

Chapter 2

The Legal and Administrative Framework

The basic law under which the Presidential and Parliamentary elections were held was provided for in the Constitution of Sierra Leone 1991 supplemented by a number of orders and decrees promulgated by the National Provisional Ruling Council (NPRC). The principal decrees were:

- The Interim National Electoral Commission Decree, 1994 (No.1);
- The Political Parties Decree, 1995 (No.7);
- The Political Parties (Regulation of Conduct) Decree, 1995 (No.14);
- The Franchise and Electoral Registration Decree, 1995 (No.15);
- The Electoral Provisions Decree, 1995 (No.16);
- The Presidential Elections Decree, 1995 (No.17);
- The Parliament (Number of Ordinary Members) Order, 1996;
- The Electoral Laws (Abridgement of Nomination Requirements) Decree, 1996 (No.1); and
- The Franchise and Electoral Registration (Suspension of Objection Provisions) Decree, 1996 (No.3).

The Constitution was adopted by popular referendum, and came into force on 1 October 1991. Substantially, it is of a model found elsewhere in the Commonwealth. It was to have been the 'supreme law of Sierra Leone': see Section 171(15). Barely six months later, the Constitution, or at least the conflicting provisions of it, was effectively suspended by the Administration of Sierra Leone (National Provisional Ruling Council) Proclamation 1992, issued on 4 May 1992 for and on behalf of the Armed Forces of Sierra Leone. The Proclamation declared that all provisions of the Constitution which were 'inconsistent or in conflict with the Proclamation or any decree made thereunder shall be deemed to have been suspended with effect from the 29th day of April, 1992' (the date of the military coup). The Proclamation also dissolved Parliament and suspended all political activity in the country.

During 1993 a special Commission was appointed to draft a new constitution. The Commission is believed to have produced a draft constitution, which was never published.

Fundamental Principles

As far as we can determine, the fundamental and constitutional principles of state policy remain intact – that is, as under Section 5 of the Constitution: the Republic of Sierra Leone is a state based on the principles of freedom, democracy and justice; sovereignty belongs to the people from whom Government derives all its powers, authority and legitimacy. Chapter III of the Constitution deals with the recognition and protection of fundamental human rights and freedom of the individual, acknowledges, *inter alia*, the freedom of expression and the right to assemble freely and associate with other persons, and in particular to form or belong to any political party.

Interim National Electoral Commission

Sections 32 and 33 of the Constitution provided for the membership and functioning of an Electoral Commission. Replacing these provisions the NPRC promulgated the Interim National Electoral Commission Decree, 1994 (Decree No.1, which was deemed to have come into force on 31 December 1993), which established the Interim National Electoral Commission (INEC).

The Commission was to consist of a Chairman and four other members. Its principal functions were to: compile a register of voters; demarcate electoral boundaries, subject to the approval of the NPRC; conduct and supervise all public elections (i.e., presidential, parliamentary and local government elections) and referenda; and educate people on the electoral process. Decree No.1 gave a measure of assurance for an independent INEC in that it provided that in the performance of its functions, the Commission should not be subject to the direction or control of any person or authority.

In fact, however, the detailed control of the electoral process lay with the NPRC, not INEC. Whereas (the suspended) Section 33 of the Constitution had authorised the Commission to make regulations for the registration of voters and the conduct of elections, at the time of these elections the power to do so was vested in the NPRC by virtue of Section 14 of the Interim National Electoral Commission Decree, 1994 – although admittedly, this power was to be exercised in consultation with INEC. Under the arrangements in force at the time of these elections, as noted above, the Decree prevailed.

The situation with regard to the regulation-making powers and the detailed control over the electoral process gave rise to acute problems for INEC, in at least two observable areas.

First, there were delays. Drafts of electoral decrees submitted by INEC to the NPRC often took a long time to be processed and promulgated, with an adverse impact on INEC preparations for the elections and their scheduling.

Second, draft proposals on certain matters considered as important by INEC failed to receive the NPRC's approval. We have seen, in this context, the INEC commentaries on the provisions of the Electoral Provisions Decree, 1995, the Franchise and Electoral Registration Decree, 1995 and the Political Parties (Regulation of Conduct) Decree, 1995. These commentaries provide INEC's detailed comments and criticisms, highlighting what INEC had required and what the decrees actually provided.

In respect of the Franchise and Electoral Registration Decree, 1995, for instance, INEC had proposed in its draft that INEC be given the authority in exceptional circumstances to set up new registration for displaced persons and for INEC to be given the right, as it considered necessary, to register refugees in camps outside Sierra Leone (i.e., Guinea and Liberia). When this Decree was promulgated (on 14 December 1995) the authorities omitted both proposals.

Eventually, through the promulgation of the Franchise and Electoral Registration (Suspension of Objection Provisions) Decree, 1996, issued on 23 February 1996 (three days before the elections), the NPRC authorised the registration of Sierra Leonean refugees in the Republics of Guinea and Liberia. However, there was insufficient time for INEC to mobilise staff and materials and elections could not be held in the refugee camps outside Sierra Leone.

Political Parties

As we have noted, a prohibition on all political activity was imposed under the Proclamation of 1992. The prohibition was lifted through the promulgation of the Political Parties Decree, 1995 (No.7) of 19 June 1995. Decree No.7 provided (adopting the wording of Section 35(1) of the Constitution) that subject to the Constitution, political parties can be established to participate in shaping the political will of the people, to disseminate information on political ideas, social and economic programmes of a national character, and to sponsor candidates for presidential, parliamentary and local government elections.

The Decree suspended Section 34 of the Constitution which provided for a Political Parties Registration Commission. Instead, the Decree provided for the registration, by INEC, of all political parties, the prohibition of the use of certain names and symbols, the qualifications of executive and founding members, as well as office-bearers, and appeals against refusals of registration. Thirteen political parties contested the 1996 elections.

Another decree, the Political Parties (Regulation of Conduct) Decree, 1995 (No.14), provided for the submission to INEC of details of assets, accounts and audit of political parties, declaration of assets, liabilities and expenditure in relation to elections, notification of alterations to the constitution or rules, INEC's power, on application to the Supreme Court, to cancel registration, and the winding up of political parties upon the application by the Attorney-General to that Court.

Again, as we have noted above, INEC offered comments that were critical of the Political Parties (Regulation of Conduct) Decree on the ground, *inter alia*, that the NPRC had failed to make provision placing limits on political party spending during the election campaign, or on contributions to party funds by Sierra Leone nationals, companies or foreign nationals.

Electors

Every citizen of Sierra Leone over 18 years and of sound mind has the right to vote and is accordingly entitled to be registered as a voter or elector for purposes of public elections (Section 31, Constitution). The Franchise and Electoral Registration Decree, 1995 (No.15) defined in detail the qualifications of electors, their registration and other aspects of the franchise, including the requirement that an elector be ordinarily resident in a ward on the date for the registration of electors. Under Section 2 of the Decree, INEC can divide Sierra Leone into wards for purposes of public elections.

Once registered on the Register of Electors, the elector is given a voter registration document. In order to vote in any election, the elector must present this to the Presiding Officer and the details must tally with the information on the electoral roll (Section 14(4), Decree). Secrecy of the ballot is a constitutional requirement (Section 36, Constitution).

Parliament

The Parliament of Sierra Leone consists of the President, the Speaker and Members of Parliament (Section 73, Constitution). The legislative power is vested in Parliament which may make laws for the peace, security, order and good government of Sierra Leone.

Members of Parliament were to comprise:

- (a) 12 Paramount Chiefs;
- (b) such number of ordinary members as prescribed by the NPRC, being not less than 60: Section 2, Electoral Provisions Decree, 1995 (No.16).

By virtue of the Parliament (Number of Ordinary Members) Order, 1996 (published on 8 February 1996), the NPRC prescribed the number of ordinary members to be 68. A total of 80 parliamentary seats, in two separate elections (for the Paramount Chiefs and for ordinary members), was therefore contested in these elections.

The President

The President of the Republic of Sierra Leone is Head of State, the supreme executive authority and Commander-in-Chief of the Armed Forces (Section 40, Constitution).

No person is qualified for election as President unless he or she is a citizen of Sierra Leone, is a member of a political party, 40 years old or over and is otherwise qualified to be elected as a Member of Parliament (i.e., is on the Register of Electors, and is able to speak and to read in the English language) (Section 41, Constitution).

A presidential candidate must be nominated by a political party (Section 42, Constitution). All persons registered as voters in public elections are entitled to vote. A candidate for election to the office of President would be deemed to have been duly elected where he or she was the only candidate nominated for the election after the close of nomination. But where there was to be a contest no person would be elected President unless he or she had polled not less than 55 per cent of the vote. Short of that threshold, and where there were several candidates, the two candidates with the highest number of votes would be required to go forward to a second election to be held within 14 days of the announcement by INEC of the result of the first election. The person elected President would not be allowed to hold office for more than two terms of five years each, whether or not the terms were consecutive (Section 46, Constitution).

In every presidential election, in addition to the presidential candidate, there must also be a candidate, from the same political party and on the same nomination form, designated for the office of Vice-President. The qualifications for the office of Vice-President are the same as those

for the office of President. The Vice-President is required to assume the Presidency in the event of the President vacating office whether by death, resignation or otherwise.

Subject to the Constitution, the executive power is vested in the President to be exercised by him directly or through Ministers of Cabinet who are appointed by the President.

The nomination of Ministers shall require approval by Parliament. No member of Parliament shall be appointed a Minister or Deputy Minister.

Paramount Chiefs

As we have noted, the membership of Parliament consists of 12 Paramount Chiefs representing the 12 districts of Sierra Leone and 68 ordinary members. The institution of Chieftaincy, which is well established by customary law and usage, is guaranteed and preserved under the Constitution (Section 72).

In order to be a candidate for election to one of the 12 seats reserved for the Paramount Chiefs, a person must be a substantive Paramount Chief, whose name will have been duly gazetted before nomination. The register of electors for the Paramount Chiefs' election, which is prepared by the District Officer, is compiled from the Chiefdom Councillors' list, comprising Paramount Chiefs, section chiefs and section speakers, town chiefs, heads of villages, taxpayers resident in the town or village (assessed on the basis of 1:20) and customary officials.

A separate election for the 12 Paramount Chiefs was scheduled to be held on Saturday 24 February 1996, with the District Officers performing the function of Returning Officers.

Proportional Representation

At the elections of 26 February 1996, for the first time, Sierra Leone adopted the proportional representation system in choosing the membership of Parliament. By this system the voters were required to cast their ballot for the lists drawn up by the political parties contesting the elections. After counting the ballots, the seats in Parliament were to be allocated to the political parties concerned on the basis of the mathematical formula set out in the Second Schedule to the Electoral Provisions Decree, 1995 (No.16). It was also a requirement of the Decree that only a political party which had received 5 per cent or more of the ballots cast should be considered for the allocation of seats in Parliament.

The Second Schedule formula for the distribution of seats to participating political parties is expressed in the following terms:

1. (1) The total number of votes cast is determined.
- (2) The percentage of the total cast for each political party is determined.
- (3) Parties that fail to make the 5 per cent threshold are then eliminated.
- (4) The votes cast for the eliminated parties are then distributed on a pro-rata basis among those left.
- (5) The seats are then distributed on the final percentages obtained.

Example:

- Five political parties – A, B, C, D, E
- 100,000 total votes
- Party A – 40,000 votes
- Party B – 30,000 votes
- Party C – 25,000 votes
- Party D – 3,000 votes
- Party E – 2,000 votes

Parties D and E are eliminated because they fail to make the 5 per cent threshold. Their 5,000 votes are split among parties A, B and C, in the ratio of 4:3:2.5. The final percentage is then determined. The seats are then distributed based on these percentages.

2. Where the final percentage determined above yields a surplus fraction not absorbed by the number of seats allocated to the political party concerned, such fraction shall compete with other similar fractions accruing to any other political party or parties being considered for the allocation of seats, and any undistributed seat or seats shall be allocated to the political party or parties concerned in sequence or order of the highest fraction.

Example:

Using the 60 seats originally proposed for the ordinary members of Parliament, the above percentage formula will produce the following result:

Party A would win 25.20 seats; Party B, 18.90 seats; and Party C, 15.75 seats for a total allocation of 58 seats. In the distribution of the two remaining seats, Party B would gain one additional seat on account of its 0.90 fraction being the highest, and Party C would have the other remaining seat on the basis of its 0.75 fraction, being the next highest fraction.

Petitions

The right to lodge a formal objection against the nomination of any candidate for election as President exists by virtue of Section 4 of the Electoral Laws (Abridgement of Nomination Requirements) Decree, 1996 (No.1). However, by the terms of the provision, the objection is required to be lodged after, not before, the election. The objection is to be filed in the High Court, and is to be treated as if it were a petition presented after the election.

In respect of the election itself, it is provided under Section 19 of the Presidential Elections Decree, 1995 (No.17) that any citizen of Sierra Leone may challenge the validity of the election of the President by petition to the Supreme Court within seven days after the declaration of the result of the election.

Observers

It is a requirement of the Electoral Provisions Decree, 1995 (No.16) that during an election conducted under the Decree, the arrangements and other acts relating to the electoral process generally shall be subject to verification and monitoring by observers accredited by the Electoral Commission: Section 14(3). We were duly accredited as observers by INEC.

In Retrospect

Our examination of the electoral laws of Sierra Leone reveals a framework that is rooted in the Constitution of 1991.

The parallel applications of the Constitution of 1991 and NPRC decrees inevitably resulted in tension. As will be evident from our survey of the electoral laws, there has been constant divergence of perceptions and views between the NPRC and INEC. Inescapably, this has also caused confusion. We suspect that confusion may not always have been accidental.