

**LEGAL COMMENTARY ON THE BILL ENTITLED
THE SIERRA LEONE CITIZENSHIP (AMENDMENT) ACT 2005
BY MAURICE R, GARBER**

1. The law firm of Garber & Co. applauds the Government's initiative in enacting a law which permits dual citizenship for Sierra Leonean which is in line with similar laws passed in Ghana, Nigeria and other progressive countries. The firm was requested to conduct this study by the Center for Constitutional Rights & Development in Sierra Leone. A careful review of the parent Act, the Sierra Leone Citizenship Act 1973 and the above mentioned amending Bill to be placed before Parliament in my opinion may undermine the good intent of the Government in seeking to permit dual citizenship unless some of its provisions are re-examined and modified.

The proviso to Section 13 of the parent Act is rather confusing and rather than stating "Provided that a citizen by naturalization shall pay those taxes, rates, fees, charges and impositions that **are applicable to persons of his original citizenship**" should read 'Provided that a citizen by naturalization shall pay those taxes rates, fees, charges and impositions **as may be prescribed**'. That way, the Government maintains the flexibility to charge fees or impose other conditions while avoiding the problem of comparing and ascertaining the equivalent fees & taxes between the two jurisdictions.

2. The most important area is that dealing with "Resumption of Citizenship". It should be noted that Sierra Leoneans abroad may have acquired foreign citizenship by birth in a foreign country, by voluntary naturalization based upon prolonged residence in that country or by economic or political asylum having sought employment opportunities or safe refuge in that country.

The 1973 Act states clearly in **Section 10** that "**No person shall have Sierra Leonean citizenship and any other citizenship at one and the same time**". **Section 11** states "**Any person who upon attaining the age of twenty-one years is a citizen of Sierra Leone and also a citizen of another country shall cease to be a citizen of Sierra Leone upon attaining the age of twenty-two years (or in the case of a person of unsound mind, at such later date as may be prescribed) unless he has complied with paragraphs (a) (b) and (c) of Section 9.**"

Section 9, paragraphs (a) (b) & (c) require that a person applying for citizenship be of full age and capacity; has renounced in a manner satisfactory to the Minister, any other citizenship that he possesses and that he take the oath of allegiance to the republic of Sierra Leone. Section 10 is the declaration section while Section 11 seeks to automatically strip of Sierra Leonean citizenship anyone who has maintained dual citizenship up to one year after reaching the age of majority, namely age twenty-two. The Act is not clear as to the

consequence that flows where a person aged 30 or 40 for example acquires dual citizenship and while it can be implied that Section 11 also deprives such a person of his Sierra Leonean citizenship, the Section does not explicitly say so. From a litigation lawyer's perspective, where vested rights are being taken away, the statute is ambiguous, poorly drafted and therefore susceptible to legal challenge.

3. The "Resumption of Citizenship" provisions in the Bill are the most important and are contained in a new Section 19A which is to be inserted and added to the 1973 Act. In my opinion, the provisions therein and the procedure mandated for the resumption of citizenship are unduly cumbersome, potentially embarrassing to the declarant, somewhat unnecessary and the time frame for submission of the declaration too short. The Act requires that a Sierra Leonean citizen, of full age and capacity who has acquired foreign citizenship and by so doing, ceased to be a Sierra Leonean citizen may if he wishes to resume his citizenship;
 - (i) Furnish to the Minister a statement in writing together with a declaration that if he had not done the act or thing, he would have suffered significant hardship; or
 - (ii) At the time when the person did the act or thing, he did not know that he would, as a result of doing the act or thing, cease to be a Sierra Leonean citizen; and
 - (iii) That the person has maintained a close and continued association with Sierra Leone.

Then, if the Minister is satisfied as to the truth of the statements made and any possible alleged hardship or economic detriment that the person faced, and he is satisfied that the person is of good character, he may then register the declaration and upon registration, that person again becomes a Sierra Leonean citizen. Sections 19A (1) (2) & (3).

4. The 'resumption" provisions further arguably exclude a significant category of those who may have lost their Sierra Leonean citizenship under section 11 of the 1973 statute, namely those who acquired UK, US or foreign citizenship through birth in that foreign country.
5. It is difficult to argue that such persons fall within Section 19A (1) (a) which applies to those who acquired foreign citizenship "**by any voluntary or formal act**" on their part. A new born child is usually expelled from the mother's womb or removed via a caesarian section. It does not constitute a voluntary or formal act of the new born child. Even upon reaching majority, pursuant to Section 11 of the 1973 Act, the loss of citizenship is automatic upon reaching age 22 and it is the omission or failure to renounce the foreign citizenship acquired at birth

and declare an oath of allegiance to the republic of Sierra Leone that seals the fate of the Sierra Leonean adult. It follows that neither the child nor the adult Sierra Leonean can truly claim that he did voluntary or formal act or indeed, any act or thing the sole purpose of which was to acquire the citizenship of a foreign country as required by Section 19A (1) (b). The Act appears to unduly focus on voluntary acts by adults resulting in loss of Sierra Leonean citizenship thus excluding those who lost their citizenship by omission or inadvertently.

6. Consequently, it is proposed that section 19A (1) (a) be amended to read as follows; “where any citizen of Sierra Leone has at any time while a citizen of Sierra Leone (a) acquired the citizenship of any foreign country by **birth**, or any voluntary or formal act, **or omission**; or (b) done any act, **omission** or thing the sole or primary purpose of which or effect of which was or is to acquire the citizenship of a foreign country, and that person ceased to be a Sierra Leonean citizen by reason thereof, he shall “**by virtue of this Act be deemed not to have lost his citizenship or ceased to be a Sierra Leonean citizen and he shall without any further act on his part be deemed to have retained said Sierra Leonean citizenship throughout the relevant period prior to the operative date of the within Act.**”

7. By using such deeming provisions, this proposed amendment mandates automatic reversion of citizenship for all those Sierra Leoneans who may for one reason or the other have lost their Sierra Leonean citizenship. The factual declarations pertaining to significant hardship or detriment; ignorance of the law pertaining to his loss of citizenship; and the maintaining of close ties with Sierra Leone are unduly restrictive and attempt to pigeon-hole all categories of Sierra Leoneans that may have lost their citizenship or acquired foreign citizenship for a variety of reasons. There are no forms, declarations or time frames to be reckoned with and I humbly suggest that this is a more practical way of giving effect to and ensuring the resumption of citizenship for Sierra Leoneans abroad for the following reasons:
 - (i) Sierra Leoneans abroad are not faced with the dilemma of having to make embarrassing declarations to the Minister to justify or satisfy the minister that he ought to be permitted to resume his Sierra Leonean citizenship.
 - (ii) It ensures that there was no intervening period wherein Sierra Leonean citizenship was lost.
 - (iii) Sierra Leoneans abroad who are not aware that a Citizenship Amendment Act has been passed do not lose out on the opportunity of regaining their citizenship because more than two years have elapsed since the statute was passed

- (iv)** Some of the factual declarations requested by the Act may be inapplicable to some Sierra Leoneans who may as a consequence be unable to reclaim their citizenship.
- (v)** It takes away the inherent reluctance on the part of some Sierra Leoneans abroad to first acknowledge that they lost their Sierra Leonean citizenship and to now apply to a Minister in Sierra Leone to get it back.
- (vi)** It obviates the need for the various Sierra Leonean embassies, consulates and missions abroad to advise Sierra Leoneans in the Diaspora of the existence of the statute and the need to apply for resumption of citizenship within 2 years.
- (vii)** It obviates the need for the relevant Minister or Ministry to review, assess and respond to thousands or hundred of thousands of declarations from Sierra Leoneans all over the world who may wish resume their citizenship.
- (viii)** It takes away the administrative bottleneck that will invariably occur as thousands of Sierra Leoneans abroad mail or deliver their declarations to the Minister.
- (ix)** It obviates the need for the Minister to ascertain the truth of the factual statements made in the declaration and avoids the potential controversy that may occur if the minister refuses to permit a Sierra Leonean or a class of Sierra Leoneans from resuming their citizenship.
- (x)** It simplifies the process through which citizenship is resumed and ensures that the objective in passing the Act in the first place is achieved.

It is important and urgent that the Bill to be laid before parliament be robustly debated given these concerns and necessary modifications made to the Bill immediately so that its objective is not lost in its implementation. Take note that Section 76 (1) (a) of the 1991 Sierra Leone Constitution disqualifies from election as a member of Parliament a Sierra Leonean citizen who has voluntarily become the citizen of another country or is under a declaration of allegiance to such a country. It follows that this section must be amended in order to ensure that Sierra Leonean abroad can actively participate in the civic and political life of Sierra Leone. Alteration of this section of the Constitution must be in accordance with section 108 (2) of the Constitution.

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