



GOVERNMENT OF SIERRA LEONE

**OFFICE OF THE ATTORNEY-GENERAL AND MINISTRY OF JUSTICE
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**STATEMENT ON QUERIES REGARDING THE HUMAN RIGHTS COMMISSION AND HUMAN RIGHTS
DEFENDERS IN SIERRA LEONE**

A. INTRODUCTION

A.1. This Statement is a response to the various queries regarding the Human Rights Commission of Sierra Leone (HRCSL) and human rights defenders addressed to my office directly and indirectly through other channels of the Government of Sierra Leone (GOSL). More particularly, I wish to acknowledge the letters of 16 October 2018 by [REDACTED]

[REDACTED] and the letter by Mr. Michael Forst, the UN Human Rights Council (UN/HRC) Special *Rapporteur* dated 19 October 2018.

A.2. It is also to assure the International Community, our Donors and Partners, Non-Governmental Organisations and Civil Society Institutions concerned with defending the Human Rights, especially of the poor and vulnerable groups in Sierra Leone, of our commitment to support their work on Human Rights in the country.

A.3. The Statement explains the context of the Government of Sierra Leone institutional restructuring action affecting the HRCSL and the commissioners among others. It demonstrates how the dissolution of the HRCSL was necessary to safeguard the principles of pluralism and independence of NHRI and to ensure complicity with due process under domestic law. The Statement also proffers reason for the delay in responding formally to the queries and reiterates our Government's commitment to Human rights.

B. THE CONTEXT OF THE GOSL ACTION AFFECTING THE HRCSL

B.1. In March 2018, Sierra Leoneans elected a different political party into government. His Excellency President Julius Maada Bio inherited a depleted economy that was at near collapse. The Governance Transition Team Report (The GTT Report) which entailed a review of the state of the economy under the previous regime uncovered burdensome external and domestic debt, fiscal indiscipline, mismanagement of Ministries, Departments and Agencies, (MDAs), rampant

corruption including the award of inflated government contracts. The new administration has a sovereign mandate to ensure continuity in government, to stop leakages in government expenditures, to develop the country and to account for its stewardship of the State and the judicious use of its resources.

- B.2. Considering the above, the Office of the President issued a Public Notice on 26 June 2018, entitled “Restructuring of Boards, Commissions, Authorities, Agencies”, communicating Government’s ongoing action of restructuring the management and oversight boards of parastatals and other state institutions.
- B.3. Except for the National Electoral Commission, the Judicial and Legal Service Commission, the Law Reform Commission, the Sierra Leone Teaching Service Commission, and the National Council for Technical, Vocational and Other Academic Awards, **all other boards, commissions, authorities, and agencies including the HRCSL, together fell to be considered for restructuring.**
- B.4. The HRCSL was neither targeted or singled out in this national restructuring of state institutions. Notwithstanding, the government action provoked a backlash from our international partners and a spate of queries and criticisms regarding **only** the HRCSL and its commissioners out of a total number of **seventy institutions** that were affected.

C. THE NATURE OF THE QUERIES

- C.1. A News Release issued on 23 October 2018 by Mr. Michael Forst captioned “Sierra Leone must respect human rights law, says UN expert” states that:
“The Government’s decision to de facto dissolve the Commission’s current membership undermines the rule of law in Sierra Leone and distracts from efforts to promote and protect human rights, and human rights defenders in the country.... The Sierra Leonean authorities should immediately rectify their actions by allowing the commissioners to conclude their five-year term”.
- C.2. Mr. Forst requested a response from the Government of Sierra Leone within 60 days and advised that *“Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration”*. He also promised in his letter that he would *“indicate that [he has] been in contact with [GOSL] to clarify the issue/s in question.”*
- C.3. The GOSL expresses regret and concern that Mr. Forst issued a news release in a week within his promised 60-day period in which he requested the GOSL to respond. Also, his news release was issued without having waited to consider the account from the GOSL. Further, the news release failed to indicate that he had contacted the GOSL as he promised. Unfortunately, Mr Forst’s action ensured that the views of the Government and people of Sierra Leone **were not** reflected in that news release. This is an unfair situation that raises serious questions over his motive and objectivity.
The thrust of the queries that have been raised by the relevant actors against the Governments institutional reform relates to the so called “dismissal” of the Commissioners of the HRCSL.

D. JUSTIFICATION FOR THE DISSOLUTION OF THE HRCSL

D.1. The Republic of Sierra Leone committed herself to establishing a National Human Rights Institution, the HRCSL, pursuant to the Human Rights Commission of Sierra Leone Act, No. 9 of 2004 (hereinafter referred to as the HRCSL Act) with guarantees of its independence and effective operations.

D.2. The mode of establishing the HRCSL is consistent with the Paris Principles adopted by UN General Assembly Resolution 48/134 of 20 December 1993. Central to the Paris Principles is the obligation on all, including national governments, to respect pluralism and independence of national human rights institutions (NHRIs). I shall now explain how and why the government action to dissolve the HRCSL upholds the principles of pluralism and independence.

D.3. Respect For Pluralism

D.3.1. Section 3(1) of the HRCSL Act provides for the composition of the HRCSL and the powers of the President of the Republic of Sierra Leone to appoint Human Rights Commissioners. **It provides for five (5) Commissioners** of which there shall be a Chairperson, Vice Chairperson and three other Commissioners. Section 3(2) of the Act contains a **mandatory provision for the composition to include at least two lawyers and two women**. This is a fundamental requirement to ensure pluralism and gender equity in the composition of the HRCSL that was not adhered to by the previous government.

D.3.2. Mr. Usman Jesse Fornah, Ms. Grace Coleridge-Taylor, and Mr. Rashid Dumbuya in respect of whom the queries specifically relate were appointed to the HRCSL in 2017. The HRCSL had outstanding vacancies prior to their appointment as Commissioners. The vacancies occurred by the passing of [REDACTED] on 2 January 2016; and the second and final term of [REDACTED] ended on 10 December 2016.

D.3.3. When the former government appointed Mr. Fornah, Ms. Coleridge-Taylor, and Mr. Dumbuya presumably to fill the three vacancies, it chose not to renew the appointment of the then Chairperson of the HRCSL [REDACTED] and the Vice Chairperson, [REDACTED] and did not fill their positions with new appointments as mandated by Section 4 of the HRCSL Act. **This omission to fill the vacancies left the operation of the HRCSL with only three (3) instead of five (5) commissioners for well over a year in breach of Section 3(1) of the HRCSL Act.**

D.3.4. In addition, this composition of only three (3) Commissioners also failed to meet the mandatory pluralism requirement provided for in Section 3(2) of the HRCSL Act, namely **that the composition of the Commission shall include at least two lawyers and two women**. The requirement of having two lawyers was satisfied but that of two women was not satisfied. Mr. Fornah, Ms. Coleridge-Taylor, and Mr. Dumbuya, being sitting human rights commissioners at the time owed a duty to advise and ensure the

Commission has its full composition and plural make-up. The three named Commissioners failed in this duty.

- D.3.5. These failures represent a breach of the constitutive HRCSL Act, and fundamentally undermined the Paris Principles and the obligation to treat women fairly. Thus, the action of the new government to dissolve the HRCSL ushered in an opportunity for a New Direction that would ensure that the HRCSL is fully compliant with its Act and the Paris Principles.

D.4. Respect For Independence

- D.4.1. Section 137(7) of the Constitution of Sierra Leone, Act No. 6 of 1991 describes the procedure for the removal or dismissal of a Commissioner. This constitutional provision for the removal of a Commissioner is inserted into the HRCSL Act by Section 4(3)(g). Also, Section 3 and the Schedule to the HRCSL Act provide the detailed procedure for the appointment of Commissioners. Together these provisions fulfil the requirements under the Paris Principles to ensure or guarantee the independence of our HRCSL.

- D.4.2. The issue of removal or the dismissal of the Commissioners, is the key of queries and criticisms levied against the GOSL action affecting the HRCSL. Our critiques rely on Section 137(7) of the Constitution of Sierra Leone, Act No. 6 of 1991, to suggest that the GOSL has departed from laid down procedure on the removal or dismissal of the Human Right Commissioners.

- D.4.3. Permit me to clarify with emphasis that the procedure in Section 137(7) of the 1991 Constitution which is inserted in Section 4(3)(g) HRCSL Act, pertaining to "removal" of a Commissioner is not applicable in the circumstances of the action taken by the Government to restructure its institutions including the HRCSL.

- D.4.4. I invite you to kindly consider Section 4(3) (a to g) of the HRCSL Act especially section 4(3)(g) which applies section 137 (7) of the 1991 Constitution and produced hereunder. It states:

"A vacancy in the Commission shall occur if:

- a) a member's term expires, whether initially or after reappointment
- b) a member dies or is so physically or mentally incapacitated, as or to be unable to perform the functions of his office
- c) a member becomes bankrupt or insolvent
- d) the member wilfully fails or refused to participate in the work of the Commission without due course
- e) the member becomes a member of a political party
- f) the member resigns by written notice addressed to the President
- g) the member is dismissed or removed in accordance with the conditions stipulated in subsection 7 of Section 137 of the Constitution, as if he were a Judge of the superior court of judicature".

- D.4.5. You would observe from the foregoing, that out of the seven instances by which a vacancy can occur in our Human Rights Commission, it is only in one instance (section 4 (3) (g), that you are required to go by the procedure set out in Section 137 (7) of the Constitution. The remaining six of those instances speak to instances in which vacancies may occur by operation of law including systemic failure.
- D.4.6. As mentioned earlier, vacancies that ensued when two of the Commissioners [REDACTED] completed their second and final term by the 31st July, 2017, occurred by operation of law, pursuant to Section 4(3)(a), of the HRCSL Act as matter of course. But the previous government failed to constitute the full complement of 5 Commissioners as required by law.
- D.4.7. More importantly, the three appointed Commissioners conducted themselves in manners that contravened Section 4(3)(d)&(e) and thus caused the occurrence of vacancies in their offices. For instance, our investigations reveal that one or more of these commissioners wilfully failed or refused to participate in the work of the Commission. They discontinued on-going investigations and failed to investigate numerous human rights violations, on the instruction of the previous Government. Also, the commissioners became overtly partisan by several conducts during the recent elections that undermines the public confidence in the Commission.
- D.4.8. Consequently, the GOSL wishes to inform by the Statement all our partners, donors and civil society groups that its actions did not remove or dismiss any Commissioner of the Human Rights. By operation of law vacancies had occurred in the Commission in respect of all five Commissioners pursuant to Section 4(3)(d) &(e). Also, the HRCSL was non-compliant with the composition requirements of Section 3 of the HRCSL Act. This non-compliance is not merely restricted to the conduct of the individual Commissioners or in their collective capacity as a Commission. It goes to the root of their appointment - a failure on the part of the former administration and a failure on the part of the Commissioners to ensure the Commission had its full membership including two lawyers and women representing the society at large.
- D.4.9. For these reasons, the steps needed to rectify this systemic failure must be bold and effective as those taken by the GOSL in the Public Notice of 26 June 2018. Even the NHRI Director in her letter agrees that Governments are free to pursue reforms that they consider necessary with respect for the rule of law and due process (NHRI). No one can doubt that the procedures in the HRCSL Act as elaborated above are fair, objective and impartial.
- D.4.10. But for the action of the new Government of His Excellency Julius Maada Bio to restructure our institutions including the HRCSL, such non-compliance of the previous regime and the commissioners would have persisted and remained unrectified thereby undermining the independence of the HRCSL and legal compliance.

D.4.11. We have taken steps to invite applications and nominations for new Commissioners and the setting up of a panel to select and recommend new Commissioners as prescribed by our national law in keeping with due process and the rule of law. Mr. Fornah, Ms. Coleridge-Taylor, and Mr. Dumbuya were entitled to have their names nominated and the GOSL hoped that they took advantage of that opportunity.

E. REASONS FOR THE DELAYED RESPONSE TO THE QUERIES

- E.1. The HRCSL was amongst several other institutions that were dissolved for restructuring. We recognise the international and national importance of the HRCSL. However, when the HRCSL is positioned amongst other domestic institutions which also fell for restructuring, to single out the HRCSL or its commissioners as a talking point would have been unfair and partial in relation to the other institutions and their membership. As a government we must behave responsibly with an equal duty to protect and defend all our institutions and not just some.
- E.2. More importantly, it was strategically important to focus on reconstituting the Commission which required by procedure to maintain plurality and independence.
- E.3. It was also imperative to maintain a peaceful environment in which to engage with the various entities, that would constitute the panels to interview the applicants and nominees to become Commissioners as provided for under the HRCSL Act. I am pleased to state that this strategic consideration has ensured the maximum cooperation of all concerned entities and to complete the process of the interviews of prospective Commissioners.

F. COMMITMENT TO THE HRCSL

- F.1. I can confirm that we have completed the process of reconstituting the HRCSL within the strict compliance of the requirements of the legislation and recommendations have been made to His Excellency the President for the appointments of the Commissioners subject the approval of Parliament.
- F.2. The GOSL reiterates its commitment to HRCSL, which it considers to be fundamental to achieving its main goal of developing the country's human capital. We will endeavour to provide the necessary support for the HRCSL to undertake its core responsibilities including investigating human rights violation nationwide, monitoring of the Free Quality Education and school feeding which is one of the Governments flagship programmes, the monitoring of Health Care facilities, correctional Centres, public education and awareness raising on Human Rights across the country.
- We will also undertake a review of the 2004 legislation and structure of the HRCSL among other institutions to make it more efficient and effective to carry out its mandate.

G. CONCLUSION

- G.1. The HRCSL was not targeted or singled out in the Public Notice of 26 June 2018, which aims to restructure several state institutions. The Commissioners Fornah, Coleridge -Taylor and Dumbuya were not “dismissed” or “removed” from office to warrant the application of Section 4(3)(g) HRCSL Act and section 137(7) 1991 Constitution of Sierra Leone as has been erroneously misrepresented and canvassed. Vacancies had occurred affecting all the commissioners respectively by operation of law pursuant to Section 4(3)(a),(d) & (e).
- G.2. The three Commissioners conducted themselves in a manner that contravened Section 4(3)(d)&(e) and thereby caused the occurrence of vacancies in their offices. This is further compounded by the flagrant violation by the previous government and the then commissioners of the composition requirements under the HRCSL Act (i.e. five Commissioners including two women and two lawyers) and thereby undermined the Paris principles of pluralism, independence and legal compliance.

Dr Priscilla Schwartz

Attorney-General and Minister of Justice
Government of the Republic of Sierra Leone
06 January 2019

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Secretary to the President

Mr. Michael Forst, Special *Rapporteur*, the United Nations Human Rights Council (UN/HRC)