

THE STATE PROCEEDINGS ACT, 2000

ARRANGEMENT OF SECTIONS

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SIGNED this 8th day of August, 2000.

ALHAJI AHMAD TEJAN KABBAH,
President.

LS

No. 14



Sierra Leone

2000

The State Proceedings Act, 2000

Short title.

Being an Act to provide for the exercise of jurisdiction in respect of claims by or against the Government pursuant to the abolition by subsection (1) of section 133 of the Constitution of Sierra Leone of the petition of right process; and for other matters connected therewith.

[17th August, 2000] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I— PRELIMINARY

Interpretation.

1. (1) In this Act, unless the context otherwise requires:—

“Agent” in relation to the Government, includes an independent contractor employed by the Government;

“Attorney-General” means the Attorney-General and Minister of Justice;

“civil proceedings” includes proceedings in the High Court or a Magistrates’ Court for the recovery of fines or penalties;

“court” means the High Court or a Magistrates’ Court;

“officer” in relation to the Government, includes a Minister and any other officer of the Government;

“order” includes a judgment, decree, rule, award or declaration of court;

“proceedings against the Government” includes a claim by way of set-off or counterclaim raised in proceedings by the Government;

“rules of court” means rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of the Court;

“statutory duty” means any duty imposed by or under any enactment.

- (2) Any reference in this Act to the provisions of this Act shall, unless the context otherwise requires, include a reference to rules of court made for the purposes of this Act.

- (3) Any reference in Parts IV and V to civil proceedings by or against the Government, or to civil proceedings to which the Government is a party, shall be construed as including a reference to civil proceedings to which the Attorney-General or any other public officer is a party:

Provided that the Government shall not for the purposes of Part IV or V be deemed to be a party to any proceedings by reason only that they are brought by the Attorney-General upon the relation of some other person.

PART II— SUBSTANTIVE LAW

2. Where a person has any claim against the Government, that claim may be enforced by a suit against the Government, in accordance with this Act. Right to sue Government.

3. (1) Subject to section 4, no proceedings shall be commenced against the Government under section 2 until the expiration of three months after written notice of intention to commence the proceedings has been served by the claimant or his attorney or agent on the Attorney-General. Notice of intention to sue.

(2) The notice referred to in subsection (1) shall state the cause of action, the name and place of abode of the intended claimant and the relief which he claims.

4. (1) The notice required by section 3 shall not apply to any proceedings taken to invoke the original jurisdiction of the Supreme Court under subsections (1) and (3) of section 28 and sections 124 and 127 of the Constitution. Notice of proceedings not required in certain cases.

(2) Where, in any proceedings against the Government there is failure to give the notice referred to in subsection (1), the court before which the proceedings are taken shall not dismiss the proceedings but shall direct the plaintiff to give the Attorney-General the requisite notice and adjourn the proceedings accordingly.

5. Subject to this Act, the liability of the Government in contract is the same as that of a private person of full age and capacity in respect of— Government liability in contract.

- (a) claims arising out of any express or implied contract with the Government;
- (b) claims for liquidated or unliquidated damages in cases not arising in tort; and
- (c) claims for the recovery of taxes or duties wrongly paid or over-paid.

Government
liability in
tort.

6. (i) Subject to this Act, the Government shall be subject to all those liabilities in tort, which a private person of full age and capacity is subject—

- (a) in respect of torts committed by his servants or agents;
- (b) in respect of any breach of those duties which he owes to his servants or agents at common law by reason of being their employer; and
- (c) in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property:

Provided that no proceedings shall lie against the Government by virtue of paragraph (a) in respect of any act or omission of a servant or agent of the Government unless the act or omission concerned arose in the course or the employment of the servant or the agent and would have given rise to a cause of action in tort against the servant or agent or his estate.

(2) Where the Government is bound by a statutory duty which is binding also upon persons other than the Government or officers of the Government, then, subject to this Act, the Government shall, in respect of a failure to comply with the duty, be subject to all those liabilities in tort, if any, to which a private person of full age and capacity would be subject.

(3) Where any functions are conferred or imposed upon an officer of the Government as such, either by any rule of the common law or by any enactment, and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the Government in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Government.

(4) Any enactment which negatives or limits the amount of the liability of any Government department or officer of the Government in respect of any tort, committed by the department or officer, shall apply in relation to the Government as it would have applied in relation to that department or officer if the proceedings against the Government had been proceedings against that department or officer.

7. No proceedings shall lie against the Government under this Act in respect of— Government not liable in certain cases.

- (a) anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him; or
- (b) any act, neglect or default of an officer of the Government unless the officer—
 - (i) has been directly or indirectly appointed by the Government and was, at the material time, paid in respect of his duties as an officer of the Government wholly out of public funds or out of monies appropriated by Parliament; or
 - (ii) was, at the material time, holding an office in respect of which the Public Service Commission certifies that the holder of that office would normally be paid in the manner specified in subparagraph (i).

8. (1) Where, after the commencement of this Act, any servant or agent of the Government infringes a registered trade mark, copyright, patent or design and the infringement is committed with the authority of the Government, then, subject to this Act, civil proceedings in respect of the infringement shall lie against the Government. Provisions as to intellectual and industrial property.

(2) Except as is expressly provided by this section, no proceedings shall lie against the Government by virtue of this Act, in respect of the infringement of a registered trade mark, copyright, patent or design.

Indemnity and contribution.

9. Where the Government is subject to any liability by virtue of this Part, the law relating to indemnity and contribution shall be enforceable by or against the Government in respect of the liability to which it is so subject as if the Government were a private person of full age and capacity.

Provisions relating to Armed Forces.

10. (1) Nothing done or omitted to be done by a member of the Armed Forces of Sierra Leone while on duty as such shall subject either him or the Government to liability in tort for causing the death of another person or for causing personal injury to another person, in so far as the death or personal injury is due to anything suffered by that other person while he is a member of the Armed Forces of Sierra Leone if—

- (a) at the time when that thing is suffered by that other person, he is either on duty as a member of the Armed Forces of Sierra Leone or is, though not on duty as such, on any land, premises, ship, aircraft or vehicle for the time being used for the purposes of the Armed Forces of Sierra Leone; and
- (b) the Minister certifies that his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to a gratuity or pension under any enactment relating to the disablement or death in the Armed Force of which he is a member.

Provided that this subsection shall not exempt a member of the Armed Forces of Sierra Leone from liability in tort in any case in which the court is satisfied that the act or omission was not connected with the execution of his duties as a member of those Forces

(2) No proceedings in tort shall lie against the Government for death or personal injury due to anything suffered by a member of the Armed Forces of Sierra Leone if—

- (a) that thing is suffered by him in consequence of the nature or condition of any such land, premises, ship, aircraft or vehicle as aforesaid, or in consequence of the nature or condition of any equipment or supplies used for the purposes of those Forces; and
- (b) the Minister certifies as mentioned in paragraph (a) of subsection (1),

nor shall any act or omission of an officer of the Government subject him to liability in tort for death or personal injury, in so far as the death or personal injury is due to anything suffered by a member of the Armed Forces of Sierra Leone being a thing as to which the conditions referred to in paragraphs (a) and (b) of subsection (1) are satisfied.

(3) A certificate of the Minister—

- (a) that a person was or was not on any particular occasion on duty as a member of the Armed Forces of Sierra Leone; or
- (b) that at any particular time any land, premises, ships, aircraft or vehicle, equipment or supplies was or was not, or were or were not, used for the purposes of those Forces,

shall, for the purposes of this section, be conclusive as to the fact which it certifies

(4) For the purposes of this section—

“Minister” means the Minister responsible for defence;

Act No. 6
1991 “Armed Forces of Sierra Leone” has the meaning assigned by section 165 of the Constitution of Sierra Leone.

Acts done
under
statutory
powers.

11. Nothing in this Part shall extinguish or abridge any powers or authorities which, if this Act had not been passed, could have been exercisable by virtue of any powers or authorities conferred on the Government by any enactment, and, in particular, nothing in this Part shall extinguish or abridge any powers or authorities exercisable by the Government or the President, whether in time of peace or of war, for the purpose of the defence of Sierra Leone or of training, or of maintaining the efficiency of any of the Armed Forces of Sierra Leone.

PART III— JURISDICTION AND PROCEDURE

Civil
proceedings
by or against
Government
to be by rules
of court.

12. Subject to this Act, all civil proceedings by or against the Government shall be instituted in a court of competent jurisdiction and shall, as far as is practicable, be proceeded with in accordance with the rules of court applicable to proceedings between private parties.

Parties to
proceedings.

13. (1) Civil proceedings by the Government shall be instituted and conducted by the Attorney-General or by any person authorised by him.

(2) Civil proceedings against the Government shall be instituted against the Attorney-General as defendant.

(3) No proceedings instituted in accordance with this Act by or against the Attorney-General or any other officer shall abate or be otherwise affected by any change in the person holding the office.

Interpleader.

14. The Government may institute or be made a party to interpleader proceedings in the same manner in which a private person may institute such proceedings or be made a party thereto and the rules of court relating to interpleader proceedings shall, subject to this Act, apply.

Service of
documents.

15. All documents required to be served on the Government for the purposes of or in connection with any civil proceedings by or against the Government shall be served on the Attorney-General at the Law Officers' Department or on a representative of the Attorney-General in any part of Sierra Leone or on any officer specified under any other law.

16. In any case in which civil proceedings against Government triable in the High Court are instituted in a district registry, the Government may enter an appearance in the district registry or in the central office of the High Court in Freetown, and if an appearance is entered at the central office all steps in relation to the proceedings up to trial shall be taken as though the proceedings had been instituted at the central office.

Venue and related matter.

17. (1) If in a case in which proceedings are instituted by or against the Government in a Magistrates' Court an application in that behalf is made by the Government to the High Court, and there is produced to the court a certificate of the Attorney-General to the effect that the proceedings may involve an important question of law, or may be decisive in other cases arising out of the same matter, or are for other reasons more fit to be tried in the High Court, the proceedings shall be removed into the High Court.

Removal and transfer of proceedings.

(2) Where any proceedings have been removed into the High Court on the production of a certificate referred to in subsection (1), and it appears to the court by which the proceedings are tried that the removal has occasioned additional expense to the person by whom the proceedings are brought, the court may take account of the additional expense so occasioned in exercising its power in regard to the award of costs.

(3) Without prejudice to the rights of the Government under subsections (1) and (2), the provisions of any enactment relating to the removal or transfer of proceedings from a Magistrates' Court to the High Court or the transfer of proceedings from the High Court to a Magistrates' Court shall apply in relation to proceedings against the Government.

18. (1) In any civil proceedings by or against the Government, the court shall, subject to this Act, have power to make all such orders as it has power to make in proceedings between private persons and otherwise to give such appropriate relief as the case may require:

Nature of relief.

Provided that:—

- (a) where in any proceedings against the Government, any such relief is sought as might in proceedings between private persons be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and
- (b) in any proceedings against the Government for the recovery of land or other property, the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof, make an order declaring that the plaintiff is entitled as against the Government to the land or property or to the possession thereof.

(2) The court shall not in any civil proceedings grant an injunction or make an order against an officer of the Government if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained against the Government under the proviso to subsection (1).

Appeals and
stay of
execution.

19. Subject to this Act, all enactments relating to appeals and stay of execution shall, with any necessary modifications, apply to civil proceedings by or against the Government as they apply to proceedings between private persons.

PART IV— JUDGMENT AND EXECUTION

Interest on
debts,
damages and
costs.

20. (1) Section 17 of the Judgment Act, 1838 (which provides that a judgment debt shall carry interest) shall apply to judgment debts due from or to the Government.

1 and 2 Vict.
C. 110.

(2) Where any costs are awarded to or against the Government in the High Court, interest shall be payable upon those costs unless the court otherwise orders, and any interest so payable shall be at the same rate as that at which interest is payable upon judgment debts.

(3) Section 4 of the Law Reform (Miscellaneous Provisions) Act (which empowers courts of record to award interest on debts and damages) shall apply to judgments given in proceedings by or against the Government. Cap. 19

(4) This section shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

21. (1) Where in any civil proceedings by or against the Government, or in connection with any arbitration to which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government or against an officer of the Government as such, the proper officer of the court shall, on an application made in that behalf by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order: Satisfaction of orders against Government.

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs if any, ordered to be paid to the applicant.

(2) A copy of a certificate issued under this section may be served upon the Attorney-General by the person in whose favour the order is made.

(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accountant-General or such other accounting officer as may be appropriate shall, subject to section 23, pay to the person entitled or to the legal practitioner representing him the amount appearing by the certificate to be due to him together with interest (if any) lawfully due thereon:

Provided that the court by which any such order as is mentioned in this section is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole or any part thereof, shall be suspended, and if the certificate has not been issued, may order any such directions to be inserted therein.

(4) Except as is provided in this section, no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Government of any such money or costs as are referred to in this section, and no person shall be individually liable under any order for payment by the Government or any Government department or officer of the Government as such, of any such money or costs.

(5) This section shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

Execution by
Government.

22. (1) Subject to this Act, any order made in favour of the Government against any person in any civil proceedings to which the Government is a party may be enforced in the same manner as an order made in an action between private persons and not otherwise.

(2) This subsection shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

Cap. 24

(3) The provisions of the Debtors Act shall apply to sums of money payable and debts due to the Government.

(4) Nothing in this section shall affect any procedure which immediately before the commencement of this Act was available for enforcing an order made in favour of the Government in proceedings brought by the Government for the recovery of any fine or penalty, or the forfeiture or condemnation of goods, or the forfeiture of any ship or any share in a ship.

Attachment of
moneys
payable by
Government.

23. (1) Where any money is payable by the Government to some person who, under any order of the court, is liable to pay any money to any other person, and that other person would, if the money so payable by the Government were money payable by a private person, be entitled under rules of court to obtain an order for the

attachment thereof as a debt due or accruing due, the High Court may, subject to this Act and in accordance with rules of court, make an order restraining the first mentioned person from receiving that money and direct payment thereof to that other person:

Provided that no such order shall be made in respect of:—

- (a) any wages or salary payable to any officer of the Government as such;
- (b) any pension or other money which is subject to the provisions of any enactment prohibiting or restricting assignment or charging or taking in execution; or
- (c) any money payable by the Government to any person on account of a deposit in the Post Office Savings Bank.

(2) The provisions of subsection (1) shall, so far as they relate to forms of relief falling within the jurisdiction of a Magistrates' Court, have effect in relation to Magistrates' Courts as they have effect in relation to the High Court.

PART V— MISCELLANEOUS AND SUPPLEMENTAL

24. (1) Subject to and in accordance with rules of court, in any proceedings in the High Court or a Magistrates' Court to which the Government is a party, the Government may be required by the court, Discovery and interrogatories.

- (a) to make discovery of documents and produce documents for inspection; and
- (b) to answer interrogatories:

Provided that this section shall be without prejudice to any enactment or rule of law which authorises or requires the withholding of any document or the refusal to answer any question on the ground that the production of the document or the answering of the question would be injurious to the public interest.

(2) Any order of the court made under the powers conferred by paragraph (b) of subsection (1) shall direct by what officer of the Government the interrogatories are to be answered.

(3) Without prejudice to the proviso to subsection (1), any rules of court made for the purposes of this section shall be such as to secure that the existence of a document is not disclosed, if in the opinion of the Attorney-General, it would be injurious to the public interest to disclose the existence thereof.

Exclusion of proceedings *in rem* against Government.

25. (1) Nothing in this Act shall authorise proceedings *in rem* in respect of any claim against the Government, or the arrest, detention or sale of any ship, aircraft, cargo or other property belonging to the Government, or give to any person any lien on any such ship, aircraft, cargo or other property belonging to the Government, or give to any person any lien on any ship, aircraft, cargo or other property.

(2) Where proceedings *in rem* have been instituted against any such ship, aircraft, cargo or other property as is referred to in subsection (1), the court may, if satisfied, either on an application by the plaintiff for an order under this subsection or an application by the Government to set aside the proceedings, that the proceedings were so instituted by the plaintiff in the reasonable belief that the ship, aircraft, cargo or other property did not belong to the Government, order that the proceedings shall be treated as if they were *in personam* duly instituted against the Government in accordance with this Act, or duly instituted against any other person whom the court regards as the proper person to be sued in the circumstances, and that the proceedings shall continue accordingly.

(3) Any order made in accordance with subsection (2) may be made upon such terms, if any, as the court thinks just; and where the court makes any such order it may make such consequential orders as the court thinks expedient.

Application to Government of certain enactments.

26. This Act shall not prejudice the right of the Government to take advantage of the provisions of an enactment although not named therein; and it is hereby declared that in any civil proceedings against the Government the provisions of any enactment which could, if the proceedings were between private persons, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Government including a statute of limitations.

27. Writs of extent or *diem clausit extremum* are hereby abolished. Abolition of certain writs.

28. (1) Notwithstanding section 12, the Rules of Court Committee may make rules for the purpose of giving effect to this Act, and any such rules may contain provisions to have effect in relation to any proceedings by or against the Government in substitution for, or by way of addition to, any of the provisions of the rules applying to provisions between private persons. Rules of court.

(2) Without prejudice to the generality of subsection (1), provision shall be made by rules of court in respect of the following matters: —

- (a) for securing that where any civil proceedings are brought against the Government in accordance with this Act, the plaintiff shall, before the Government is required to take any step in the proceedings, provide the Government with such information as the Government may reasonably require as to the circumstances in which it is alleged that the liability of the Government has arisen and as to the departments or officers of the Government concerned;
- (b) for providing that in the case of proceedings against the Government the plaintiff shall not enter judgement against the Government in default of appearance or pleading without the leave of the court to be obtained on an application of which notice has been given to the Government;
- (c) for excepting proceedings brought against the Government from the operation of any rule of court providing for summary judgment without trial;

- (d) for providing that a person shall not be entitled to avail himself of any set-off or counterclaim in any proceedings by the Government for the recovery of taxes, duties or penalties, or to avail himself in proceedings of any other nature by the Government of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties:
- (e) for enabling evidence to be taken on commission in proceedings by or against the Government.

Pending proceedings. **29.** Except as otherwise expressly provided, this Act shall not affect proceedings which have been instituted and are pending at the commencement of this Act.

Financial provisions. **30.** (1) Any expenditure incurred by or on behalf of the Government by reason of this Act shall be defrayed out of moneys provided by Parliament.

(2) Any sum payable to the Government under this Act shall form part of and be paid into the Consolidated Fund.

Savings. **31.** (1) Except as otherwise expressly provided, nothing in this Act shall:—

- (a) apply to any criminal proceedings;
- (b) subject the Government to any greater liabilities in respect of the acts or omission of any independent contractors employed by the Government than those to which the Government would be subject in respect of such acts or omissions if it were a private person;
- (c) affect any enactment, rule of evidence or presumption relating to the extent to which the Government is bound by any Act;

(d) affect any proceedings in a Local Court.

(2) Where any property vests in the Government by virtue of any enactment or rule of law which operates independently of the acts or the intention of the Government, the Government shall not by virtue of this Act be subject to any liability in tort by reason only of the property being so vested; but this subsection shall be without prejudice to the liabilities of the Government under this Act in respect of any period after the Government or any person acting for the Government has in fact taken possession or control of any such property or entered into occupation thereof.

(3) This Act shall not operate to limit the discretion of the Court to grant relief by way of *mandamus* in cases in which such relief might have been granted immediately before the commencement of this Act, notwithstanding that by virtue of this Act some other and further remedy is available.

32. The Courts Act, 1965, is hereby amended by the repeal of Sections 22 and 24.

Amendment of
Act No. 31 of
1965.

33. The Petitions of Right Act is hereby repealed.

Repeal of
Cap. 23.

Passed in Parliament this *1st* day of *August*, in the year of our Lord *two thousand*.

J. A. CARPENTER,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correctly printed copy of the said Bill.

J. A. CARPENTER,
Clerk of Parliament.