## I. The Media:

The media should also help disseminate accurate and balanced information, whilst at the same time pushing back on misinformation, false and hate messages. The Sierra Leone Association of Journalists (SLAJ) and media owners should support training for journalists on electoral justice related matters. The objective would be to ensure that they do not disseminate information that may be prejudicial to on-going efforts to resolve disputes or complaints before the courts. SLAJ should consider partnering with civil society organisations and the Sierra Leone Bar Association (SLBA) for the purposes of training journalists on electoral laws and the recently passed Cyber Crime and Security Law. It is vital that the media isn't just disseminating accurate and useful information about electoral processes and grievances, but it is also helping to counter misinformation and educating members of the public about free and responsible speech.





“

*...electoral justice is critical to promoting and consolidating democracy. It has a fundamental role in the continual process of democratisation and as a catalyst in the transition from the use of violence as a means for resolving political conflict to the use of lawful means to arrive at a fair solution. Although Sierra Leone has made some progress in resolving electoral disputes, including by reviewing the laws relating to public elections, establishing an electoral offences court, training law enforcement and justice officers, significant challenges remain. There is need for the Government and non-state actors to work cooperatively in addressing the challenges that confront access to electoral justice.*



A background image of a pair of brass scales of justice, with the pans hanging from a central beam. The scales are slightly out of focus, creating a sense of depth. The lighting is warm, highlighting the metallic texture of the scales.

“

*in the 2012 and 2018 electoral cycles, the key election-related grievances were as follows: controversies regarding the accuracy of the 2015 census data and delimitation of boundaries; objections to the legitimacy of parliamentary and presidential candidates; disagreement over the procedures for counting ballots and transmission of results; election-related violence and petitions relating to the validity of election results; the improper use of state resources and undue manipulation of state institutions. The study found that resolving election-related disputes through the Sierra Leonean courts has been anything but seamless. Apart from delays that characterise the proceedings, the laws do not always foster effective and satisfactory resolution of such disputes.*

A hand holding a woven basket with a pink rim against a blurred background. The basket is made of light-colored fibers with a green and white pattern. The hand is positioned at the top right of the frame, holding the rim of the basket. The background is a soft-focus outdoor scene with green foliage and a bright sky.

“

Given the challenges that confront the conventional electoral disputes resolution mechanisms, we propose that it is worth thinking about alternative ways of resolving electoral disputes/challenges. Whilst the formal systems, especially if they are well-funded and operate professionally, are useful in that regard, they ought to be complemented by other means and mechanisms. Such informal or alternative electoral dispute resolution (AEDR) mechanisms need to exist in Sierra Leone primarily not to replace formal dispute resolution systems but to play a supportive role, especially in situations in which the formal systems face credibility, financial or time constraints linked to political or institutional crises or to their inadequate design. The AEDR mechanisms, we recommend, should exist alongside formal mechanisms such as the court, Electoral Commission of Sierra Leone (ECSL), and the Political Parties Registration Commission (PPRC), and must play a permanent supportive and complementary role. We acknowledge that some AEDR mechanisms have come into being over the last decade on an ad hoc basis and in exceptional or extraordinary circumstances, but it is important that we explore the possibility of institutionalizing their role across the full spectrum of the electoral process.



**CARL is an independent, not-for-profit organization that seeks to promote a just society for all persons in Sierra Leone, through monitoring institutions of accountability, outreach and advocacy for institutional transparency, capacity building and empowerment of citizens.**

FOR MORE  
INFORMATION, VISIT  
[WWW.CARL-SL.ORG](http://WWW.CARL-SL.ORG)