

An Assessment of Post-Legislative Scrutiny in the Parliament of Sierra Leone

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Abstract

Sierra Leone is among countries in Sub-Saharan Africa which have not institutionalized post-legislative scrutiny (PLS) in their national legislative processes. However, the inspiration to start the process of institutionalizing PLS is derived from the recent interest in 'better regulation' and the impetus in PLS of domestic legislation in Sierra Leone. This article tries to scrutinize the structure, procedures and emerging methodologies that are shaping the Parliament of Sierra Leone's (PoSL) ability to conduct PLS, and its interaction with the Executive. The question that guides this research is whether there has been PLS in Sierra Leone; if so, what are the steps, and if not why? Essentially, PLS remains an indispensable component of the legislative process, especially when parliament engages in legislative scrutiny to determine government action or inaction in implementing public policies. The article concludes that the inclusivity of the Fifth Parliament has created a political space for engaging in PLS. Second, absence of clearly defined procedures for PLS in the parliament, through the 1991 Constitution and the Standing Orders of the House allows MPs to raise matters on public policy and its implementation, and third, the urgency on the need to recalibrate the legislative process will provide a congenial environment for the operationalization of the PLS, especially with the Committee system.

Keywords: legislative process, parliament, Sierra Leone, post-legislative scrutiny.

A Introduction

Law making is an on-going process in the development of the country's polity, and post-legislative scrutiny (PLS) is an integral part of it. In Sierra Leone, even though structures exist to trigger PLS, standardized methodologies and procedures are largely absent. As a result, initiating PLS offers an opportunity towards the development of parliament's internal capabilities as well as ensuring tangible area of delivery within a parliamentary system, with significant implications on the broader governance framework. Amidst Parliaments' responsibility to monitor the extent to which the laws are passed and implemented to achieve the expected impact, PLS serves as an important dimension for increasing government accountability and adds value to the oversight role of parliament.

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B The Status of Post-Legislative Scrutiny in the Parliament of Sierra Leone (PoSL)

While the generality of Section 93 of the 1991 Constitution of Sierra Leone [Act No. 6 of 1991] created the legal framework for legislative oversight,¹ it is however not conclusive on PLS. In fact, while the revised 2006 Standing Orders attempted to give further explanations to the powers and functions of Parliamentary Committees, it is however equally dormant on its roles to PLS. As a result, there has never been a formalized PLS initiated or conducted by parliament. Even though Parliamentary Committees are expected to submit to parliament findings and recommendations of their respective reports, in most cases, these recommendations are forwarded to the Executive, which did not act on some of the recommendations, and in cases where it did, it was ineffectual. Where there is a need for legislative review, it is for the most part driven by the government agenda. Government set the agenda for Parliament which informed why there are more public rather than private Member bills before the House.²

Engaging in oversight activity is one of the ways in which Departmental Select Committee may conduct PLS in the PoSL. However, this tool has suffered weaknesses in the legislative process. The frequently used tool that has been sparsely applied is legislative reforms; a process that emanates from Ministries, Departments and Agencies (MDAs) and filters through the Legislative Committee as provided for in SO 70(7) which describes the functions and mandate of the Legislative Committee.

Currently, the PoSL cannot identify any workable structure to factor the need for post legislative scrutiny. Most times, it's the MDAs that lobby Parliament to initiate legislative amendments that can give tremendous authority to certain individuals within state institutions.³ For example, the amendment of the Environment Protection Agency Act in 2008 and the Sierra Leone Roads Authority Amendment Act of 2010 which led to the establishment of the Road Maintenance Fund Administration are cases in point where the respective MDAs lobbied Parliament to initiate amendments of the legislations amidst the lack of understanding of its impacts and outcomes.⁴

While parliament remains the legitimate organ to create structures for the operationalization of post-legislative scrutiny (PLS) in Sierra Leone, it has reneged on its responsibility and allowed the executive organ to create the Law Reform Commission which received and reviewed majority of legislative proposals without parliamentary participation.

Even though there is the possibility for PLS to take place during plenary debates, these debates track neither the objectives and impacts of legislations nor the desired outcomes of its enactment. In cases it does, there is no link between

1 Section 93 of the 1991 Constitution of Sierra Leone established Standing Committees in Parliament for Legislative, Finance etc.

2 Interview with Committee Clerk – Mr. Deen Momodu Rogers, 10 April 2018.

3 *Ibid.*

4 *Ibid.*

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the substantive issue and the view of the committees that are responsible to follow up because of the absence of the Committee on Government Assurances.

Standing Orders [19] can also be used to assess the impact of legislative outcomes by putting *Questions to Ministers* relating to public affairs for which the minister is charged with the responsibility or any other matter of administration for which she/he is responsible or which falls under his/her portfolio. Even though such procedures for PSL exist, its effectiveness is very much limited. Between 2012 and 2017 parliamentary sessions, only three questions were put to ministers.

Along similar perspective, Standing Orders (SO) 76[6] can also be used as a tool of PLS in Sierra Leone. This provision requires the *Minister to Respond* to the House within 14 days on matters under his/her purview after a Parliamentary Committee report has been adopted. However, the reality is that most of these oversight reports are laid but not adopted for the minister under whose purview the response is required within 14 days. The reason for this cannot be unconnected from the weak capacity of parliament to implement this viable tool.

C Challenges of Post-Legislative Scrutiny in Sierra Leone

Problematizing the issue of PLS continues to be crucial for deepening democratic governance in Sierra Leone. Despite its relevance to the adherence of the rule of law, the process of reviewing the implementation of legislation continues to be ignored. In Sierra Leone, while the risk continues to exist that legislations are adopted in the Chamber of Parliament, there is insufficient information to MPs on the actual state of their implementation. Furthermore, subsidiary legislations in most cases are not brought to parliament for approval.

The absence of a codified legal framework for PLS in the Parliament of Sierra Leone remains a challenge. Even the Standing Order is dormant about PLS and did not create any structure to further it. In fact, the procedural framework that is expected to guide the conduct of PSL is not codified, a situation that is even more challenging because of the absence of post-legislative manual or handbook.

More importantly, implementation of legislation consistent with its objectives continues to remain a complex matter depending on the mobilization of mechanisms, funds and different actors. In Sierra Leone, several factors continue to affect implementation of legislation, including the following: resistance from stakeholders, changing expectations of the people and insufficient resources. For instance, the budget limitations continue to remain a challenge to the effectiveness of parliament; as the institution has not received its second quarter of the 2017 budgetary allocation, which is over 1 billion Leones.⁵ This is against the backdrop that the parliament has not been allowed to develop its own budget and therefore its needs for funds left to the discretion of budget prescriptions of the Ministry of Finance. With the limited resources that parliament gets, most of

5 Interview with Former Clerk of Parliament – Mr Ibrahim Sesay, 17 May 2018.

them are spent on travels and daily subsistence allowance rather than for substantive programmatic requirements like oversight visits to MDAs.⁶

Nevertheless, while the potential benefit of increased and systematic PLS had been widely recognized, there is no consistent arrangement within PoSL to monitor the implementation of laws once they have been passed even though MPs with their extensive constituency experience are well-placed to monitor how new legislations are working out in practice. Whereas the established procedures in the PoSL indicates that the outcomes of Committee oversight should lead to proposals for legislations as contained in Section 93, Sub section 3(2) of the 1991 Constitution of Sierra Leone,⁷ the reality indicates the contrary, as most of the Committee reports frequently laid in the Chamber are not discussed.

In addition, there are no mechanisms in place to monitor the implementation of Parliamentary Committees' recommendations such as the Committee on Government Assurance in Ghana, which is made up of 25 members and mandated to scrutinize all proposals tabled by cabinet ministers and deputies in the floor of the House.⁸ In addition, the oversight interaction between the executive (*i.e.* MDAs and Parliamentary Committee) is more conciliatory in nature rather than being professional.⁹ Because most oversight visits are triggered through requests from Parliamentary Committees seeking logistical support from MDA's reinforces, the degree of compromise which undermines the outcomes of scrutinizing the implementation and outcomes of legislations or public policies.

Similarly, lack of requisite skills, experience and resource among MPs and the limited number of parliamentary staff serve as an impediment to the implementation of PLS in Sierra Leone. The weak capacity of most MPs also explains the reason for the lack of PLS. The qualification described for membership in parliament according to Section 75, Paragraph [d] of the 1991 Constitution is that "MPs should be able to read and write the English Language with a degree of Proficiency sufficient to enable him/her to take an active part in the proceedings of Parliament". This serves as a weak requirement for the technical expertise required for MPs to engage in reviewing, monitoring and evaluating the impacts and outcomes of previous legislations.

More importantly, while the argument from parliament indicate that post-legislative review would likely decrease defective legislations and reduce the need for amendments, this situation has not been exploited in the PoSL. During the Fourth Parliament of the Second Republic, the Director of the Legislative Affairs Department opined that "Parliamentary Committees are not using the Chamber

6 Interview with Former Clerk of Parliament – Mr Ibrahim Sesay, 17 May 2018.

7 Section 93, Sub-section 3(2) states that Committees shall investigate or inquire into the activities or administration of such MDAs as may be assigned to them, and such investigation, or inquiry, may extend to proposal for legislations.

8 See News Ghana (2014) 'Parliamentary Committee on Government Assurances inspect Road Project'. Available at: www.newsghana.com.gh (last accessed 4 May 2018).

9 Because of lack of funds, it has become imperative for MDAs to provide logistical support to Parliamentary Committees members who are supposed to monitor them. This invariably leads to compromise, especially when MDAs underwrite accommodation and transportation cost for Parliamentary Committee members for the duration of the oversight visits.

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as a forum to raise matters in the House as provided for in the rules of procedures to affect PLS".¹⁰

The absence of political will through the executive dominance on the legislative agenda has an underpinning effect on how political power is exercised and its implications on PLS. There are instances where decisions of parliament are guillotined by the Executive, and it became apparent over time that the Executive does not cherish accountability in instances where there is the political will by the leadership of the legislature.

D Summary of Findings

To sum up, PLS, if planned and executed well, can guarantee not just enactment of laws but can also guarantee their effective implementation and desired outcomes. Conversely, however, what happens is that both the government and the parliament tend to shift their focus to fresh political or legislative measures once a law has been passed. As a remedy, therefore, PLS can help to rectify this tendency and help the governmental system to evaluate the outcomes of legislations. Even though PLS appears as wasteful of parliamentary time, enacting non-implementable laws that fail to meet the objectives of the legislations has grave implications. Therefore, the culture of completing the stages of the legislative process, making room for lessons learned from PLS, can improve the entire legislative process.

This article has investigated the status of PLS by examining the structures, procedures and challenges of PLS in the PoSL. Essentially, PLS remains an indispensable component of the legislative process and enables parliament to scrutinize government action or inaction during the implementation of public policies. Against this backdrop, the initial findings of this article indicate that the current configuration of the Fifth Parliament has created inclusivity, political space and parliamentary dynamics that anticipate a legislative space for strengthening PLS; second, the absence of clearly defined procedures for PLS in parliament, through the 1991 Constitution and the Standing Orders of the House, allows MPs to raise matters on public policy and its implementation¹¹; and third, the urgency on the need to recalibrate the legislative process will provide a conducive atmosphere for the operationalization of the PLS especially with the Committee system.

E Recommendations

Apparently, however, the aforesaid conclusions have exposed the possibilities to engage in PLS in Sierra Leone if only the undermentioned recommendations are implemented.

10 Interview with Director, Legislative Affairs, Mr Cyril King, 22 June 2018.

11 Standing Order 76, Sub section 6, which aptly resonated with Section 107, Sub section 2 of the 1991 Constitution, states that "a minister under whose portfolio the matter raised in a report falls shall be requested to offer a comprehensive response to the house".

First, because the current Committee system pays less premiums to complete the stages of the legislative process to the point of engaging in PLS, there is the need to realign the Committee system with a focus on PLS and reorient the work of the subject-specific Parliamentary Oversight Committees; second, because the procedural document of the PoSL did not countenance PLS, the need to review the Standing Order of the PoSL is recommended to capture elements of the PLS that will enhance the framework for its operationalization; third, the diversity of the Fifth Parliament has created the opportunity to not only ensure the completion of the stages of the legislative processes but also strengthen the research component of the Parliamentary Oversight Committees; fourth, constitute a Committee on Government Assurances to not only track the outcomes of legislations but also inject innovative ideas that will ensure the realization of legislative impacts and outcomes; and finally, the need to increase the staff strength, capacity of MPs and staff, as well as budgetary allocation to the Parliament of Sierra Leone to engage in PLS, cannot be overemphasized.