

## **Chapter 3**

### **The Legal Framework and Election Administration**

#### **Political structure**

The Republic of Sierra Leone gained political independence in 1961 and in that same year joined the Commonwealth. The President of Sierra Leone is the Head of State, the supreme executive authority and the Commander in Chief of the Armed Forces. The President is elected to a term of office of five years by absolute majority through secret balloting.

Parliament, the executive arm of government is a unicameral chamber with 124 seats. One member is elected from each of the 112 constituencies, through a simple majority in a first-past-the-post electoral system. The other 12 members are from the rank of Paramount Chieftaincy. The institution of Chieftaincy is protected and guaranteed from abolition by the Sierra Leone Constitution.

Members of Parliament are elected to serve a five year term.

#### **Legal framework – the Constitution**

The present Constitution of the sovereign Republic of Sierra Leone came into force on 1 October 1991. As the higher organic law of the state, it establishes the fundamental principles of state policy; recognises and protects fundamental human rights and freedoms of the individual, and provides for representation of the people through genuine and periodic elections.

#### ***The National Electoral Commission (NEC)***

Section 32 (1) of the Constitution provides for a National Electoral Commission of Sierra Leone, which commission is responsible for the conduct and supervision of the registration of voters for and of all public elections and referenda.

Further, the Constitution empowers the NEC to make regulations by statutory instruments for the registration of Voters, the conduct of Presidential, Parliamentary or Local Government elections and referenda and connected matters, including registration for voting by proxy.

The NEC comprises a Chairman and four Members known as Electoral Commissioners. The Commonwealth Observer Group<sup>1</sup> recognises the preponderance of women in the electoral

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<sup>1</sup> Hereafter referred to as 'the Group'

process. It especially notes gender parity in the composition of commissioners which is currently made up of three women and two men. Further, the Group takes cognisance of the fact that the Chair, who is the Chief Electoral Commissioner, is a woman.

The members of the NEC are appointed by the President through a consultative process and their appointment is subject to the approval of Parliament. The period of appointment is for a term of five years unless the member is prematurely removed for inability to discharge the function of his office '(whether arising from infirmity of mind, or body or other cause or for misbehaviour)'.

The Constitution confers independence on the NEC in the exercise of its functions. It states, 'in the exercise of any function vested in it by this constitution, the electoral commission shall not be subject to the direction or control of any person or authority' (section 32/18).

Its independence, however, is balanced by the requirement for accountability. The Chief Electoral Commissioner is mandated to submit a report to Parliament at least once a year on its programme or work.

### ***The Political Parties Registration Commission***

Parallel to the NEC is the Political Parties Registration Commission (PPRC) created by virtue of the Constitution, with the responsibility to register political parties.

The Group recognises the importance of the PPRC in the electoral process but has not sufficiently considered its impact as this is not one of its mandates.

### **The Public Elections Act 2012**

While the Constitution provides the foundation upon which the legislative framework for representation of the people and good governance is built, it is the Public Elections Act and regulations derived therefrom which provide specificity in the administration, management and conduct of election and all related processes.

The Public Elections Act 2012<sup>2</sup> came into effect in May 2012, effectively replacing the National Election Commission Act 2002 and The Electoral Laws Act, 2002. It consolidated the previous pieces of legislation and in some instances amended specific provisions to improve the electoral process. The Act outlines the procedures related to the Registration of voters and arrangement for elections among other things. It establishes an Electoral Offences Court, a division of the High Court with jurisdiction to try election offences under the Act. The PEA 2012 also empowers the NEC by statutory instrument to make regulations for giving effect to the Act.

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<sup>2</sup> Hereafter referred to as PEA 2012.

### ***Registration of electors and the voters' list***

The Constitution of Sierra Leone gives to every citizen of Sierra Leone who is eighteen years and above and of sound mind the right to register and to vote. This is articulated further in the PEA 2012 which states:

'Subject to section 16, every person who –

- (a) 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 years; and
- (b) is ordinarily resident in a ward is entitled to be registered as a voter in that ward and, when so registered, to vote at an election in that ward.'

The Act also prescribes a period of not later than six months prior to an election or referendum as the case may be, for the registration of voters and the updating and revision of the voters' list. It prohibits multiple registration either in the same ward or across wards/constituencies.

### ***Application of biometrics in the voter registration process***

For the 2012 electoral cycle, the NEC introduced the application of biometrics in the voter registration process. The use of biometrics for identification of voters is becoming increasingly popular in several jurisdictions. This involved the capturing of the elector's fingerprints which are then cross-matched in the database to detect duplicate or multiple registration. Once duplicate or multiple registration has been detected then criminal proceedings may be initiated against such persons.

The Group was informed that through the applications of biometrics, 794 cases of duplicate or multiple registrations were detected. The NEC informed the Group that it had instigated proceedings in several of the above instances.

Additionally, we were informed that in circumstances where the fingerprints could not be taken because either the appropriate digit was missing or, where present and the prints taken, were of such poor quality and therefore could not be processed to completion, then facial recognition techniques were applied. These techniques, according to the NEC, were equally capable of detecting duplicate registration through cross-matching.

The Group did not observe the voter registration process. However, it was informed in meeting with stakeholders that the Commission may have experienced problems related to insufficient equipment, resulting in machines being moved around from one area to the next to facilitate the process. Despite these reported difficulties the Group nonetheless commends the NEC on this bold initiative to reform the electoral process in general and in particular the voter registration process. In this regard it urges the NEC to continue to pursue additional reforms along these lines with a view to effecting changes to the legislation to allow for

continuous voter registration instead of periodic registration which now obtains. Further, the Group wishes to suggest the continuous maintenance of the list through the removal of the names of dead electors and the addition upon application, of the names of those who have attained the required age and are otherwise qualified.

### ***The voters' register***

The voter registration process which ran from January to March 2012 resulted in the development of a Voters' Register of 2,692,635 voters. The register was compiled with the addition of the photograph of each elector against the demographic details. This allowed the Presiding Officer and the Voter Identification Officer (VIO) to identify each elector with a greater degree of certainty as the voter was required to present his voter identification card which was then cross-checked against the presentation on the Voters' List. In instances where the voter did not have his card, voting was allowed on presentation of documentary evidence of registration along with some other form of identification. The NEC established a special voter enquiry help desk in each polling centre to assist in matters of this nature. It seems to have achieved its purpose as many electors were seen seeking assistance at these desks.

For the 2012 electoral cycle, ballots were cast in Presidential, Parliamentary, Local Government (Mayor/Chairperson) and Paramount Chiefs Elections.

The PEA 2012 allows for specific categories of persons who are likely to be unable to go in person to the polling station at which such person is entitled to vote to cast his or her ballot in a polling station in a location where such a person is likely to be on Election Day. The categories referred to are:

- a) persons on official duty in connection with the election;
- b) public officers or employees of a public corporation or commercial firm or mining company, members of the Sierra Leone Police Force or the Armed Forces who have been transferred outside of the place in which they ordinarily reside and have been registered as voters.<sup>3</sup>

In such instances the law requires that an application be made to the Returning Officer of the area where the person resides, for a certificate of authorisation to vote in a polling station in the area to which the transfer is effected. The application should be made no later than 15 days before Election Day and should be supported by written confirmation of the employer or supervisor of the applicant. The Returning Officer shall then delete the applicant's name from the Voters' List where s/he is initially entitled to vote.

The Group observed an instance of five persons claiming to be police officers appearing at a polling station requesting to vote. The Presiding Officer initially refused to allow voting and

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<sup>3</sup> The Public Elections Act, Section 74 (2).

sought clarification through a telephone call to the Regional Personnel who apparently approved. The persons were allowed to vote and their names added to the Voters' Register of that station.

### ***Presidential election***

The Constitution of The Republic of Sierra Leone provides for the election of a President by secret ballot. The further requirement is that the winning candidate should secure not less than 55 per cent of the valid votes cast. Further, under the Constitution, if no person secures the required 55 per cent then the two candidates with the highest number or numbers of votes shall go forward to a second election which shall be held within 14 days of the announcement of the result of the previous election. The candidate polling the higher number of votes is then declared President.

Candidates contesting the election for the office of President, are required to be citizens of Sierra Leone, members of a political party who have attained the age of 40 years, and who are otherwise qualified to be elected as a Member of Parliament. The political party nominates the candidate for presidency. The Vice-President, who is the Principal Assistant to the President in the discharge of his executive functions, is designated a candidate for the office of Vice-President by a Presidential candidate before a Presidential election. The term of office of the President is five years.

### ***Nomination – Presidential Elections***

The nomination period for the Presidential, Parliamentary and Local Government (Mayor/Chairperson) and Paramount Chiefs was conducted from 12 September to 14 October 2012.

Immediately preceding the exercise, the NEC announced an increase in the nomination fees. The law allows for the NEC to prescribe the fees. However, in this instance, the movement from one million Leones to 100 million Leones, representing a nearly ten thousand percentage increase, was not favourably received by the political parties. This resulted in the NEC having to delay implementation of the new fee structure for this electoral cycle.

The Group believes that if the nomination fees are set too high, this will make it difficult for new or emerging political parties and individual candidates without significant financial resources to participate in the electoral process. Democracy is based on participation. Participation is expressed in the electoral process allowing for candidates without a large pool of resources to be able to put forward their ideas to the electorate without being deterred by a high nomination fee. The Group wishes to suggest that consideration be given to arriving at a reasonable fee and in this regard consultation should be had with all stakeholders. The nomination fees are non-refundable and are paid over into the National Consolidated Fund.

In the November 2012 elections nine candidates were nominated for the office of President representing the following parties:

1.	Mohamed BANGURA	United Democratic Movement (UDM)
2.	Julius Maada BIO	Sierra Leone's People's Party (SLPP)
3.	Joshua Albert CAREW	Citizens Democratic Party (CDP)
4.	Eldred COLLINS	Revolutionary United Front Party (RUFPP)
5.	Kandeh Baba CONTEH	Peace and Liberation Party (PLP)
6.	James Obbahi FULLAH	United National People's Party (UNPP)
7.	Gibrilla KAMARA	People's Democratic Party (PDP)
8.	Ernest Bai KOROMA	All People's Congress (APC)
9.	Charles Francis MARGAI	People's Movement for Democratic Change (PMDC)

***Parliamentary Elections and election of Paramount Chiefs – Members of Parliament***

Sierra Leone is divided into 112 constituencies. Each constituency returns one Member to serve in the Parliament. The candidate securing the highest number of votes in a first-past-the-post electoral system is returned as the Member of Parliament for that constituency.

Additionally, the constitutional arrangement provides for 12 Paramount Chiefs to be returned to the Parliament. These Paramount Chiefs are elected by eligible councillors whose names are in the Gazetted Councillors list for a particular chiefdom. The participation of this select group in the Paramount Chief election does not preclude their participation in any other election. For the November 2012 parliamentary election 586 candidates were nominated representing ten political parties. Thirty five candidates contested as Independents.

***Local Government Election – election of Mayors and Chairperson***

For purposes of local governance Sierra Leone is divided into 394 wards, twenty of which are multi-member wards. There are 19 local councils.

A total of 1,626 Candidates were nominated across the ten registered political parties, of which, 1,283 (79%) were male and 337 (21%) were female. There is direct election of Mayors and Chair for each local Council or Municipality in the 19 localities into which Sierra Leone is divided.

### ***Voter education***

One of the functions of the NEC is to officially implement voters' education activities in Sierra Leone. The NEC and civil society organisations, implemented voters' education programmes utilising a range of methodologies/media to educate the society on a number of issues, including: voting procedures, election campaigning, the new PEA 2012 and voters' rights and their responsibilities as citizen of Sierra Leone.

Ward Election Education Committees (WEEC) were established by NEC in 398 wards to provide training to citizens on how to participate in the electoral process. The programme of WEEC included voters as well as civic education. The composition of WEEC included two religious representatives (a Muslim and a Christian), two town criers, two representatives of civil society and a representative of a group for persons with disabilities.

The WEEC was established with the purpose of providing civic and voters' education within their respective locality. It was observed by the Group that due to the high level of illiteracy within Sierra Leone, such programmes needed to be implemented over a continuous period. Alternatively, voter education programmes should be implemented at the commencement of the electoral cycle with far greater intensity than obtained for this election. The fact that a precedent was being set with four elections being conducted on the same day meant the NEC had a greater imperative and therefore should have made greater effort in this regard.

### ***Training of party agents***

Over six hundred party agents were trained by NEC and civil society organisations to observe the election process. However it is our view that due to resource constraints the step down/cascade training process implemented at district and ward levels, did not achieve the desired result. Despite this shortfall, the party agents seem to have had a better understanding of their role in the polling stations and in the electoral process than in previous elections observed by the Commonwealth. We did not observe any party agent disrupting the poll.

### ***Training of polling officials***

At the national level, the NEC organised three day training programmes for polling centres/stations and other officials in the management and administration of voting day procedures and the new PEA 2012. We were informed that it was the intention of the NEC to cascade this training to district and ward levels, however, it was observed that there were inconsistencies in the implementation of voting procedures and practice by polling staff at polling stations/centres on Election Day. The inconsistencies in the execution of procedures did not in our view have any significant effect on the overall proceedings as most of the polling officers appeared to have absorbed the training well and were confident and

composed in managing their functions.

### ***Provisions for persons with disability***

The PEA 2012 makes special provision for voters to cast their ballots, who are incapacitated by blindness or any other physical disability and who are unable to read to cast their ballot in the same manner as other voters. In the case of a voter who is physically incapacitated it allows such a person to be accompanied by another voter of his/her choice. Similarly this applies to voters who are blind or visually impaired.

The law requires that the person who provides assistance in any of the above instances, guarantees the faithful expression of the disabled person and maintains the secrecy of the vote.

In the case of voters who are unable to read and write, finger print pads were provided to allow such voters to record an ink mark against the name and symbol of the candidate of choice.

The Group observed voters being given general information by the polling officials on how to mark and properly fold the ballot. The information given also covered the use of the inked finger to mark the ballot.

Tactile ballot papers used in the 2007 General Elections for voters with visual impairment were not used in these elections. The Group was informed that, with four elections being conducted on the same day, the NEC foresaw a complexity in designing tactile ballot papers, especially in relation to multi-member wards. The NEC also informed the Group that, along with the sheer complexity in design, the associated costs would make it imprudent to use tactile ballots in this electoral cycle. The Group established through the public media that voter education was conducted for voters in the disabled community by interest groups. The focus was on providing explanations on the overall voting process and the provision under the PEA 2012 for voters with disability. The Group also observed the rebroadcast of some of these programmes on national television, with information being given orally as well as by sign language.

### ***Ballot production, reconciliation and transmission of results***

The law requires a number to be printed on the ballot paper which is attached to a counterfoil bearing the same number. The fact that four elections were conducted at once meant the differentiation of the ballots by colour and design. All ballot papers however, exhibited the number on the ballot and on the counterfoil as required under the Act. The Group is of the view that the occurrence of the number on the ballot as well as on the counterfoil could be manipulated to compromise the secrecy of the vote.



After the poll has closed the Presiding Officer undertakes a ballot reconciliation exercise. This exercise accounts for ballots unused, spoilt, rejected and improperly marked. It results in the production of a statement 'The Ballot Paper Account/Reconciliation and Results Form' (RRF). The NEC, in NEC-Updates, ordered the completion of one Reconciliation and Results Form for each election. The RRF form contains an original and four carbon copies. It further ordered the completion of a further two versions of the RRF to be distributed to party agents and observers. It instructed that the Polling Officials should distribute the first set of completed forms in the following order:

- Top and original copy – for Regional Tally Centre (regional copy)
- 1st carbon copy (pink colour) – For National Tally Centre (national copy)
- 2nd carbon copy (blue colour) – For District Tally Centre (district copy)
- 3rd carbon copy (green colour) – For Polling Centre Manager (PC display copy)
- 4th carbon copy (yellow colour) – For the ballot box (ballot box copy)

The forms are enclosed in tamper evident envelopes as prescribed by the Commission. The number of forms required to be completed at the polling station seemed to be an improvement over what obtained in previous elections. However, the concerns shared by Observers in 2007, related to the difficulty in producing several copies in instances where there may be several party agents present and the difficulty with access to electricity and photocopiers, are shared by this present Group. This was especially the case when, four days after the election, the Group received complaints from one political party, that in several instances their agents did not receive the RRF.

### ***The Electoral Offences Court***

Section 137 of the PEA 2012 establishes an Electoral Offences Court whose jurisdiction is to try offences committed under the Act. These offences range from those committed at the stage of voter registration to offences committed at the taking of the poll. The Election Offences Court is a division of the High Court which sits in such places in Sierra Leone as the Chief Justice may determine. It is presided over by a High Court Judge or a retired Judge of the Superior Court or a Barrister or Solicitor who is qualified to hold office as a High Court Judge. Trials are by summary procedure subject to appeal.