

PUBLIC NOTICE

Supplement to the Sierra Leone Gazette Vol. CXXIX, No. 51

dated 10th September, 1998

PUBLIC NOTICE No. 8 OF 1998

Published 10th September, 1998

THE CONSTITUTION OF SIERRA LEONE, 1991
(Act No. 6 of 1991)

CRIMINAL PROCEDURE AND EVIDENCE RULES, 1998

Short title.

In exercise of the powers conferred upon him by subsection (5) of section 29 of the Constitution of Sierra Leone, 1991 the President hereby makes the following Rules—

1. These Rules shall be deemed to have come into operation on the 9th day of April, 1998. Commencement.

2. Where at the trial on indictment of any person charged with an offence or any other offence to which the Regulations relate, and that person— Absence of accused after plea.

(a) has entered a plea of not guilty to the charge; and

(b) is represented by a legal practitioner,

the trial shall, after the plea, proceed and shall not be invalidated or adjourned merely because of the subsequent absence of that person at the trial.

3. Where at the trial on indictment of any person charged with an offence or any other offence to which the Regulations relate, that person, after his rights or duties have been explained to him by the Court, fails or refuses to— Refusal to make plea, etc. at trial.

(a) make a plea to the charge or charges when called upon to do so, and the Court

enters a plea of not guilty in respect of the charge or charges;

- (b) participate in the arraignment process;
- (c) participate in the process involving the empanelling of a jury; or
- (d) do or say anything which in the course of the proceedings he has a right or duty to do or say,

the Court shall record such failure or refusal and the trial shall proceed and shall not be invalidated or adjourned merely because that person fails or refuses to make a plea, participate in either the arraignment or empanelling process or do or say any such thing, as the case may be.

Absence of legal representation.

4. (1) At a trial on indictment of any person charged with an offence or any other offence to which the Regulations relate, the person shall be permitted to defend himself in person or by a legal practitioner of his own choice.

(2) Notwithstanding the provisions of rule 2, where at a trial on indictment of any person charged with an offence or any other offence to which the Regulations relate, that person refuses or is unwilling to be represented by a legal practitioner of his own choice or by such legal practitioner as may be appointed by the Court at the expense of the State, (having due regard to the means of that person to engage the services of a legal practitioner), the trial shall proceed and shall not be invalidated or adjourned merely because of the absence of a legal practitioner representing that person.

Failure to cross-examine.

5. (1) At the trial on indictment of any person charged with an offence or any other offence to which the Regulations relate, the person charged shall be entitled to cross-examine in his own behalf or by the legal practitioner representing him, any witness called by the prosecution.

(2) Where at the trial on indictment of any person charged with an offence or any other offence to which the Regulations relate—

- (a) the person charged is not represented by a legal practitioner in the circumstances referred to in sub-rule (2) of rule 4; and
- (b) he fails or refuses, by words or conduct, to cross-examine any witness called by the prosecution, after his right to do so has been duly explained to him by the Court,

the trial shall proceed and shall not be invalidated or adjourned merely because that person has failed or refused to cross-examine the witnesses called by the prosecution.

5. Where at a trial on indictment of any person charged with an offence or any other offence to which the Regulations relate, that person fails or refuses to put up a defence at the trial, whether by words or by conduct, after his right to do so has been duly explained to him by the Court, the trial shall proceed and shall not be invalidated or adjourned merely because that person has not put up a defence, and that failure or refusal shall be recorded by the Court.

Refusal to put up defence.

7. Where at the trial of any person charged with an offence or any other offence to which the Regulations relate, a member of the jury dies or is discharged by the Court as being, through illness or any other reason, incapable of continuing to act, the jury shall nevertheless be considered as remaining for the purposes of that trial properly constituted and the trial shall proceed accordingly:

Continuance of trial where a juror dies or becomes incapable

Provided that the number of jurors shall not be reduced below nine.

8. At the trial of any person charged with an offence or any other offence to which the Regulations relate, the verdict of not less than two thirds of the original jury shall be held and received by the Court as the verdict of the whole jury.

Action on verdict.

9. At the trial of any person charged with an offence or any other offence to which the Regulations relate, secondary evidence, whether of audio or visual or documentary material, including photographs, shall be admissible in evidence if the original of such

Secondary evidence admissible.

material cannot be traced or produced without delay or expense or in the possession or control of the accused person or third party who cannot be traced without undue delay or expense.

Written statement by accused.

10. A statement made in writing by an accused person or photocopy thereof shall be admissible in evidence notwithstanding the absence of an earlier or the original statement made by the person.

Admissibility of written statements of other persons.

11. A voluntary cautioned written statement, including a copy thereof made to a constable and signed by the person by whom it made, containing any material particular tending to prove the guilt of any person charged with an offence or any other offence to which the Regulations relate, shall be admissible in evidence if the statement duly tendered by that constable, notwithstanding the absence of refusal of the person who made the statement to testify at the trial.

Voluntariness as criterion for admissibility of accused's statement.

12. At the trial of any person charged with an offence or another offence to which the regulations relate, in considering the admissibility of any statement made by that person, the only relevant consideration for the court shall be whether that statement was made freely and voluntarily, without the accused person being induced to make that statement by any promise of favour or by menaces or undue terror.

Bankers' Books Evidence Act not applicable.

1879 (42 Vict. CII.) 13. (1) The provisions of the Bankers' Books Evidence Act 1879 shall not apply to the bank accounts of any person who has undertaken or entered into any financial transaction with another person purporting to act for and on behalf of the Government of Sierra Leone.

(2) Subject to sub-rule (1), the manager or other appropriate officer of any bank which holds an account for a person who has had any financial transaction with any person purporting to act for and on behalf of the Government of Sierra Leone shall, on a written request of the Attorney-General or the Minister of Justice, directed to the manager or appropriate officer of the bank or financial institution,

(a) furnish the Attorney-General or the Minister of Justice with a duly certified extract and other information kept

that bank or other financial institution relating to the account of that person; and

- (b) freeze the operation of any account relating to that person or any other account held by that person at that bank or other financial institution.

(3) Any extract or other information furnished under this rule shall, without more, be received as evidence in any court.

(4) For the purposes of this rule, a person operates an account at a bank or other financial institution if he operates such an account in his own name or jointly with any other person or under a business name or in the name of a company.

(5) For the purposes of this rule a person enters into or undertakes a financial transaction with a person or institution purporting to act for and on behalf of the Government of Sierra Leone if he enters into any contract with such person or institution in his own name or jointly with any other person or in the name of a business or

14. Where there is any money in the bank account of any person who has entered into or undertaken any financial transaction with any other person or institution purporting to act for and on behalf of the Government of Sierra Leone, such money shall be forfeited to the Government of Sierra Leone, unless that person shows that the transaction was entered into in good faith and in the public interest and that the contract was duly performed.

Funds to be forfeited to the Government of Sierra Leone

15. (1) Where a person has been convicted of having caused financial loss by fraud or other impropriety to the Government of Sierra Leone, the Court shall, for the purpose of recovering the money, make an order—

Recovery of financial loss caused by fraud.

- (a) requiring that person to make good such loss by paying the amount of such loss into a special account to be kept at the Bank of Sierra Leone; or

- (b) mandating the manager or other appropriate officer of a bank or other financial institution in possession or control of monies belonging to that person to pay such monies amounting to the loss in question into a special account to be kept at the Bank of Sierra Leone; or
- (c) authorising an officer of the court to sell any personal or real property belonging to that person, where the full amount of the loss cannot be satisfied by monies belonging to that person, and to pay such monies or the proceeds of such sale into a special account to be kept at the Bank of Sierra Leone.

(2) A person, bank or other financial institution on which a court order is served, pursuant to this rule, shall comply with that order, and shall be indemnified against any action or claim relating to the due compliance with that order.

Voidable
transaction.

16. (1) Any transaction entered into by any person or institution with any person purporting to act for and on behalf of the Government of Sierra Leone shall be voidable at the instance of the Attorney-General and Minister of Justice.

(2) Any transfer of money or other property to or in the name of another person with the effect of preventing the Government of Sierra Leone from having access to such money or property under these Rules shall be voidable at the instance of the Attorney-General and Minister of Justice.

(3) Where any transaction has been declared void pursuant to sub-rule (1) or (2), any person who has received money or other property belonging to the Government of Sierra Leone as a result of any transaction entered into with any person purporting to act for and on behalf of the Government of Sierra Leone, or with the effect of preventing the Government of Sierra Leone from having access to

such money or property shall refund such money or property to the Government of Sierra Leone and in default thereof the provisions of these Rules shall apply accordingly.

17. **These Rules shall apply to—**

Application of Rules

- (a) all **financial** transactions entered into between a person and any other person purporting to act for and on behalf of the Government of Sierra Leone;
- (b) the trial of offences referred to in the Regulations;
- (c) the trial of offences charged in connection with the activities of the members of the Armed Forces Revolutionary Council;
- (d) the trial of a person charged in connection with the activities of the members of the **Armed Forces Revolutionary Council**;
- (e) any transaction entered into or undertaken or any offence alleged to have been committed between the 25th day of May, 1997 and the date of the expiration of the Public Emergency Regulations, 1998; and
- (f) acts or omissions occurring before the 25th day of May, 1997 and having a **connection with** the offences committed between the 25th day of May, 1997 and the 13th day of February, 1998 and activities of members of the Armed Forces Revolutionary Council or its collaborators.

PN No. 2 of 1998

18. **In these Rules unless the context otherwise requires —**

Interpretation.

“financial transaction” includes any contract or other agreement entered into with monetary consideration by a person or institution in his own name or jointly with any other person or in the name of a business or company;

“the Government of Sierra Leone” includes Public Corporations and other institutions established wholly or partly out of public funds.

P.N. No. 2 of 1998. “the Regulations” mean the Public Emergency Regulations 1998;

“trial” includes a trial by a court martial.

Revocation. P.N. No. 4 of 1998. 19. The Criminal Procedure and Evidence Rules, 1998 is hereby revoked.

MADE this 8th day of September, 1998.

Issued under my hand,

ALHAJI AHMAD TEJAN KABBAH,
President.