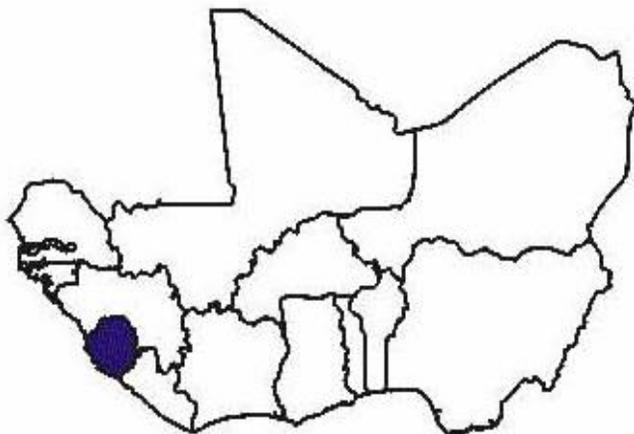


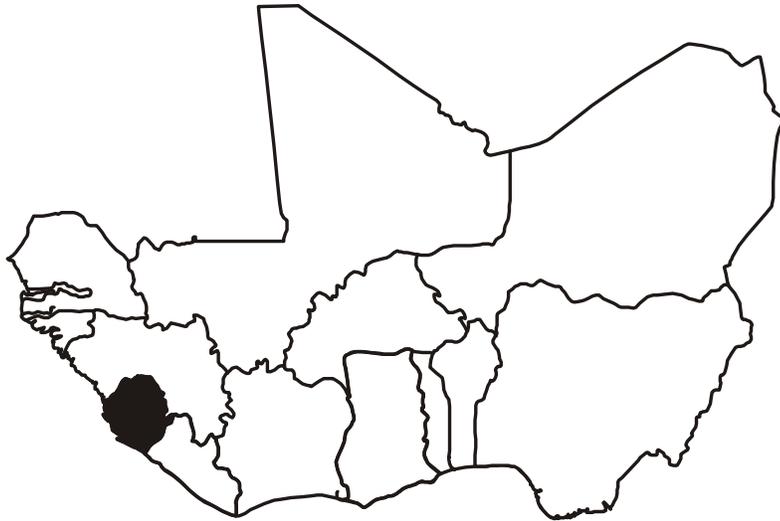
# WINDOWS FOR TRANSPARENCY - Sierra Leone



**Report of Research Into Laws of Sierra Leone  
with Access to Information Provisions**



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**Report of Research into Laws of Sierra Leone  
with Access to Information Provisions**

*A publication of*



*Media  
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**Media Rights Agenda**

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Media Rights Agenda is grateful for these various contributions.

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## *Preface*

**T**his report is based on a legal research conducted by Media Rights Agenda (MRA) in collaboration with the Society for Democratic Initiatives (SDI) in Freetown, Sierra Leone, to establish the scope of access to public information granted citizens and other members of the public under Sierra Leonean Law.

The research was motivated by the need to explore possibilities for citizens and other members of the public in Sierra Leone to exercise their rights of access to information under the Law even in the absence of a comprehensive Freedom of Information Law as part of a wider project in selected countries in West Africa.

Media Rights Agenda began working on access to information issues in 1993. In 1994, it partnered with the Civil Liberties Organization (CLO) and the Nigeria Union of Journalists (NUJ) to launch a campaign for the adoption of a Freedom of Information Law in Nigeria.

Following from this process, it initiated a vigorous campaign in 1999 to get Nigeria's National Assembly to pass the draft Freedom of Information Bill into a Law which would be assented to by the President, as required by the Constitution.

After more than 10 years of a somewhat frustrating experience in trying to get the government to enact a Freedom of Information law, MRA is now reviewing its strategies for trying to bring about transparency in government and governance. A critical question in that review exercise is whether it is really necessary to wait for the passage of the Freedom of Information Bill before citizens can begin to push their governments to be more open and transparent.

Therefore, while MRA remains committed to the campaign for the enactment of a Freedom of Information Law in Nigeria and similar laws elsewhere on the continent, it has also decided to explore existing laws, regulations and policy documents which provide some opportunities for citizens to obtain information and services from governments and to begin pushing vigorously for their effective implementation.

In spite of the legal status of the right of access to information and the steps so far taken within the African Human Rights system to give effect to this right, Africa appears to be lagging behind other regions of the world

in this global movement towards guaranteeing citizens' right of access to information, with West Africa being among the three worst off regions on the continent.

Very few countries on the continent have clear and specific guarantees of the right to information in their constitutions. Such countries include: Cameroon, the Democratic Republic of the Congo (DRC), Ethiopia, Ghana, Madagascar, Malawi, Mozambique, Senegal, South Africa, Tanzania and Uganda.

However, most of these countries do not have comprehensive freedom of information laws to elaborate this right. Only three of them – South Africa, Uganda and Ethiopia – have freedom of information laws to give effect to this right.

Although Uganda adopted its Access to Information Act since April 2005, full implementation is still being awaited more than five years after. The mandated Regulations which will bring the law into force are still not in place and so, despite having a constitutional guarantee and a freedom of information legislation, Ugandan citizens remain unable to enjoy the right of access to information.

Despite challenges of effective implementation, South Africa's Promotion of Access to Information Act (PAIA) of 2000, the first access to information law on the continent, also appears to be the most credible effort on the continent to empower citizens through access to information as a matter of right although there are recent moves in its Parliament to roll back this gain.

Ethiopia adopted the Law on Mass Media and Freedom of Information in 2008. Although the Ethiopian Law is merged with media legislation, it contains significant features of a Freedom of Information law.

Besides South Africa, Uganda and Ethiopia, the only other country on the continent with freedom of information law is Angola, which adopted its Access to Official Documents Law (Law 11/02) in 2005.

This means that only four countries out of the 54 in Africa have adopted freedom of information laws – that is about 7.4 per cent. No single country in three (West Africa, Central Africa, and North Africa) out of Africa's five sub-regions has a freedom of information law.

Zimbabwe has a law which it pretentiously calls the Access to Information and Protection of Privacy Act (AIPPA), adopted in 2002 and which it has adopted three times since then, in 2003, 2005 and 2008. But it is difficult to classify AIPPA as a freedom of information law in view of the scope of exemptions contained in the Law and several obnoxious provisions designed to control the media and repress media freedom in the country. It is geared more towards restricting the free flow of information than facilitating it.

Over the past 12 years, there have been vigorous efforts in four countries in West Africa to adopt Freedom of Information laws. These are in Ghana, Liberia, Nigeria and Sierra Leone. There are indications that the bill will soon become law in Liberia because there is no evidence of strong opposition to the bill. In Sierra Leone, the Freedom of Information bill has been in the legislative process now for over five years but is yet to become Law. The situation is even worse in Ghana where the Right to Information Bill has been awaiting legislative action for over seven years. But nowhere in the sub-region has the situation been more disheartening than in Nigeria, where a Freedom of Information Bill has been awaiting passage since 1999.

Many reasons have been advanced for the slow pace of adoption of Freedom of Information laws in Africa, including:

Lack of political will on the part of leaders who ideally have the responsibility for putting such laws in place.

A culture of secrecy in government which makes the notion of public scrutiny an alien concept.

A “messiah complex” among political leaders who believe that they have come to save the people and that they know what is best for them and have all the answers to the problems.

The limited capacity within civil society to conduct effective advocacy for the adoption of freedom of information laws in the respective countries beyond mere sloganeering.

Other competing priorities in many countries where the argument is frequently made that when placed against the need to provide other services and infrastructure such as health, education, water, roads, etc., the requisite institutional arrangements and resources necessary to adopt and implement freedom of information laws will be too costly.

The low levels of awareness among members of the public which severely limits public demand for adoption of freedom of information laws.

Regardless of the absence of comprehensive freedom of information laws in most countries, the project which led to this report sought to explore ways in which citizens can use other existing laws, regulations and policy documents to advance their rights.

In many countries around the continent, there are scores of legislation with access to information clauses or provisions under which government bodies, including ministries, departments and agencies, are obliged to provide information to their citizens either proactively or upon a request being made.

This project sought to identify such laws in Ghana, Liberia, Nigeria and Sierra Leone with the ultimate goal of testing how effectively they are implemented or respected by government officials with a view to empowering citizens in these countries to take advantage of such provisions to advance their human rights in a variety of sectors.

The report will be a valuable resource for citizens and other members of the public interested in exercising their rights of access to information or in testing the levels of transparency and compliance with laws among public institutions in Sierra Leone.

It helps to identify the provisions or sections of laws, regulations and policies which require some public institutions to grant citizens or members of the public access to information directly or through which citizens and other members of the public can have indirect access to information, records and documents held by relevant public institutions.

We hope citizens and members of the Sierra Leonean public will take advantage of this report to push for information from public institutions.

Edetaen Ojo  
Executive Director  
Media Rights Agenda

## *The Constitution of Sierra Leone 1991*

Access to information is also enshrined in the 1991 constitution of Sierra Leone. Section 5(1) states “The Republic of Sierra Leone shall be a state based on the principles of Freedom, Democracy and Justice.” The right to freedom of whatever nature which is fundamental to any human being is guaranteed by the constitution. This includes the right to information no matter where the person is coming from. This is well illustrated in section 15 of the constitution which states that “whereas every person in Sierra Leone is entitled to the fundamental human rights and freedoms of the individual, that is to say, has the right, whatever his race, tribe, place of origin, political, opinion, colour, creed or sex, it has its limitation in that it is subject to respect for the rights of and freedoms of others and for the public interest, to “freedom of conscience, of expression and of assembly and association.

Access to information is provided for in Chapter Three, under the title The Recognition and Protection of Fundamental Human Rights and Freedoms of the Individual. Section 25(1) states “except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purpose of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, freedom from interference with his correspondence freedom to own, establish and operate any medium for the dissemination of information, ideas and opinions and academic freedom in institutions of learning.

Here the law guarantees the protection of free information, enjoyment of the right to one's opinion.

The law gives these beautiful rights and takes them away by making limitations. It goes further to state that provided that no person other than the Government or any person or body authorized by the President shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever. Subsection (2) states nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision- (a) which is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons, preventing the disclosure of information received in confidence, maintaining the authorities and independence of courts, or regulating the telephony, telegraphy, telecommunications, posts, wireless broadcasting, television, public exhibitions or public entertainment; or (b) which imposes restrictions on public officers or members of a defence force; except in so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.

The constitution provides for information relating to the arrest of a suspect. Section 17(2) provides “Any person who according to subsection (a) is arrested or detained shall be informed in writing or in a language that he understands at the time of his arrest and in any event not later than twenty four hours, of the facts and grounds for his arrest or detention. An arrest made without showing cause for the arrest is considered illegal and may entitle the suspect to lawfully resist the arrest. Upon arrest the suspect is then taken to the nearest police station or detention centre the arrested person shall be

## *The Constitution of Sierra Leone 1991*

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informed by the police officer who effected the arrest details of the charges preferred against the suspect. This is buttressed in section 23(5), Every person who is charge with a criminal offence- (a) shall be informed at the time he is charged in the language which he understands and in detail of the nature of the offence charge,. The information in Subsection (a) is vital towards protecting the suspect's right to dignity and to ensure his/her right to fair trial should he/she be arraigned before the court. Provision of this information is mandatory and is not to be demanded before being granted. A suspect has the right to contact his legal counsel to give information about his arrest is provided Subsection (3) of the aforementioned section provides all proceedings of every court and proceedings relating to the determination of the existence or the extent of civil rights or obligations before any court or other authority, including the announcement

Section 29(1) also mandates the release of information in cases of public emergency. It states as follows "whenever in the opinion of the president a state of public emergency is imminent or has commenced, the President may, at the time of, by proclamation which shall be published in the Gazette, declare that Subsection (a) a state of public emergency exists either in any part, or in the whole of Sierra Leone. The President has a duty to make the public access the state of emergency information by notifying the country at any time he thinks it is necessary to declare public emergency. People should be aware of what is going on and to know what they ought and not ought to do at that particular time so as to avoid arbitrary arrest. Subsection (3) provides that every declaration made under Subsection (1) shall lapse (a) in the case of a declaration made when parliament is sitting at the expiration of a period of seven days beginning with the date of publication of the declaration; Also, Subsection (4) states a declaration made under Subsection (1) may at anytime before being superseded by a Resolution of Parliament be revoke by president by proclamation which shall be published in the Gazette, and all measures taken thereunder shall be deemed valid and lawful and shall not be enquired into by any court or tribunal

The public must also be informed in situations where there is vacancy in a parliamentary seat in order to carry out election to fill in the gap. Section 39(1) provides that, when the seat of any member of parliament becomes vacant, the vacancy shall be filled at the general election, not later than six months after the vacancy occurs, in accordance with the provisions of law relating to such election. Provided that if parliament is dissolved before such election is due to be held, the vacancy shall be filled at the general election. Subsection (2) provides that the proclamation appointing a date for the holding of an election to fill a vacancy shall be published.

When there is vacancy in parliament either because of the death of a parliamentarian or other reasons as spelt out in section 77 of the constitution such information should be made publicly not less than six months from the date of the vacancy. It is important to mandate such information to give adequate notice to the public so as to select who is legible to run for the election. Political parties will put up their candidature as well as independent candidates. If parliament is about to dissolve before such election there is no need to fill the gap. The vacancy can only be filled at the next general election.

# *Acts of Parliaments*

## **University Act 2005**

**S**ection 98 of the Act states that there shall be freedom of speech, debate and proceedings in parliament and that freedom shall not be impinged or questioned in any court of out of parliament.

Right to information has been and is considered one of the ingredient rights that makes the attainment and enjoyment of freedom of expression possible. This right is depicted in the University Act 2005, which are laws governing the operation of University in Sierra Leone.

### **PURPOSE:**

The objective for which each University is established is teaching, research, serving as an examining body and the provision of professional, community as well as commercial services.

### **RELEVANT PROVISION:**

Section 9 (2) states that without prejudice to the generality of subsection (1) it shall be the function of each university to

(a) provide instruction in such branches of learning as it may think fit and make provision for research and the advancement and dissemination of knowledge in such manner as may be determined by it;

(e) preserve academic freedom and avoid discrimination in teaching, and research, in the admission of students, the appointment of staff and in the granting of degrees, diplomas certificates and other awards.

Section 20 (1), each University shall have a Court which shall be constituted in accordance with the Statutes and chaired by the Pro Chancellor.

(2) The Court shall be the highest administrative authority of the University to which the Vice-Chancellor and Principal shall report annually concerning the working of the University.

### **COMMENT:**

Section 9 of the law necessitates the maintenance of academic freedom relating to recruitment and appointment of staff, students entitlement to teaching and research without any discrimination what so ever, in the dissemination of information. Students should be very free to express their political opinion without fear or favor.

## *Acts of Parliaments*

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Section 15 and 20 confers an obligation on the Vice Chancellor to prepare a report yearly and present same to the courts respectively. This enhances access to information on all matters relating to the activities of the university, however there is a limitation which to my opinion is justifiable because matters of purely academic issues should not be exposed to the courts except recommended by the senates. Such matters are highly confidential.

To enhance access to information on all financial matters of the university pursuant to Section 27, (1) The Auditor-General of Sierra Leone shall audit the accounts of the Universities, in accordance with the laws of Sierra Leone, as contained in Section 119 of the Constitution and Part VI of the Public Budgeting and Accounting Act, 1992 (Act No. 1 of 1992), or other appropriate legislation in operation at that time.

(2) A copy of the audit report shall be submitted to the Court and to the Tertiary Education Commission, in addition to the other authorities designated in the laws referred to in paragraph (1).

(3) The Auditor-General shall have a right of access at all reasonable times to the books, records, accounts and vouchers of the University and such other information and explanations as may be necessary for the performance of his duties.

### **COMMENT:**

This is an interesting method of creating transparency in the University set-up. The question is how accessible is the information to the public? Journalist though permitted to attend university court sessions are cautioned as to what they report in the air for fear of contempt.

Section 30 (2) Where a contract is to be terminated—

(a) the person concerned shall be given the amount of notice specified in his contract and he shall also be entitled to all arrears of emoluments, the University's contribution to any pension scheme other than the social security scheme and all leave entitlement which will have accrued to him at the date on which he ceases to be employed by the University; and

(b) in the case of dismissal, which may be summary, no notice shall be given and the person concerned ceases to be employed by the University from the date of the dismissal

### **COMMENT:**

Section 30 (2) (a) of the Act provides that any person whose contract is terminated must be informed as to the reasons of his/her termination. Subsection (2) (b) denies this right to information by stating that in the case of dismissal, which may be summary, no notice shall be given and the person concerned ceases to be employed by the University from the date of the dismissal, the law limits access to information and does not also state clearly, cases which may lead to summary dismissal

# *Public Procurement Act 2004*

## **PURPOSE:**

**B**efore getting into the intricacy of this Act it is worthy to note the objective of the said Act. The object for which the Authority is established is to regulate and monitor public procurement in Sierra Leone and to advise the Government on issues relating to public procurement.

Section 14 (2) without prejudice to the generality of subsection (1), it shall be the responsibility of the Authority to–

(a) formulate policies and standards on public procurement and to ensure compliance therewith by all parties to procurement contracts;

(b) assess the operations of the public procurement processes and submit proposals for the improvement of the processes, including the introduction of information and communications technology, and the development of modalities for appropriate collaboration among procuring entities.

(c) ensure capacity building and human resource development for public procurement, including development, promoting and supporting training and professional development of persons engaged in public procurement;

(d) develop and recommend to heads of procuring entities a career development and management programme, and a system for selection, appointment and termination of appointment of procurement officers;

(e) disseminate information about, and promote awareness of the public procurement system;

(f) issue standard forms of contract and standard bidding documents for mandatory use by all procuring entities;

(g) provide interpretation of this Act and other instruments governing the procurement process;

(h) plan and coordinate technical assistance in the field of public procurement;

(i) publish a quarterly Public Procurement Bulletin which shall contain information on public procurement, including approved procurement plans, proposed procurement notices, and notices of invitation to bid and contract award information;

(j) publish in the Public Procurement Bulletin or in the Gazette or newspaper with wide national circulation or the electronic media, a database of suppliers, contractors and consultants, and records of prices to assist in the work of procuring entities; This section highly recommends information and communication technology in order to embrace access to information. It deals with the modalities relating the award of contract.

Section 37 provides that

(1) Public procurement shall be undertaken by means of advertised open bid proceedings, to which equal access shall be provided to all eligible and qualified bidders without discrimination, subject only to the exceptions provided in sections 38, 39, 40 and 41.

(3) If the procuring entity uses a method of procurement other than advertised open bidding or, in the case of procurement of consultant services, a method other than request for proposals, it shall note in the record of the procurement proceedings the grounds for the choice of the procurement method.

**COMMENT:**

Though this section, government contracts are given out only when the public is well informed about it by way of advertisement through the newspaper, radio and other means of communication. This is just a method of ensuring awareness by the general public and giving the opportunity to several persons who are qualified to make offers based on the available contract. Such dissemination of information will limit contracts being given to private persons or relatives not qualified. Equal access will be given to all eligible bidders subject to open competition,

13. (1) The Chief Executive shall, within three months at the end of each financial year, submit for the approval of the Board an annual report of the activities, operations, undertakings, property and finances of the Authority for that year.

(2) Subject to subsection (1), an annual report shall include a copy of the audited accounts of the Authority with the audit report thereon.

(3) A copy of the annual report approved by the Board shall be sent to the Minister not later than six months after the end of the year to which the report relates and the Minister shall, as soon as possible, but not later than one month of the receipt thereof lay the report before Parliament

## *Public Procurement Act 2004*

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Section 26; The procuring entity shall promptly publish in the Gazette and any newspaper of wide national circulation notice of each contract award in which the price of the contract exceeds the threshold set in the First Schedule, indicating the contract price and the name and address of the successful bidder.

In addition, Section 27 provides that the procuring entity shall upon the request of any unsuccessful bidder, inform the bidder of the reasons for which the bid was unsuccessful. Section 26 and 27 relates to the procedure of awarding contract to a successful bidder and an unsuccessful bidder respectively. In both sections there should be transparency as to who obtains a contract and those who failed to get it. Such information should be made wide to the public indicating the contract price name of the person who gained the contract and address, reasons should be given to any unsuccessful bidder why he or she was not selected to ensure transparency.

### Section 28

(1) Subject to this Act, documents, notifications, decisions and other communications referred to in this Act to be submitted by the procuring entity to a bidder or by a bidder to the procuring entity, shall be in writing

(2) The Authority may authorize procuring entities to use other forms of communication, including electronic communication, for publication of invitations to bid, transmission of bidding documents, submission of bids, conclusion of contracts, and payment but any such other means of communication shall be such as can preserve a record of the content of the communication, provide an adequate level of security, and does not unduly restrict bidders' access to the procurement proceedings, and that other requirements in this Act and regulations, and other applicable legislations are met.

It is clear from this section that except otherwise provided by this Act all communications must be submitted to a bidder or by a bidder to the procuring entity and this shall be in writing.

However despite the fact that this act provides for access to information in so many domain, there is also confidentiality and prohibition of the disclosure of certain information which are so sensitive that, disclosure may lead to insecurity. This is shown in

*Public Procurement Act 2004*

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Section 16 which states.

(1) Notwithstanding any law to the contrary, no return or other commercially sensitive information collected by the Authority under section 15 shall, subject to subsection (2), be disclosed to any person.  
Sub section

(2) The return or other information referred to in subsection (1) may, subject to the directions of the Chief Executive, be disclosed—

(a) to any person if required for the performance of that person's functions under this Act;

(b) if required by any law or as evidence in any court of law.

(3) Any officer of the Authority who in the course of his employment under this Act—

(a) willfully discloses any data or information obtained in the course of such employment to a person not authorized to receive that information

(b) uses information obtained in the course of such employment for the purpose of speculating in any stock, bond or other security or any goods or services, before its release is authorized by the Chief Executive; or

(c) otherwise contravenes this section, commits an offence and shall be liable on conviction to a fine not exceeding one million leones or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Here the law is to the effect protecting business sensitive information and that they should remain confidential especially to persons not authorized to receive it and when it may be used mala fide. However the law gives exceptions to this rule where such information may be disclosed to any person if required by law or evidence of the court or to any person based on his functions. This is also subject to limitation in that it must be directed by the Chief Executive. Any disclosure by any officer of the authority of such information shall be convicted for an offence.

More so Section 32

5) The procuring entity shall not disclose-

(a) information, if its disclosure will- , (i) be contrary to law (ii) impede law enforcement (iii) not be in the public interest (iv) prejudice legitimate commercial interests of the parties or (v) inhibit fair competition under this Act, subsection

***Public Procurement Act 2004***

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(b) information relating to the examination evaluation and comparison of bids, proposals offer or quotations, other than the summary referred to in paragraph (e) of subsection (2)

However Subsection (6) of the aforementioned section provides that documents and records be presented to the Anti Corruption Commission. It states as follows “Records and documents maintained by procuring entities on procurements shall be made available for inspection by these Authorities, Anti- Corruption commission and Auditor-General upon request; and where donor funds have been utilized for the procurement, donor officials shall also have access, upon request, to procurements files for the purpose of audit and review. It mandates the release of information on all records relating to procurements to be inspected to ensure transparency.

## *The National Drugs Act 2008*

It is of interest to note that dissemination of information is also expressed in the National Drugs Act 2008.

Section 3 (1) (e) states, the Agency shall, in addition to any other functions conferred on it by this Act, have responsibility for – collecting, collating and disseminating information on drug and drug-related issues to public and private sector agencies and organizations and wider community, and the conduct of research, analysis and education geared towards the prevention of eradication of drug abuse.

### **COMMENT:**

This section requires the community far and wide to be informed on matters relating to the use of drugs and how research education can help to wipe out or prevent the use of drugs. The public and private sector should have access to information on how to go about the research.

Section 86 (1) of the said Act provides that “The fund shall be administered by the Agency in accordance with any enactment regulating the administration of public Monies”. The management of funds in this section must be transparent as all other public funds are required to be.

The Act provides that certain information need to be protected.

#### Section 69

(1) states “A person who has acquired knowledge in his analyst, inspector, authorized person or any other person exercising power or performing functions under this Act shall not make a record of or divulge or communicate to any other person, any information acquired by him whether directly or indirectly in the course of an investigation under this Act except-

- (a) it required to do so under this Act or any other enactment;
- (b) when lawfully required to make the disclosure by any court within Sierra Leone;
- (c) for the purpose of any investigation, prosecution or other proceedings in Sierra Leone or elsewhere; or
- (d) for the due administration and enforcement of this Act.

Although there is a limitation under this Act, there is an exception in that where the law or court requires the disclosure of any such confidential information it must be released.

*The National Drugs Act 2008*

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Another instance where the law forbids disclosure of information under this Act is in respect of the identities of informers. It requires that their names and addresses should not be made public. These are laws which do not favor transparency, but falls within the exceptions to freedom of information. It is also sometime judicious.

This is well illustrated in Section 68 (1) as it states “Subject to subsection (3), a witness in any proceedings under this Act shall not be obliged-

(a) to disclosed the name or address of any informer who has given information with respect to an offence under this Act or of any person who has assisted in detecting investigation or otherwise assisting with respect to the due administration of enforcement of this Act; or

(b) to answer any question if the answer to it would lead, or would tend to lead, to the disclosure or discovery of the name address or identity of such informer or person is not a witness in the proceedings.

## *The National Revenue Authority Act 2002*

**T**he act as a whole does not make sufficient provision of access to information and transparency. For instance there is no provision which requires external auditors to evaluate and audit the account of the organization. The Auditor General audits the activities of the organ and can appoint any person of his choice to carry out the audit.

### Section 18

(1) The Authority may- without prejudice to the generality of subsection (1), the Authority shall have the following departments;

(d) an internal audit department, responsible for measuring, evaluating and reporting upon the effectiveness of the internal controls of the Authority, financial and otherwise, aimed at the efficient use of resources within the authority.

### Section 31

(1) authorities shall keep proper books of accounts and other records in relation to the activities, properties and finances of the Authorities in a form approved by the Auditor-General, and shall prepare in respect of each financial year of the Authority a financial statement which shall include-

- (a) a balance sheet account,
- (b) income and expenditure accounts;
- (c) sources and application of funds; and
- (d) financial estimates particularly, of the amount of revenue to be collected in the ensuing year subsection

(2) The account of the Authorities kept under Subsection (1) shall not later than forty-five days after the end of each financial year, be audited by the Auditor- General or an auditor appointed by him.

The auditing carried out in this section gives a lead way to fraud, although Section 33 provides that “the Authorities shall, within three months after the end of the financial year submit to the Minister a report of the performance of his functions during that year and on its policy and programmes. The annual report shall include accounts and annual financial statements prepared under Section 31 and report of the audit thereon. The Minister shall lay copies of the annual report before parliament within two months after he has received the report.”

Here access to such vital information from such life feeding state institution takes effect only after internal audit has been conducted and submitted to the Minister who subsequently submits it before parliament. The question is how reliable is the internal audit report without an external audit being carried out? This reveals that there are no clear rules that govern access to information.

# *Local Government Act 2004*

## **PURPOSE:**

**T**he purpose of this Act is to consolidate with amendments, the law on local government, and to provide for the decentralization and devolution of functions, powers and services to local councils and for other matters connected therewith.

Section 103 provides that “Every councilor, appointed or assigned member of staff of a local council shall be subject to the Anti Corruption Act 2001. This Article mandates the release of information to an agent of the Anti Corruption Commission and every councilor who is appointed member of staff of a local council is bound by the Anti corruption laws

Article 104 (1) further states that “Every councilor appointed or assigned member of staff of each local council shall not later than thirty days after assuming or leaving office make a declaration of assets in such form as the Anti Corruption Commission may determine.

The article requires such persons as mentioned herein in the exercise of their function (as staff of each local council) to declare their assets within 30 days upon assuming or leaving office. This will greatly enhance access to information and promote transparency which is advantageous to both the councilor and the community by limiting suspicion with respect to the achievement of assets.

In furtherance to providing for the public’s right to know

Subsection (2) states that the original and other copies of the declaration shall

(a) in the case of a councilor be submitted to the commission and Anti Corruption Commission respectively

(b) in the case of appointed staff be submitted to the Commission and Anti Corruption Commission respectively and

(c) in the case of appointed staff be submitted to the Public Service Commission respectively

Article 105 provides that “Every local council shall take and cause to maintain a comprehensive inventory of the asset of the council on annual bases, and shall submit it to the ministry.

Here in order to promote freedom of information, every local council is required to take stock of all their assets annually and submits it to the ministry concerned and the Anti Corruption Commission.

More so, Article 106

(1) states that all revenues of local council shall be documented in receipts on special numbered forms made by the Government Printer.

*Local Government Act 2004*

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- (2) States that, any member of the staff of a local council,
  - (a) who falsifies revenue receipts
  - (b) uses false or duplicated receipts
  - (c) falsifies or misrepresents the recorded values and amount of revenues or
  - (d) takes any deliberate action which results in the incorrect collection or recording of revenues, commits an offence, and is liable on conviction to a fine not exceeding le 10,000 000 or to a term of imprisonment not exceeding three years or to both fine and imprisonment.

**COMMENTS**

In summary this Act requires that all revenues of local council be documented and any member of staff who acts contrary to the provisions of Subsection 2 (a) (b) (c) and (d) shall be liable on conviction to a term of imprisonment or to a fine.

Subsection 3, states that the court may, in addition to any penalty imposed under Subsection (2) order the dismissal of any person convicted under that subsection. These are all vital trends to enhance access to information.

Article 107

- (1) local councils shall post on a notice board in a conspicuous place on the premises of the council and on a notice board in each ward for at least 21 days,
  - (a) monthly statement of financial account
  - (b) annual income and expenditure statement
  - (c) inventory of assets of the local councils
  - (d) bye laws and notice relating to tax rates and fees
  - (e) minutes of council meetings and
  - (f) development plans. Subsection
- (2) Copies of the reports, notices and statements shall be made available on a request and on payment of a fee to be fixed by a local council. To ensure transparency the local councils shall inform the public by way of notice at least 21 days, of the monthly statement of financial account, expenditure, assets, bye-laws, tax rates, fees, minutes of meeting, development plans

Article 108, the ministry shall promote participatory process in local councils and encourage citizen's inclusive and involvement in governance.

**COMMENT**

This Act requires the ministry to promote transparency and accountability by giving subsidies to encourage citizen's and promotes good governance.

# *Registration of Business Act*

## **PURPOSE:**

**T**he purpose of this Act is to consolidate the law on the registration of businesses and business names and to provide for other related matters. The registration of Business Act also makes provision for access to information

## **RELEVANT PROVISION:**

Section 11.

(1) Every proprietor or firm required by this Part to be registered shall, in all trade catalogues, trade circulars and business letters issued or sent from Sierra Leone to any person in or outside Sierra Leone, cause to be mentioned in legible characters the ordinary name of the proprietor or of every partner in the firm and where the proprietor or any partner has either before or after the coming into operation of this Act changed his name, or, being a woman, has changed her name in consequence of marriage, any name by which the proprietor or partner was formerly known:

Provided that—

(a) the proprietor or firm in default may apply to the High Court for relief against the disability imposed by this section, and the Court, on being satisfied that the default was due to accident or inadvertence or that on other grounds it is just and equitable to grant relief, may grant the relief applied for either generally or as respect any particular contract and on such Conditions as the Court may impose.

## **COMMENT:**

The process of disseminating information in catalogues, communicating in circulars described in the Act gives an indication of making the information available to the public. This section is also retrospective with regards to the issue of change of name of proprietors and partners in a business. It is required by the Act that this change of names be made public by way of catalogues circulars etc.

# *Anti Corruption Act 2008*

## **PURPOSE:**

**T**he purpose of this Act is “to provide for the establishment of an independent Anti-Corruption Commission for the prevention, investigation, prosecution and punishment of corruption and corrupt practices and to provide for other related matters.

## **RELEVANT PROVISION**

Section 13 provides that the Commissioner, Deputy Commissioner and every officer of the Commission shall:

- (a) not later than thirty days after the date of his appointment;
- (b) not later than 31st December in every year until the expiration or termination of his appointment; and
- (c) upon the determination of his appointment, deposit with the Commission a sworn declaration of his assets and liabilities in such form as the Commission may prescribe.

Section 14

(1) The Commissioner, Deputy Commissioner and every officer shall maintain confidentiality and secrecy of any matter, document, report and other information relating to the administration of this Act that becomes known to him, or comes in his possession or under his control.

(2) except in accordance with this Act, or as otherwise authorized by law, neither the Commissioner, Deputy Commissioner nor any officer of the Commission shall-

- (a) divulge any information obtained in the exercise of a power, or in the performance of a duty under this Act;
- (b) divulge the source of such information or the identity of any informer or the maker, writer or issuer of a report given to the Commission.

(3) Notwithstanding Subsections (1) and (2), the Commissioner may disclose, for the purposes of publication in the media, such information as he considers necessary in the public interest.

(4) For the purposes of an investigation under this Act in respect of an offence committed in Sierra Leone, the Commissioner may, impart to an agency in Sierra Leone or elsewhere, such information, other than the source of the information, as may appear to him to be necessary to assist an investigation into any offence.

*Anti Corruption Act 2008*

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(5) Any person who, without lawful excuse, fails to comply with this section is guilty of an offence and shall, on conviction, be liable to a fine not less than five million leones or to imprisonment for a term not less than one year or to both such fine and imprisonment.

(6) The Commissioner, Deputy Commissioner and every officer shall take such oath as may be prescribed by the Commission.

Section 18.

(1) Parliament shall, on the basis of annual estimates of expenditure submitted to it by the Commission, provide the Commission with the funds needed for its operations.

(2) The Commission shall keep proper books of account and proper record in relation to the funds of the Commission and the books of account and records shall be in such form as the Auditor- General shall approve.

(3) The books of account of the Commission shall be audited by the Auditor-General or by an auditor appointed by him.

(4) The audit shall be completed within two months after the end of each financial year of the Commission which shall be the same as the financial year of the Government.

Section 19.

(1) The Commission shall, not later than three months after the end of any year, submit to the President a report of its activities in that year.

(2) The Commission shall cause the report submitted under subsection (1) to be tabled before Parliament.

(3) A report under Subsection (1) shall include –

(a) the number and a detailed account of investigations carried out in the year;

(b) the investigations which the Commission has decided to discontinue;

(c) investigations which have lasted more than six months;

(d) the number and status of matters pending in the courts;

(e) key prevention measures instituted or implemented during the year;

(f) key education and community relations activities undertaken during the year; and

(g) the report of the audit conducted under subsection (3) of Section 18.

Section 53

(1) For the purposes of any investigation under this Act, the Commission shall have such powers, rights and privileges as are vested in the High Court or a judge thereof in a trial in respect of

- (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise; and
- (b) compelling the production of documents; and
- (c) the issue of a commission or request to examine witnesses abroad, and any rules of Court shall, with the necessary modification, apply to the exercise of the powers, rights and privileges of the Commission conferred by this section.

(2) A person under investigation or any witness summoned to appear before the Commission may be assisted by counsel of his own choice.

(3) Pursuant to Subsection (1), the Commissioner may authorize in writing an investigating officer to exercise, upon production by the investigating officer of the authorization, the power to inspect and investigate and to require any person to produce, any accounts, books, documents or other article of or relating to, any person named in such authorization which may be required for the purpose of the investigation and the disclosure of all or any information relating thereto, and to take copies of such accounts, books or other relevant entry therein.

(4) An investigating officer authorized under Subsection (3) shall be empowered by such authorization to require from any person information as to whether or not there is any account, book, document or other article at any company or any other place which is to be produced, inspected or investigated.

(5) Any requirement made under Subsection (3) shall be in writing and may require a person to produce records or provide explanations and information on an ongoing basis over a period of time, not exceeding six months.

(6) The six months limitation in Subsection (5) shall not preclude the Commissioner from making further requirements for further periods of time so long as the period of time in respect of which each requirement is made shall not exceed six months.

(7) A requirement under this Section to produce a record stored in electronic form is a requirement-

- (a) to reduce the record to hard copy and produce it; and (b) if specifically required, to produce a copy of the record in electronic form.

*Anti Corruption Act 2008*

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(8) A person who is required under this section to disclose any information or to produce any accounts, books, documents or articles shall, notwithstanding the provision of any law to the contrary or any oath of secrecy, comply with such requirement.

(9) A person who- (a) fails or neglects, without reasonable excuse, the proof of which shall be upon him, to comply with any requirement under this section; or (b) obstructs any investigating officer in the execution of an authorization given under this section, commits an offence and shall be liable on conviction to a fine not less than five million leones or to imprisonment for a term not less than one year or to both such fine and imprisonment.

Section 54 (1) The Commission may, by writing under the relating to hand of the Commissioner, require any person whose property.

(a) is under investigation; or

(b) is related to any person who is under investigation; or

(c) is suspected to have or to have had any business or other dealings with any person who is under investigation, under this Act to furnish to the investigating officer a statutory declaration or statement in writing enumerating-

(i) Any property, moveable or immovable, as may be specified by the Commission being property belonging to or possessed by or which at any time belonged to or was possessed by such person, his agents or trustees;

(ii) all expenditure incurred by such person in respect of himself, his spouse of spouses, parents, or children with regard to living expenses and other private expenditure during any period specified by the Commission.

(iii) all liabilities incurred by such person, his agents or trustees during the period specified by the Commission and specifying in respect of each such liability whether it was incurred jointly (and if so, with whom) or severally.

(2) The Commission may also require such person or persons as may be specified by it to furnish the investigating officer with a statutory declaration or a statement in writing-

(a) of all income earned during a specified period; and

(b) the tax paid on such income.

(3) Any person specified in Subsection (1) may be required to furnish to the investigating officer a statutory declaration or statement in writing-

*Anti Corruption Act 2008*

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(a) of all moneys or other movable property or properties kept in his home or elsewhere in Sierra Leone; and

(b) of all moneys or other moveable property or properties sent out of Sierra Leone by him or on his behalf during the period specified by the Commission.

(4) Any person required under Subsection (1) to furnish information in respect of his movable or immovable property shall specify in respect of each such property whether it is or was possessed jointly (and, if so, with whom) or severally; and specify the dates upon which each such property was acquired and whether by purchase, gift, bequest, inheritance or otherwise, and where it was acquired by purchase, specifying the consideration paid for it.

(5) The declarations filed with the Commission and the records of the Commission in respect of those declarations are secret and confidential and shall not be made public, except where a particular declaration or record is required to be produced for the purpose of, or in connection with any court proceedings against, or inquiry in respect of a declaration under this Act, the Commissions of Inquiry.

Section 55. Any person who-

(a) fails to furnish any statutory declaration or statement as required in subsections (1) to (3) of section 54; or

(b) in making any statement or furnishing any information under Section 54, willfully makes any false statement or any statement which he does not believe to be true, commits an offence and shall be liable on conviction to a fine not less than five million leones or to imprisonment for a term not less than one year or both fine and imprisonment.

Section 69.

(1) An investigating officer authorized in that granted bail by behalf by the Commissioner may arrest without warrant any person Commission. who has been released on bail under section-

(a) if that officer has reasonable grounds for believing that any condition upon which that person was so released or otherwise admitted to bail has been or is likely to be broken; or

(b) on being notified in writing by any surety for that person that the surety believes that the person is likely to break the condition that he will appear at the time and place required and for that reason the surety wishes to be relieved of his obligation as surety.

*Anti Corruption Act 2008*

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Section 77 (1) Where a public officer suspects that an act constituting an offence under Part IV has been committed or is about to be committed within or in relation to a public body, he shall forthwith make a written report to the Commission.

(2) The Commission shall issue such guidelines as it considers appropriate to ensure compliance with subsection (1).

Section 81:

(1) Where the Commission receives information of informers in confidence to the effect that an act constituting an offence under Part IV has occurred, that information and the identity of the informer shall be held secret between the Commission and the informer, and all matters relating to such information shall be privileged and shall not be disclosed in any proceedings before any court, tribunal or other authority.

(2) Where any record, which is given in evidence or liable to inspection in any civil, criminal or other proceedings, contains an entry relating to the informer or the information given by the informer, the Commissioner shall cause all parts relating to the informer or the information given to be concealed from view or to be obliterated so far as may be necessary to protect the identity of the informer.

(3) A person who gives information that result in the conviction of another person, of an offence under this Act shall be paid ten percent of the proceeds of any property forfeited as a result of the conviction.

82. (1) Subject to Subsection (6), where a person:

(a) discloses to the Commissioner or Deputy Commissioner or an officer of the Commission that a public officer, body corporate or public body is or has been involved in any act constituting an offence under Part IV; and

(b) at the time he makes the disclosure, believes on reasonable grounds that the information he discloses may be true and is of such a nature as to warrant an investigation under this Act, he shall incur no civil or criminal liability as a result of such disclosure.

(2) Subject to subsection (6), where a public officer

(a) discloses to his superior officer or to the Commissioner that an act constituting an offence under Part IV may have occurred within the public body in which he is employed; and

(b) believes on reasonable grounds that the information is true, he shall incur no civil or criminal liability as a result of such disclosure and no disciplinary action shall be instituted against him by reason only of such disclosure.

### *Anti Corruption Act 2008*

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(3) A person who makes a disclosure under Subsection (1) or (2) shall assist the Commission in any investigation which the Commission may undertake in relation to matters disclosed by him.

(4) A person to whom a disclosure is made under Subsection (1) or (2) shall not, without the consent of the person making the disclosure, divulge the identity of that person except where it is necessary to ensure that the matters to which the information relates are properly investigated.

(5) A person who commits an act of victimization commits an offence and shall on conviction be liable to a fine not less than five million leones or to imprisonment for a term not less than one year or to both such fine and imprisonment.

(6) A person who makes a false disclosure under Subsection (1) or (2) knowing it to be false commits an offence and shall on conviction be liable to a fine not less than five million leones or to imprisonment for a term not less than one year or to both, fine and imprisonment.

113. A request shall be in writing, including facsimile. Transmittal writing dated and signed by or on behalf of the person making the request.

#### **COMMENTS:**

The Anti-Corruption Act 2008 was passed to strengthen the Anti-Corruption Commission (ACC). The whole essence of this Act is to curb corrupt practices and mandates the release of information to an agent of the Commission mandatory. Thus the law promotes dissemination of such information by offering protection to informers. This is buttressed under Section 14 mentioned herein above. It also mandates the Commissioner, Deputy Commissioners and all members of the commission to declare their assets not later than thirty days upon assuming office. Any person who discloses information relating to corruption and who believes that the information released is true will be free from civil or criminal liability. These are all methods in curbing corrupt practices but it does not guarantee citizens access to the information held by the commission

# *The Environmental Protection Agency Act 2008*

## **PURPOSE:**

**T**his Act is to establish the Sierra Leone Environmental Protection Agency, to provide for the effective protection for the environment and for other related matters

## **RELEVANT PROVISION:**

### Section 9

(1) A member of the Board who has any interest direct or indirect, in any matter to be considered by the Board shall disclose the nature of his interest to the Board and such disclosure shall be recorded in the minutes of the Board; and the member shall not take part in any deliberation or decision of the Board relating to that matter.

### Section 27

(1) The Agency shall, after receiving an environmental impact assessment, circulate it to professional bodies or associations, Government Ministries and Non-Governmental Organizations for their comments.

### Section 32

Any person aggrieved by a decision to reject his application or not to renew his licence may appeal to the High Court within thirty days of the rejection or refusal to renew.

### Section 53

(1) Where it appears to the Agency that the activities of any undertaking poses a serious threat to the environment or to public health, the Agency may serve on the person responsible for the undertaking, an enforcement notice requiring him to take such steps as the Agency thinks necessary to prevent or stop the activities.

(2) An enforcement notice shall specify–  
(a) the offending activity;  
(b) the steps required to be taken; and  
(c) the time within which the steps shall be taken.

(3) The Agency may, in an enforcement notice direct the immediate cessation of the offending activity where it considers that the circumstances so demand.

(4) Any person who acts contrary to an enforcement notice issued under this section commits an offence and shall be liable on conviction to a fine not exceeding Le50, 000,000.00 or to imprisonment for a term not exceeding two years or both the fine and imprisonment.

**COMMENTS:**

The aim of this Act is to ensure protection of the environment and to promote transparency. The law enhances transparency mechanism by instituting ways of making payments go through various channels before it is distributed to members of the board. The whole essence of this is to reduce abuse of discretionary power by Board Members as well as fraud if they are to decide on their remuneration. More so where a member of the Board has an interest in any matter, he or she discloses his interest to the Board and in the interest of justice the person is made to stay out of the deliberations. To further ensure transparency the Act requires that environmental impact assessment in respect of project should be made open for public comments

# *The Public Order Act 1965*

## **PURPOSE:**

**T**he purpose of this Act is to Consolidate and Amend the Law Relating to Public Order In this Act, unless the contrary intention appears—

“Commissioner of Police” includes the principal officer of the Sierra Leone Police Force, or any police officer authorized by him to exercise any of his powers under this Act and any other person appointed by the Governor-General by Notice in the Gazette to exercise and perform any or all of the powers and functions assigned to the Commissioner of Police under this Act;

## **RELEVANT SECTIONS**

### Section 26

Any person who maliciously publishes any defamatory matter knowing the same to be false shall be guilty of an offence called libel and liable on conviction to imprisonment for any term not exceeding three years or to a fine not exceeding one thousand leones or both

### Section 27

Any person who maliciously publishes any defamatory matter shall be guilty of an offence called libel and liable on conviction to a fine not exceeding seven hundred leones or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

### Section 28

(1) On the trial of an offence of libel against sections 26 or 27, the accused having pleaded such plea as hereinafter mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defense, unless it was for the public benefit that the said matters charged should be published; and to entitle the accused to give evidence of the truth of such matters charged as a defense to such charge it shall be necessary for the accused in pleading to the said charge, to allege in writing the truth of the said matters charged in the manner now required in pleading a fair comment and justification to an action for a defamation and further to allege in writing that it was for the public benefit that the said matters charged should be published and the particular fact or facts by reason whereof it was for the public benefit that the said matters charged should be published to which plea the prosecutor shall be at liberty to reply generally, denying the whole thereof.

(2) Where the alleged libel contains several charges, and the accused fails in proof of the truth of any one of the matters alleged in it, or where the alleged libel is general and the accused fails to prove so much of the plea under this section as would justify the libel, the Court shall

*The Public Order Act 1965*

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find the accused guilty, and it shall be competent for the Court, in pronouncing sentence, to consider whether the guilty of the accused is aggravated or mitigated by the said plea, and by the evidence given to prove or disprove the same.

(3) The matter charged in the alleged libel complained of by such charge shall be presumed to be false, and the truth thereof shall in no case be inquired into in the absence of such plea as mentioned in subsection (1).

(4) In addition to such plea it shall be competent to the defendant to plead not guilty.

(5) Subject to the provisions of this section, nothing in this Part contained shall take away or prejudice any defense under the plea of not guilty which is now competent to the defendant to make under such plea to any charge brought under sections 26 or 27.

Section 29 no person shall be criminally liable for the publication of defamatory matter in the following cases—

(a) where the matter is published by the Governor-General or by Order of the Governor-General in any official document, Gazette, or proceeding; or

(b) where the publication is made in a petition to the Governor-General or to a Minister;

(c) where the publication takes place in any proceeding held before or under the authority of any court by law established or under any Act or Order or under the authority of the Governor-General or of a Minister; or

(d) where the publication takes place in any official report made by a person appointed to hold an inquiry under the authority of any Act or Order or of the Governor-General or a Minister; or matter consists of an extract from, or an abstract of, a petition to, or a Gazette or document published by or under the authority of, the Governor-General or a Minister and the publication is made without express malice to the person defamed; or

(e) where the matter is published concerning a person subject to military discipline for the time being and relates to his conduct as a person subject to such discipline, and is published by some person having authority over him in respect of such conduct; or

(f) where the publication is contained in any communication between Ministers, Ministries and public officers, members of the Armed Forces; public officers in the course of their respective duties.

Section 30: No person shall be criminally liable for the publication of a defamatory matter in the following cases—

(a) where the defamatory matter consists of an extract from or an abstract from a petition to, or a Gazette or document published by or

- under the authority of, the Governor-General or a Minister and the Publication is made without express malice to the person defamed; or
- (b) where the defamatory matter constitutes, in whole or in part a fair report, for the information of the public, of any proceeding of any Court, whether preliminary or final; or of any public proceeding of any body constituted or authorised to hold such proceeding, by any Act or Order or of any public meeting so far as the public is concerned in the matter published if, in every case the publication is made without express malice to the person defamed; or
- c) where the publication is for the information of the public at the request of any Minister or public officer, or where the defamatory matter is any notice or report issued by a department of Government or public officer, for the information of the public, and where in every such case the publication is made without express malice to the person defamed; or
- d) where the defamatory matter consists of fair comment wither on any matter the publication of which or on any report which, is referred to in sections 26 to 29 or in this section; or
- e) where the defamatory matter consists of fair comment upon the public conduct of any person in public affairs, or upon the public conduct of any person employed in the public service in the discharge of his public duties, or upon the character of any such persons so as it appears by such conduct; or
- f) where the defamatory matter consists of fair comment on any published book or other literary production, or any composition or work of art, or performance publicly exhibited, or any subject; or of the character of the author of such book, production, composition, work of art, or the person exhibiting such performance, so far as their characters may appear therefrom respectively; or
- g) where the publication is in good faith for the purpose of seeking remedy or redress for any private or public wrong or grievance from a person who has or is reasonably believed by the person publishing to have, the right to remedy or redress such wrong or grievance; or
- h) where the publication is made in good faith by a person having any lawful authority over another, and is made by him in the course of a censure passed by him on the conduct of that other, in matters to which such lawful authority relates; or
- i) where the publication is made on the invitation of the person defamed; or
- j) where the publication is made in order to answer or refute some other defamatory matter published by the person defamed, concerning the person making the publication; or

k) where the defamatory matter constitutes an answer to inquiries made of the person publishing it, relating to some subject as to which the person by whom or on whose behalf the inquiry is made, has, or on reasonable grounds is believed by the person publishing to have, an interest in knowing the truth, and if the publication is made in good faith for the purpose of giving information in respect of that matter to that person; or

l) where the defamatory matter constitutes information given to the person to whom the defamatory matter is published with respect, to some subject as to which he has, or is on reasonable grounds believed to have, such an interest in knowing the truth, as to make the conduct of the person giving the information reasonable in the circumstances: Provided that as regards paragraphs (h), (i), (j) and (k), the person making the publication honestly believes the matter published is relevant to the matter the existence of which may excuse the publication of defamatory matter, and the manner and extent of the publication do not exceed what is reasonably sufficient for the occasion; and as regards paragraph (l) that the defamatory matter is relevant to the subject therein mentioned; and that it is either true or is made without malice to the person defamed and in the honest believe, on reasonable grounds, that it is true.

#### Section 31

The sale by any person of any book, pamphlet, or other printed or written matter or, of any number or part of any periodical is not a publication thereof for the purposes of this Part, unless such person knows that such book pamphlet or written matter, or number or part, contains defamatory matter; or, in the case of any part or number of any periodical that such periodical habitually contains defamatory matter.

#### Section 32

(1) Any person who publishes any false statement, rumour or report which is likely to cause fear or alarm, to the public or to disturb the public peace shall be guilty of an offence and liable on conviction to a fine not exceeding three hundred leones or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment.

(2) Any person who publishes any false statement, rumour or report which is calculated to bring into disrepute any person who holds an office under the Constitution, in the discharge of his duties shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred leones or to imprisonment not exceeding two years or both.

(3) Any person who publishes any false statement, rumour or report which is likely to injure the credit or reputation of Sierra Leone or the Government shall be guilty of an offence and liable on conviction to a fine not exceeding three hundred leones or to imprisonment for a term not exceeding twelve months or both.

(4) This section shall not apply to any defamatory matter exempted under the provisions of section 30.

(5) It is no defence to a charge under this section that the person charged did not know or did not have reason to believe that the statement, rumour or report was false, unless he proves that before he communicated such statement, rumour or report, he took reasonable measures to verify the accuracy of this statement, rumour, or report.

## **COMMENTS**

This act limit freedom of expression in so many ways especially in issues relating to publication of documents. The law criminalizes free speech and makes defamation libel; furthermore it equates seditious and false news publication. Whosoever violates the law is liable to conviction and or disproportionate fines as remedy. The law prevents journalists from disseminating vital information with respect to corrupt and other bad practices committed by senior government officials and other government workers. Over the last five years, more than ten journalists have been jailed and have created that chilling effect that criminal defamation and seditious libel laws instills. The defense is, however, found in stating that it was done in public interest and not out of malice. Proving the truism of the alleged libel is no defense since that is a crime in itself.

Positively, the Act protects the personality and character of right thinking people in the society. Without the Act there is the tendency of journalists to maliciously damage the character and personalities of public officials. It regulates the nature of media reporting and do not allow journalists to endanger state security by publication of unverified information.

From the totality of the above, if this act is repealed there should be a midway legislation to allow press freedom as well as protecting the public.

# *Child Rights Act 2007*

## **PURPOSE:**

**T**he purpose of the act is to provide for the promotion of the rights of the child compatible with the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20<sup>th</sup> November, 1989, and its Optional Protocols of 8th September, 2000; and the African Charter on the Rights and Welfare of the Child, and for other related matters.

## **RELEVANT SECTIONS:**

### Section 9

(1) The Commission shall hold its first meeting on such date and at such place as the President, after consultation with the Commission, may determine; and thereafter, the Commission shall meet for the dispatch of business at least once every month at such place and time as the Chairman may determine.

(2) The quorum at any meeting of the Commission shall be six.

(3) Any question which is to be determined by the Commission at any of its meetings shall be decided by a majority of the members present and voting.

(4) The Chairman shall preside at every meeting of the Commission at which he is present and, in his absence, the members present shall appoint one of their members to preside.

(5) Each member shall have one vote but in the case of an equality of votes, the Chairman or the person presiding shall have a casting vote.

(6) A majority of the members may, by notice in writing signed by them, request the Chairman to summon a special meeting of the Commission for such purposes as may be stated in the notice.

(7) The Chairman or, in his absence the member appointed to act on his behalf shall summon a special meeting within five days of the receipt of the notice referred to in subsection (6).

(8) Any proposal circulated among all members and agreed to in writing by a two-thirds majority of all members shall be of the same force or effect as a decision made at a duly constituted meeting of the Commission and shall be incorporated in the minutes of the next succeeding meeting of the Commission: Provided that, if a member requires that such proposal be placed before a meeting of the Commission, this subsection shall not apply to such proposal.

(9) The Commission may co-opt any person to attend and participate in its deliberations on any matter but such person shall not vote on any matter for decision by the Commission.

## *Child Rights Act 2007*

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(10) The Commission shall cause minutes of all its meetings to be taken and signed by the Chairman and kept in proper form as a public record. (11) Subject to this Act, the Commission shall regulate its own procedure.

### Section 10.

(1) Any member having a personal interest, whether pecuniary or otherwise, direct or indirect, through any member of his immediate family or business partner, in any matter to be considered by the Commission, shall disclose the fact of such interest and the nature thereof, and such disclosure shall be recorded in the minutes of the Commission, and such member shall take no part in any deliberation or discussion of the Commission relating to such matter.

(2) Any member who contravenes subsection (1) shall be liable to removal from the Commission.

### Section 31

No person shall deprive a child capable of forming views the right to express an opinion, to be listened to and to participate in decisions which affect his welfare, the opinion of the child being given due weight in accordance with the age and maturity of the child.

### Section 82.

(1) No person shall publish any information that may lead to the identification of a child in any matter before a Family Court except with the permission of the Family Court.

(2) Any person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding two million leones or imprisonment for a term not exceeding one year or to both, fine and imprisonment.

## **COMMENTS**

This act like the public order act ensures transparency in the payments of allowances and remuneration to members of the commission by making parliament to decide on such payments. Also members with particular interest are not permitted to attend and make deliberations on issues relating to their matters. For the enhancement of access to information, the minutes of the commission must be kept as a public record. The act limits publication of information relating to the identity of a child before a Family Court and criminalizes any person who violates the law. The prevention of information is to protect the image of the child. It is however a limitation to information, which in my opinion is permissible in order not to destroy the character of a child. The Act also gives a child the right to express his/her opinion and should be informed and participate on matters which relates to his or her welfare.

# *The Bumbuna Watershed Management Authority And The Bumbuna Conservation Area Act, 2008*

## **PURPOSE:**

**T**he purpose of this Act is to provide for the establishment of the Bumbuna Watershed Management Authority, to coordinate sustainable land use and agriculture programmes in an environmentally compatible manner in the Bumbuna Watershed, to promote environmental management and biodiversity conservation in the Bumbuna Conservation Area, in order to address environmental and social needs associated with the operation of the Bumbuna Hydroelectric Dam, including, the physical protection and sustainability of the Bumbuna reservoir and to provide for other related matters.

## **RELEVANT SECTION**

### Section 19

(1) The Authority shall keep proper books of account and other records in relation to the activities, property and finances of the Authority in a form approved by the Auditor-General, and shall prepare in respect of each financial year of the Authority a financial statement which shall include–

- (a) balance sheet accounts;
- (b) income and expenditure accounts; and
- (c) source and application of funds;

(2) The accounts of the Authority kept under subsection (1) shall, not later than two months after the end of each financial year, be audited by the Auditor-General or an auditor appointed by him.

(3) For the purposes of subsection (2), the Auditor-General or the auditor appointed by him shall be entitled to have access to all books of account, vouchers and other financial records of the Authority and to require such information and explanation thereon as he may think fit.

(4) The Authority shall provide the Auditor-General or the auditor appointed by him with all necessary and appropriate facilities for the examination of the accounts and records of the Authority.

(5) The Auditor-General or the auditor appointed by him shall submit to the Authority a report on the audited accounts and the financial statements referred to in subsection (1) and shall, in his report draw attention to–

- (a) any irregularities in the accounts;

*The Bumbuna Watershed Mgt. Authority and the Bumbuna Conservation Area Act, 2008*

(b) any matters that are likely to adversely affect the operations of the Authority; and

(c) any other matter which, in his opinion, ought to be brought to the notice of the Authority

**COMMENT:**

The fact that the Auditor General or somebody appointed by him audits the accounts of the institution, there is no proper guarantee of access to information. However where the report is published it is a friendly law to freedom of information.

# *Diamond Cutting and Polishing Act 2007*

## **PURPOSE:**

**T**he purpose of this Act is to provide for diamond cutting and polishing, the license of diamond cutting and polishing, to define the right and duties of a licensee and for other matters

## **RELEVANT PROVISION:**

Section 11

(1) The Director shall be responsible to monitor all diamonds purchased by the licensee as well as all diamonds in the business premises of the licensee and shall be assisted by diamond inspectors and any other person authorized in writing by the Minister.

(2) In the exercise of the powers conferred on the Director under subsection (1), the Director or any other authorized person may-

(d) question any person who in his opinion may be capable of furnishing any information on any matter to which this Act relates, and for that purpose require any diamond cutting or polishing activity to be stopped;

## **COMMENT**

The director has a right to information from any person whom he thinks may release such information with regards to the diamond cutting or polishing but such information is not made available to the public.

# *Independent Media Commission Act 2000*

## **PURPOSE:**

The purpose of this Act is to establish an autonomous body for the regulation of mass media institutions and for other matters connected therewith.

## **RELEVANT PROVISION:**

### Section 8

(2)(g) ensure that every person shall have, irrespective of that person's race, colour, sex, language religions, political or other opinion, national ethnic or social origin property disability, birth or other statute access to fair coverage in the broadcast media.

### Section 9

(3) The Committee appointed under subsection (1) shall in the pursuance of their respective functions hold public hearings and receive petitions.

### Section 17

(1) The Commission shall grant a radio or television broadcasting licenses where it is satisfied that the media institution in respect of which the application is made is technically suitable for the service intended to be rendered and that the service is in the interest of public.

(2) For the purpose of subsection (1), "the interest of the public" means plurality of views and variety of programming.

(3) Any application under subsection (1) shall not be granted by the commission if

(a) it is not in public interest; and

(b) there are compelling reasons for refusal founded on technical data, national security and public safety.

(4) The Commission shall, on refusing an application under subsection(3), notify the applicant of such refusal and the reasons thereof.

Section 22 A person aggrieved by the refusal of the Commission to grant or renew his license under this Act or by the suspension or cancellation of a license under this Act may Appeal to the High Court within thirty days of the refusal, suspension, cancellation as the case may be and the High Court shall within thirty days of receipt of the appeal make a decision thereon.

Section 32

(1) Any person who produces any news paper or magazine intended to be published or dispersed shall print in legible characters on the front of that newspaper or magazine, if the newspaper or magazine is printed on one side only, or upon the first or last leaf of the newspaper or magazine, if it consist of more than one leaf, his name or business or his residential address.

(2) Any proprietor and any person who publishes or distributes any newspaper or magazine, on which the name and business residential address of the proprietor or publishers is not printed contrary to the requirement of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding le50,000.00.

Section 36

(1) Any complaint whether made by a member of the public or otherwise, against a media institution or any person engaged in the provision of the media services in which it is alleged that the institution or person-

(a) is in contravention of the media code of practice; or

(b) has contravened the terms and conditions of a radio televisions broadcasting license or registration granted under this Act, may be referred to the Commission.

(2) Where a complaint is referred to the Commission under subsection (1), the Complaint Committee appointed under section 9, shall inquire into the complaints and make recommendations for the imposition of penalty by the commission, where the complaint has been proved.

(3) Where no penalty is prescribed by or under this act for any complaint enquired into by the Commission, the Commission may censure or impose on the media institution concerned a fine not exceeding le500,000.00.

Section 37

(1) The Commission shall established and keep a register in such form as the Commission may determine and shall record in it-

(a) licenses and any registration granted under this Act and the relevant terms and conditions of licenses and registrations; and

(b) suspension and cancellation of licenses and registrations.

(2) The register shall be opened for public inspection during such hours and subject to the payment of such fees as the Commission may determine.

**COMMENT:**

This Act had empowered the Commission to require information necessary from any person wishing to create a media system, and embraces complaints made by members of the public in cases where their rights are infringed. The Committee created by the Commission has the mandate to recommend and penalized any media institution who violates the right of any individual. To enhance access to information the register of the Commission is opened to the public.

# *Refugee Protection Act 2007*

## **PURPOSE:**

**B**eing an Act to provide for the recognition and protection of refugees; to enable effect to be given within Sierra Leone to the Convention Relating to the Status of Refugees, done at Geneva on the 28th July, 1951, to the Protocol Relating to the Status of Refugees of the 31st January, 1967 and to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, done at Addis Ababa on the 10th September, 1969; and to provide for other related matters.

## **RELEVANT PROVISION:**

Section 8.

(1) An application for the grant of refugee status shall be made to the implementing Agency, either directly or through any authorised officer or officer of the United Nations.

(2) Any authorised officer or officer of the United Nations to whom any person seeking recognition as a refugee first presents himself shall refer that person to the nearest office of the Implementing Agency and shall, as soon as possible, notify the Agency that a person seeking refugee status has entered into or is present in Sierra Leone.

(3) An application for recognition as a refugee received by any authorised officer or officer of the United Nations shall be forwarded to the Commission.

(4) The Implementing Agency shall, on receiving the application, invite the applicant to appear before it, to provide oral or documentary evidence, accompanied by a legal practitioner or other person of his choice, if he so desires, whose fees or expenses, if any, shall be paid by the Implementing Agency.

(5) The decision of the Implementing Agency to grant or not to grant the application shall be notified to the applicant in writing and where the application is refused, the Agency shall give reasons for the refusal.

Section 10. (1) Any applicant who is aggrieved by a decision of the Implementing Agency not to recognize him as a refugee may, through his representative or other interested party, appeal to the Appeal Committee, as of right, within thirty days of receiving written notification of the decision.

(2) An appellant may be personally present at the hearing of the appeal and may be assisted or represented by a legal practitioner or any other person of his choice, if he desires and may provide oral or documentary evidence or documentary evidence.

*Refugee Protection Act 2007*

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(3) The Implementing Agency shall have the right to make oral or written representations in respect of any decision appealed against.

Section 11

(1) The Implementing Agency shall have the power to cancel a refugee status where—

(a) a person recognized as a refugee has fraudulently misrepresented or omitted material facts which, if known, could have changed the decision to recognize that person as a refugee; or

(b) new evidence becomes available that a person should not have been recognized as a refugee.

(2) Before cancelling a refugee status, the Implementing Agency shall cause a written notice to be served upon the refugee—

(a) informing him of the fact that his status as a refugee is to be reconsidered; and

(b) inviting him to make written representations to the Implementing Agency within a period of thirty days from the date of service of the notice or such longer period as the Agency may allow, regarding his status as a refugee; and

(c) inviting him to an interview with the Implementing Agency, accompanied by a legal practitioner or other representative of his choice, if he so desires.

(3) The Implementing Agency shall consider every case notified to a refugee under subsection (2) and may make any inquiry or investigation it thinks necessary into such case.

(4) After considering all the evidence, the Implementing Agency—

(a) may cancel the recognition of the refugee concerned; and

(b) shall cause the refugee concerned to be notified of its decision in the matter, together with reasons, within a period of twenty-one days of the date of the decision

Section 12

(1) If, at any time, the Implementing Agency after consulting the Office of the United Nations High Commissioner for Refugees, considers that a person present in Sierra Leone has ceased to be a refugee, within the meaning of subsection (5) of section 2, the Implementing Agency may withdraw his refugee status.

- (2) Before withdrawing a refugee status, the Implementing Agency shall cause a written notice to be served upon the person whose status as a refugee is under consideration–
- (a) informing him of the fact that his status as a refugee is to be reconsidered;
  - (b) inviting him to make written representations to the implementing Agency within a period of thirty days from the date of service of the notice, regarding his status as a refugee.
  - (c) inviting the person to an interview with the implementing Agency, accompanied by a legal practitioner or any other representative, if he so desires.
- (3) The Implementing Agency shall consider every case notified to a refugee under subsection (2) and may make any inquiry or investigation it thinks necessary into any such case.
- (4) After considering all the evidence, the implementing Agency–
- (a) may declare that the person has ceased to be a refugee; and
  - (b) may grant the person concerned an alternative status which would allow him to reside in Sierra Leone after the withdrawal of his refugee status, having regard to his previously acquired rights and links with Sierra Leone; and
  - (c) shall cause the person concerned to be notified of its decision in the matter within a period of twenty-one days of the date of the decision.
- (5) Any person who is aggrieved by a decision of the implementing Agency to declare him to have ceased to be a refugee may, within a period of thirty days of being notified of such decision, appeal in writing to the Appeal Committee.

**COMMENT:**

This Act makes provision for the statuses of refugee. The essence of this Act as a friendly law to freedom of information is the right of refugees to be informed in all matters relating to decisions taken by the implementing Agency on their behalf, such as applications and cancellations of the refugee.

# *Money Laundry Act 2006*

## **PURPOSE:**

**T**he purpose of this Act is to suppress money laundering and to provide for other related matters.

## **RELEVANT PROVISION:**

### Section 5

(1) If it is uncertain whether a customer is acting on his own behalf, the financial institution shall seek information by any means as to the true identity of the principal or party on whose behalf the customer is acting.

(3) A customer who is a legal practitioner, a public or private accountant, an individual with public powers of attorney or an authorised agent, acting as a financial intermediary, may not invoke professional secrecy or confidentiality in order to refuse to disclose the true identity of the transacting party or beneficial owner.

### Section 6

(1) Where a business transaction involves an amount exceeding twenty-five million leones, in the aggregate in one day per customer and is conducted in conditions of unusual or unjustified complexity or appears to have no economic justification or lawful purpose, the financial institution shall seek information as to the origin and destination of the money, the purpose of the transaction and the identity of the transacting parties.

(2) The financial institution shall draw up a confidential report, in writing, containing all relevant information on the modalities of the business transaction and on the identity of the principal and, where applicable, of the transacting parties.

(3) The report referred to in subsection (2) shall be kept for a period of five years after the execution of the business transaction, for the purposes of any investigation under this Act relating to that business transaction.

(4) Where the financial institution has reasonable grounds for believing that the business transaction referred to in subsection (1) could constitute or be related to money laundering, the financial institution shall promptly report the matter to the Authority.

(5) It shall be an offence for the financial institution or any person required by it to make the report under subsection (4) or having

## *Money Laundry Act 2006*

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knowledge thereof to disclose to any person other than a court of competent jurisdiction, competent authority or other person authorised by law that information has been furnished under subsection (4).

### Section 7

Where in any case under this Act, the report referred to in subsection (4) of section 6 is made in good faith, the financial institution and its employees, staff, directors, owners or other representatives as authorised by law shall be exempted from all criminal, civil or other liability, as the case may be, for complying with this Act or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the report.

### Section 14.

Every financial institution shall—

(a) keep a business transaction record of any new or unrelated business transaction exceeding twenty-five million leones for a period of five years after the termination of the business transaction so recorded.

(b) reports to the Authority any business transaction where the identity of the persons involved, the transaction or any other circumstances concerning that business transaction gives any officer or employee of the financial institution reasonable grounds to believe that the transaction involves the proceeds of crime;

(c) comply with any instruction issued to it by the Authority under paragraph (f) of section 13;

(d) permit any person authorised in that behalf by the Authority, upon request, to enter into any premises of the financial institution during normal working hours and inspect the records kept under paragraph (a) and to make any notes or take any copies of the whole or any part of any such records or to answer any questions of the Authority in relation to such records;

(e) comply with the guidelines and training requirements issued or, as the case may be, provided by the Authority in accordance with paragraphs (g) and (h) of section 13;

(f) develop procedures and controls to combat money-laundering and develop audit functions to evaluate such policies, procedures and control and;

(g) develop a procedure to audit compliance with this section.

Section 15

The Authority or the Director-General of CISU, upon application to a court and satisfying the court that there are reasonable grounds for believing that–

(a) a financial institution has failed to keep a business transaction record as required by paragraph (a) of section 14; or

(b) a financial institution has failed to report any business transaction as required by paragraph (b) of section 14, or

(c) an officer or employee of a financial institution is committing, has committed or is about to commit the offence of money laundering, may obtain a warrant to enter any premises belonging to, in the possession or control of the financial institution or any officer or employee of such institution and to search the premises and remove any document, material or other thing therein for the purposes of the Authority or the Director-General of CISU as ordered by the court and specified in the warrant.

**COMMENT:**

The vitality of the money laundering Act is to regulate money laundering in Sierra Leone. The provisions cited herein above refer to exchange of information between the agency established under the Act and other agencies of the government and individuals for the purpose of achieving the objective of the Act. Disclosing the transaction of customers to the relevant agencies seems like violating of their right to privacy, but this is a necessary price to be paid by the citizens to assist curb crime in society, even where it does not provide public access to information hold by the Agency.

# *The Companies Act, 2006*

## **PURPOSE:**

**T**he purpose of this Act is to provide for the registration and regulation of companies and for other related matters.

### Section 7

- (1) A member of the Commission who is—
  - (a) directly or indirectly interested in any company or enterprise the affairs of which the Commission is deliberating upon; or
  - (b) interested in any contract made or proposed to be made by the Commission, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Commission.
- (2) A disclosure of an interest under subsection (1) shall be recorded in the minutes of the Commission, and the member shall—
  - (a) not take part after such disclosure, in any deliberation or decision of the Commission with regard to the subject matter in respect of which his interest is thus disclosed;
  - (b) be excluded for the purpose of constituting a quorum of the Commission for such deliberation or decision.

### Section 73

- (1) Except when the register of members is closed under this Act, the register and the index of members' names shall, during business hours be open to the inspection of any member of the company without charge, and of any other person on payment of the appropriate charge.
- (2) The reference to business hours is subject to such reasonable restrictions as the company in general meeting may impose, but so that not less than 2 hours in each day is to be allowed for inspection.
- (3) Any member of the company or other person may require a copy of the register, or of any part of it, on payment of the appropriate charge; and the company shall cause any copy so required by a person to be sent to him within 10 days beginning with the day next following that on which the requirement is received by the company.
- (4) The appropriate charge is—
  - (a) under subsection (1), Le 5,000 or such sum as the company may determine for each inspection; and
  - (b) under subsection (3) Le5,000 or such sum as the company may determine for every 100 words (or fraction of 100 words) required to be copied.

(5) If an inspection required under this section is refused, or if a copy so required is not sent within the proper period, the company and every officer of it who is in default shall be guilty of an offence and be liable in respect of each offence to a fine not exceeding Le.3,000,000.

(6) In the case of such refusal or default the court may, by order, compel an immediate inspection of the register and index, or direct that the copies required be sent to the persons requiring them.

#### Section 179

(1) The copies of instruments creating any charge requiring registration with the Commission and the register of charges kept in pursuance of section 169 shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day shall be allowed for inspection) to inspect by any creditor or member of the company without fee, and the register of charges shall also be open to inspection by any other person on payment of such fee, not exceeding Le5,000 for each inspection, as the company may determine.

(2) If inspection of copies of instruments creating charges or of the register is refused, every officer of the company who is in default shall be guilty of an offence and be liable to a fine of Le500,000 for each day during which the refusal continues and the court may by order compel an immediate inspection of the copies of the register.

(3) If any refusal occurs in relation to a company incorporated or registered in Sierra Leone and an instrument creates a charge over any of its property in Sierra Leone, and the refusal relates to that charge, the court may by order compel an immediate inspection of the copies or register.

(4) The registration of any particular of charges under this part shall constitute actual notice of such particulars but not of the contents of any document referred to in the particulars or delivered with the registration, to all persons and for all purposes as from the date of registration.

### **Publication of financial statements**

#### Section 305.

(1) This section shall apply to the publication by a company of full individual or group financial statements, that is to say, the statements required by section 296 to be laid before the company in general meeting and delivered to the Commission including the director's report, unless dispensed with or under Part III of the Fifth Schedule, but does not apply to interim financial statements.

- (2) If a company publishes individual financial statements (modified or otherwise) for a year, it shall publish with them the relevant auditor's report.
- (3) If a company required by section 290 to prepare group financial statements for a year, publishes individual financial statements for that year, it shall also publish with them its group financial statements (which may be modified financial statements but only if the individual financial statements are modified).
- (4) If a company publishes group financial statements (modified or not) otherwise than together with its individual financial statements, it shall publish with them the relevant auditors' report.
- (5) References in this section to the relevant auditors' report are to the auditors' report under section 308, or, in the case of modified financial statements (individual or group), the auditors' special report under paragraph 10 of Part 11 of the Fifth Schedule.
- (6) A company which contravenes any provision of this section and any officer of it who is in default shall be guilty of an offence and be liable to a daily default fine of Le.500, 000.

Section 306.

- (1) This section shall apply to the publication by a company of abridged financial statements, that is to say, any balance sheet or profit and loss account relating to a year of the company or purporting to deal with such year, otherwise than as part of the full financial statements (individual or group) to which section 305, applies.
- (2) The reference in subsection (1) to a balance sheet or profit and loss account, in relation to financial statements published by a holding company, includes an account in any form purporting to be a balance sheet or profit and loss account for the group consisting of the holding company and its subsidiaries.
- (3) If the company publishes abridged financial statements, it shall publish with those statements, a statement indicating—
- (a) that the statements are not full financial statements;
  - (b) whether full individual or full group financial statements, according as the abridged statements deal solely with the company's own affairs or with the affairs of the company and any subsidiaries have been delivered to the Commission or, in the case of an unlimited company exempted under subsection (4) of section 296 from the requirement to deliver financial statements, that the company is so exempted;

## *The Companies Act 2009*

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(c) whether the company's auditors have made a report under section 310 on the company's financial statements for any year with which the abridged financial statements purport to deal; and

(d) whether any report so made was unqualified (meaning that it was a report, without qualification, to the effect that in the opinion of the person making it, the company's financial statements had been properly prepared).

(4) Where a company publishes abridged financial statements, it shall not publish with those statements the report of the auditors as is mentioned in paragraph (c) of subsection (3).

(5) A company which contravenes any provision of this section and any officer of it who is in default, shall be guilty of an offence and be liable to a daily default fine of Le.500,000

### **COMMENTS**

Section 7 of this Act encompasses transparency with respect to the issuances of contract to any interested person. Such a person should disclose all information pertaining to the nature of his or her interest, and should not be a party to deliberations in order not to influence decision making. Section 73 requires the register of the company to be made open to all members of the company for inspection, free of charge at least 2 hours during working hours. Any other person not a member of the company is subject to charges before such inspection may be granted to him. Any default by every officer to grant access to inspection of the registered is subject to a criminal offence and the court in addition may compel an immediate inspection.

Section 305 and 306, deals with the publication of financial statements and criminalized a company which contravenes any of the provisions as stated therein.

These provisions are geared towards providing the public with information about the companies they are investing in and giving information necessary to meet its regulatory obligations under the law. At the end, this process will pave way for transparency in business and protection of the public who are shareholders and investors in these companies

# *The Prevention And Control of HIV And AIDS Act, 2007*

## **PURPOSE**

**B**eing an Act to provide for the prevention, management and control of HIV and AIDS, for the treatment, counseling, support and care of persons infected with, affected by or at risk of HIV/AIDS infection and for other related matters.

Section 2. (1) The Government shall endeavour to promote public awareness about the causes, modes of transmission, transmission, consequences and means of prevention and control of HIV/AIDS through a comprehensive nationwide educational and information campaign through its various Ministries, Departments and Agencies.

(2) The educational and information campaign shall employ scientifically proven methods, focus on the family as the basic social unit and shall be carried out –

- (a) in all schools and other educational institutions;
- (b) in prisons, remand homes and other places of confinement;
- (c) among the uniformed forces; and
- (d) at all places of work and in all communities in Sierra Leone.

(3) In conducting the educational and information campaign, the Government shall ensure the involvement and participation of persons and groups or bodies affected by HIV/AIDS, including persons living with HIV/AIDS.

Section 3: (1) The Ministry responsible for education, utilizing official information provided by the Ministry, shall integrate instructions on the causes, modes of transmission, prevention and protection against HIV/AIDS and other sexually transmitted infections in subjects taught in public and private schools at primary, secondary and tertiary levels, including formal and non-formal systems, but such integration shall not be used for the sale or distribution of birth control devices.

(2) The formulation and adoption of the appropriate course content, scope and methodology at each educational level shall be determined after consultation with the relevant stakeholders.

(3) Where the integration of HIV/AIDS education is not feasible or appropriate at any level, the Ministry responsible for education shall design modules of HIV/ AIDS and AIDS prevention and control including life skills education.

*The Prevention And Control of HIV And AIDS Act, 2007*

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(4) The Ministry responsible for education, after consulting NAS and the Ministry shall ensure that every teacher or instructor of HIV/AIDS prevention and control course is adequately trained and duly qualified to teach the course.

Section 4. (1) HIV/AIDS education and information dissemination shall form part of the delivery of healthcare services by healthcare providers.

(2) The training of healthcare providers shall include education on HIV-related ethical issues such as confidentiality, informed consent and the duty to provide treatment and support.

5. (1) The Government shall ensure the provision of basic information and instruction on HIV/AIDS prevention and control to—

(a) employees of all Government Ministries, Departments, Agencies and local councils;

(b) employees of private and informal sectors.

(2) The information provided under subsection (1) shall cover issues such as confidentiality in the workplace and towards infected employees, workers stigma and discrimination.

6. Every local council, in collaboration with the District HIV/ AIDS Committees shall coordinate educational and information campaigns on HIV within its administrative area.

Section 15 The results of an HIV test shall be confidential and shall only be released—

(a) to the tested person;

(b) in the case of a child, to a parent or legal guardian of the child; but where the child consents to an HIV test directly under paragraph (b) of subsection (1) of section 12, the results shall be released to the child; or

(c) in the case of a person with a disability, which in the opinion of the medical practitioner undertaking the test renders him incapable of comprehending the result, to—

(i) the legal guardian of that person;

(ii) a partner of that person;

(iii) a parent of that person; or

(iv) an adult offspring of that person.

*The Prevention And Control of HIV And AIDS Act, 2007*

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Section 18 (1) No person shall disclose any information relating to the result of an HIV test or any related assessments to any other person except—

- (a) with the written consent of that person;
- (b) if that person has died, with the written consent of that person's partner, personal representative, administrator or executor;
- (c) if that person is a child, with the written consent of a parent or legal guardian; but any child who is pregnant, married, a parent or is engaged in behaviour with a risk of contracting HIV may, in writing directly consent to such disclosure;
- (d) if that person is unable to give written consent, with the oral consent of that person or with the written consent of the person with power of attorney for that purpose;
- (e) if in the opinion of the medical practitioner who undertook the test, that person has a disability by reason of which he appears incapable of giving the consent, with the written consent, in order, of—
  - (i) a legal guardian of that person;
  - (ii) a partner of that person;
  - (iii) a parent of that person; or
  - (iv) an adult offspring of that person;
- (f) to a person approved, by the Minister under section 13, who is directly involved in the treatment or counseling of that person;
- (g) for the purpose of an epidemiological study or research authorised by the Minister;
- (h) to a Court, where the information contained in the medical records is directly relevant to the proceedings before the court;
- (i) if the person to whom the information relates dies, to the Registrar of Births and Deaths appointed under the Births and Deaths Registration Act, 1983.

Section 31- Subject to section 32, no person shall undertake HIV/ AIDS related biomedical research on another person or on any tissue or blood removed from the person unless the research conforms to such guidelines as the Minister may issue.

Section 32. (1) No person shall undertake HIV/AIDS related biomedical research on another person or on any tissue or blood removed from the person except—

*The Prevention And Control of HIV And AIDS Act, 2007*

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- (a) with the written informed consent of that person; or
  - (b) if that person is a child, with the written informed consent of a parent or legal guardian of the child.
- (2) The person whose consent is sought to be obtained under subsection
- (1) shall be adequately informed of the aims, methods, anticipated benefits and the potential hazards and discomforts of the research.

**COMMENT**

The aim of this Act is for the prevention, management and control of HIV/Aids. The law mandates the release of information to the public on the awareness and prevention of HIV/Aids.

However Sections 15 and 18 stressed the confidentiality of information relating to the result of HIV test except on written consent, such information is given only to the person who requested for it. This is a limitation to the freedom of information policy that, all information should be made public. I think this limitation is justifiable as such disclosure may infringe on the right of the individual and shorten the life span due to psychological torture. Section 31 and 32 provides that no research shall be carried out on a person except with a written consent of that person or the parent or legal guardian if it is a child.

# *The Investment Promotion Act 2004*

## **PURPOSE:**

**T**he purpose of this Act is to promote and attract private investment both domestic and foreign for the development of production and value adding activities, to improve exports and provide employment opportunities; and generally to create an environment conducive to private investment and to provide for other related matters.

## **RELEVANT PROVISION**

### Section 17

Any person who, in the course of his official duties transfers or communicates proprietary information obtained from an investor to any other person to whom he is not authorised by any enactment or by the Minister to transfer or communicate such information commits an offence and is liable on conviction to a fine not less than three million leones or to imprisonment for a term not less than one year or to both such fine and imprisonment.

## **COMMENT:**

The law provides that matters relating to dispute between investor and government be settled amicable unless it goes out of hand then could be subject to arbitration. Also, Section 17 provides for secrecy with regards to proprietary information and makes it an offence against any person who violates the law.

# *The Government Budgeting And Accountability Act, 2005*

## **PURPOSE**

**T**he purpose of this Act is to secure transparency and accountability in the appropriation, control and management of the finances and other financial resources of Sierra Leone and to provide for other related matters.

## **RELEVANT LAWS**

Section 3 (1) Subject to the Constitution and this Act, the Minister shall have the management of the Consolidated Fund and the control and direction of all matters pertaining to the public moneys of Sierra Leone.

(2) Without prejudice to the generality of subsection (1), it shall be the responsibility of the Minister to—

(c) publish by Government Notice and by any other appropriate means, the progress of budget implementation on a quarterly basis;

(d) manage and control government cash, banking and payment arrangements, forecasting of cash flows, public sector accounting, the public debt and government financial assets and liabilities;

(f) promote and enforce transparency and sound management in respect of the revenue, expenditure, assets and liabilities of budgetary agencies;

(g) inspect the financial operations and asset management of budgetary agencies; and

(h) maintain, subject to subsection (3) of section 119 of the Constitution and any other enactment, the annual accounts of Sierra Leone and submit them to the Auditor- General for audit and cause copies to be published for general public interest.

Section 46. (1) Subject to the general direction and control of his Minister, the vote controller shall control and be accountable for the expenditure of money applied to the appropriate expenditure head or division, as the case may be, by an Appropriation Act and for all public moneys received, held or spent by or on account of the budgetary agency for which the expenditure head or division provides.

(2) Without prejudice to the generality of subsection (1), it shall be the function of a vote controller to—

(a) advise his Minister concerning the requirements of this Act or any other enactment relating to financial propriety;

*The Government Budgeting And Accountability Act, 2005*

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- (d) ensure effective internal audit and the operation of an audit committee;
- (e) operate open, competitive and transparent procurement;
- (f) ensure sound evaluation of projects;
- (i) collect departmental revenues efficiently;
- (j) report promptly to his Minister or other appropriate authority or both instances of fraud and corruption;
- ((l) submit timely financial reports;
- (m) cooperate with the Accountant-General's staff in compiling annual accounts on time;
- (n) chair the budget committee of his agency or establishment; and
- (o) maintain records to show achievement of budgeted activities and projects.

**COMMENT:**

The purpose of this Act is to ensure the control and management of public financing. In a bid to enhance access to information, the Minister must ensure that all information pertaining to the progress of budget implementation shall be published by the government or any other means as required appropriate. To enhance transparency and sound management of the revenue the Minister shall inspect the financial operation and assets management of budgetary agencies. This is buttressed under Section 3 of the law mentioned herein.

Section 46 makes provision for a vote controller, whose function will be to advice the Minister on the requirement of the Act or any other enactment regarding financial property and promotes openness, competitive and transparent procurement, informed the Minister promptly on issues of corruption and fraud.

# *The Road Traffic Act, 2007*

## **PURPOSE**

**T**he purpose of this Act is to consolidate, with amendments, the law relating to road traffic and to provide for other related matters.

## **RELEVANT PROVISIONS:**

Section 23. (1) If at any time during the period for which a licence remains in force, the licence holder becomes aware–

(a) that he is suffering from a disease that can affect his ability to drive which the holder has not disclosed to the Licensing Authority; or

(b) that a disease from which he has at any time suffered and which has been disclosed has become more acute since the licence was granted, the licence holder shall notify the Licensing Authority in writing of the nature and extent of his disability.

(2) A person who fails to notify the Licensing Authority as required by Subsection (1) commits an offence and is liable on summary conviction to a fine of not less than Le100,000 and not exceeding Le250,000 or to a term of imprisonment not exceeding 12 months or to both.

(3) Where the prescribed circumstances that obtain in relation to a person who is an applicant for, or the holder of, a licence or if the Licensing Authority has reasonable grounds for believing that a person who is an applicant for or the holder of a licence may be suffering from a disease, subsection (4) shall apply for the purpose of enabling the Licensing Authority to satisfy itself whether or not that person may be suffering from that or any other disease.

(4) The Licensing Authority may by notice in writing served on the applicant or holder -

(a) require the applicant or holder to provide the Licensing Authority, within a reasonable time specified in the notice, with an authorization as is mentioned in Subsection (6); or

(b) require the applicant or holder, as soon as is practicable, to arrange for that applicant or holder to be examined-

(i) by a registered medical practitioner appointed by the Licensing Authority; or

(ii) with respect to a disease of a prescribed description, by the officer of the Licensing Authority as may be so appointed, for the purpose of determining whether or not the applicant or holder suffers or has at any time suffered from any disease.

(5) Where the application is for, or the licence held is a learner's licence, the Licensing Authority may by notice to the applicant require the applicant to submit to a test of competence to drive as directed in the notice.

(6) The authorization referred to in paragraph (a) of Subsection (4) -  
(a) shall be in the prescribed form and contain the prescribed particulars specified in the notice by which it is required to be provided; and

(b) shall authorize a registered medical practitioner who may at any time have given medical advice or attention to the applicant or licence holder concerned, to release to the Licensing Authority any information which the medical practitioner may have, or which may be available to the medical practitioner with respect to the question whether the applicant or the licence holder concerned may be suffering, or may at any time have suffered from the disease and if so, to what extent.

Section 35. (1) A person shall not give instructions in the driving of a motor vehicle unless that person wears in the course of instruction, an instructor's Identity Card issued by the Licensing Authority.

(2) An instructor's Identity Card shall not be valid unless the certificate number of the instructor is embossed on it.

(3) A person who fails to comply with Subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding Le250,000 or to imprisonment for a term not exceeding 12 months or to both.

Section 36. (1) A certification by the Licensing Authority of a registered instructor remains valid for a period of one year from the date of registration.

(2) The Licensing Authority shall remove from the register the name of an instructor upon the expiration of each registration year unless the instructor has applied for a renewal of the registration.

(3) A person may, before his name is removed under subsection (2), apply to the Licensing Authority, in the prescribed manner, for the retention of his name in the register for a further period of one year.

(4) A person whose name is removed from the register under subsection (2), may apply to the Licensing Authority for his name to be entered again in the register.

Section 37. (1) Where the Licensing Authority refuses to register an instructor or a driving school, the Licensing Authority shall give notice

to the applicant in writing of the decision to refuse and the grounds for refusal within 28 days of the decision.

**COMMENT**

The licensing and motor vehicle Act requires that information relating to any disease which renders any licence holder incapable of driving should be disclosed to the licencing authority

# *The Census Act, 2002*

## **PURPOSE:**

**T**he purpose of this Act is to provide for the taking of census from time to time and for other related matters.

## **RELEVANT LAWS:**

### Section 3

(1) Subject to the Act, Statistic Sierra Leone shall have the general supervision and management in the taking of any census in Sierra Leone.

(2) without prejudice to the generality of Subsection (1) Statistic Sierra Leone, shall have the responsibility-

- (a) to mobilize resources for the implementation of census programmes;
- (c) to make such arrangement as are necessary for the collection, revision and collation of the information required to be obtained for the purpose of census;
- (f) to publish the result of the census as soon as may be possible;
- (g) to create a public awareness of the purposes, benefit and the need for the census;

### Section 8

Any person holding a post of an enumerator or above who produces an Identification Card duly signed by the chief census officer and who is employed in the execution of this Act, shall have authority to ask of any person whom they have reasonable cause to believe to be able to afford the information desired, such questions as may be necessary for obtaining any particulars required for the purpose of this Act, and every person refusing to answer or who knowingly gives a false answer to any such questions, shall for every such refusal or false answer be liable on summary conviction to a fine not exceeding ten thousand leones.

## **COMMENT:**

This Act requires the gathering of information for national census and the publication of result. It entails the creation of public awareness of the benefit, needs and purpose of the census. Any person employed is authorized to obtain information from any person whom he reasonably believes could afford it and failure to release such information as required attract summary conviction.

# *National Security And General Intelligence Act 2002*

## **PURPOSE**

**T**he purpose of this Act is to provide for the internal and external security of Sierra Leone; and other related matters.

## **RELEVANT PROVISION**

Section 4 (1) The objective for which the council was established was to provide the highest forum for the consideration and determination of the matters relating to the security of Sierra Leone.

(2) without prejudice to the generalities of subsection (1), it shall be the responsibility of the council-

(b) to ensure the gathering of information relating to the security of Sierra Leone and the integration of the domestic and foreign security policies so as to enable the security services and other departments and agencies of Government to co-operate more effectively to matters relating to national security.

Section 24 (1) Any person who is aggrieved by anything done by the Director-General or any other employee of CISU in the performance of the functions of CISU under this Act may lodge a written or oral complaint in respect thereof-

(a) To the Minister, where the complaint is against anything done by the Director-General; and

(b) To the Director-General, where the complaint is against anything done by any other employee of CISU.

(2) The Minister or the Director-General, as the case may be, shall examine the complaint and take such action as is appropriate within a period not exceeding thirty days from the date of the receipt of the complaint.

(3) A person who has made a complaint under subsection (1) may where-

(a) no action is taken within the period specified or;

(b) he is dissatisfied with the action taken by the Minister, or the Director-General as the case may be, submits a written complaint to the Chief Justice

Section 28. (1) The Tribunal shall not commence the hearing of a complaint referred to it by the Chief Justice unless it has submitted to

*National Security And Central Intelligence Act 2002*

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the Minister or Director-General, as the case may be a written notice thereof together with the substance of the complaint.

Section 29 A person appearing before the tribunal may be represented by a lawyer of his choice.

Section 30. (1) on the conclusion of the hearing of a complaint, the Tribunal shall notify the Minister or as the case maybe, the Director-General and complainant of its decision

Section 35. (1) An employee of ONS or CISU shall not disclose any information obtained in the performance of his duties under this Act except required under this Act or other enactment.

(2) Notwithstanding subsection (1) ONS or CISU may permit the disclosure of information by an employee prior to the approval of the National Security Coordinator or the Director-General under this Act-

(a) to a public officer who have authority to investigate an alleged contravention of law or to the Attorney-General and Minister of Justice, if the information is required by him for an investigation;

(b) to the Minister of Foreign Affairs, if the information relates to the conduct of the international affairs of the country;

(c) to the Minister of Defense or a person designated by him, if the information is relevant to the Defense of the country;

(d) to the Chief Justice, if the information is required by a competent court of judicature; or

(e) to the Minister of state or person in the public service, if the opinion of the National Security coordinator or Director-General, the disclosure of the information is essential in the public interest and the public interest outweighs any invasion of privacy that may result in the disclosure.

Section 36. (1) subject to the Constitution and section 35, no person shall disclosed any information that he obtained or to which he had access in the performance of his duties under this Act or to which he had access in the administration or enforcement of this Act and from which there can be inferred the identity of-

(a) any other person who is or was a confidential source of information or assistant to CISU; or

(b) any other person who is or was an employee engaged in covert operational activities of CISU;

(2) A person who contravenes subsection (1) commits an offence and is liable to imprisonment for a term not exceeding ten years.

*National Security And Central Intelligence Act 2002*

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Section 37 (1) any employee shall not be required to produce before parliament any document or other evidence where-

- (a) The speaker certifies-
  - (i) That the document or other evidence belongs to a class of evidence or document or evidence the production of which is injurious in the public interest; or
  - (ii) that disclosure of the evidence or the contents of the documents will be injurious to the public interest; or
- (b) the council certifies –
  - (i) that the document or other document belongs to a class, the production of which is prejudicial to the security of the state; or
  - (ii) that disclosure of the evidence or the contents of the document will be prejudicial to the security of the state.

(2) where there is a doubt as to the nature of a document or other evidence such is referred to in subsection (1), the speaker or the council, as the case maybe, shall refer the matter to the Supreme Court for determination whether the production, or the disclosure of the contents of the document or other evidence would be injurious to the public interest or as the case maybe, prejudicial to the security of the state.

38. the provision of disclosure in this part are without prejudice to the privileges conferred on a person under any other law in relation to disclosure of evidence.

## **COMMENT**

The Act requires that the council should have access to information relating to the security of Sierra Leone and integration of the domestic and foreign security to ensure co-operation of the security services and other department. This is clearly illustrated in Section 4 of the aforementioned Act. Section 24-30 gives an aggrieved person who is dissatisfied with the action or decision of the Director-General or employee as the case maybe, informed the Minister or the Director-General respectively. If not still satisfy, he can lodge a complaint to the Chief Justice.

Section 35 (1) deals with the confidentiality of information by any employee in the course of his duty. This is not a friendly law to the freedom of information policy. However by virtue of subsection (2), ONS or CISU may permit the disclosure of information by an employee prior to the approval of the National Security. This provision does not enhance freedom of information, that is, someone may look at sensitive information and determined whether it should be released or not. It does not conform to the accepted principles of access to information which requires that access to information should not be at the discretion of an officer in the public institution. Section 36 and 37 relates to the unauthorized disclosure of information, document and identity especially to parliament which may withhold the information from the public.

## *National Commission for Privatisation 2002*

### **PURPOSE:**

**T**he purpose of this Act is to establish the National Commission for Privatization to be responsible for the privatization and reform of public enterprises; to amend certain laws relating to public enterprises; and to provide for other related matters.

### **RELEVANT PROVISIONS**

Section 6. (4) A person shall cease to be a member of the commission on the following grounds-

(f) if he resigns in his office by written notice to the President.

Section 8.(6) A majority of the members may, by notice in writing signed by them request the chairman to summon a special meeting of the Commission for such purpose as maybe stated in the notice.

(7) The chairman, or in his absence the member appointed to act on his behalf shall summon a special meeting within five days of the receipt of the notice referred to in subsection (6).

(8) Any proposal circulated among all members and agreed to in writing by a two-third majority of all members shall be of the same force and effect as a decision made at a dulyS constituted meeting of the Commission and shall be incorporated in the minutes of the next succeeding meeting of the Commission.



*Media  
Rights  
Agenda*

**M**edia Rights Agenda (MRA) is an independent, non-governmental organisation established in August 1993 for the purpose of promoting and protecting press freedom and freedom of expression in Nigeria. MRA is registered in Nigeria, has Observer Status with the African Commission on Human and Peoples' Rights in Banjul, The Gambia.

MRA's programmes fall into four broad categories, namely: Litigation, Training, Research and Publications, and Advocacy, although its projects in these areas often overlapped. Its specific project activities include monitoring of attacks on the press, publication of reports on media issues, legislative lobbying, organizing seminars, conferences and workshops, research and litigation, particularly class actions and legal assistance to journalists who are physically attacked, arrested or detained, unjustly dismissed from their work or are harassed in other manners.

The Aims and Objectives of Media Rights Agenda are:

- a. to promote respect and recognition for press freedom and freedom of expression in Nigeria;
- b. to provide protection and support for journalists and writers engaged in the lawful pursuit of their professional duties;
- c. to promote the highest standards of professional ethics, integrity, training and conduct in the journalism profession; and
- d. to bring about a conducive social and legal atmosphere for the practice of journalism, and ensure the protection of the journalist's right not to be compelled to work against his or her conviction or disclose confidential sources of information.

Media Rights Agenda has an administrative structure made up of Trustees, the Executive Committee, Advisory Council and the Secretariat.

## **Executive Committee**

**Edetaen Ojo**, Executive Director  
**Tunde Fagbohunlu**, Director of Legal Services  
**Morenike Ransome-Kuti**, Director of Research  
**Austin Agbonsuremi**, Director of Publications  
**Eze Anaba**, Director of Projects  
**Tive Denedo**, Director of Campaigns  
**Angela Agoawike**, Member  
**Ibim Semenitari**, Member

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## **Secretariat**

**Edetaen Ojo**, Executive Director  
**Ayode Longe**, Senior Programme Officer  
**Joseph Izibili**, Programme Officer  
**Ekemini Francis**, Programme Officer  
**Kingsley Aisagbonhi**, Accountant  
**Oluwabunmi Bamiselu**, Admin. Manager  
**Ronke Akogun**, Secretary  
**John Gbadamosi**, Administrative Assistant  
**Rose Aikhuele**, Office Assistant  
**Mark Dakmi**, Security

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