Constitutional Mending of the Two-Thirds Threshold and the Limiting of Legislative Majority: How Section 108 of the Constitution of Sierra Leone is viewed in Commonwealth Comparative Perspectives.

I.S. Koroma[1]

Abstract

The August 10, 2026 decision of the Speaker of the Parliament of the Republic of Sierra Leone has created a controversy. That decisions taken during the committee stage of the Constitution of Sierra Leone (Amendment) Bill, 2025 that the amendment could be carried by a simple majority of members present and voting, rather than by the two-thirds majority prescribed by section 108(2)(b) of the Constitution of Sierra Leone (Act No. 6 of 1991) riles experts who now propose mending. The opposition All People's Congress temporarily walked out in protest; the Bill was nonetheless passed; and the Speaker indicated that the question would be referred to the Supreme Court for interpretation. This paper examines the legal question raised. It argues, first, that the dominant Commonwealth authority running from Harris v. Minister of the Interior (1952), through Bribery Commissioner v. Ranasinghe (1965), Hinds v. The Queen (1977), Ssemogerere v. Attorney General (2004), and Gonese v. Parliament of Zimbabwe (2020), treats prescribed amendment procedures as jurisdictional conditions on legislative competence rather than as internal rules of order, with the consequence that non-compliance renders the resulting instrument void and justiciable. Secondly, it argues that the phrase "Members of Parliament" in section 108(2)(b) most plausibly denotes the constitutionally constituted membership of the House, not those present at the moment of the division, and that the Zimbabwean Constitutional Court's reasoning in Gonese is directly transposable. Thirdly, it surveys non-Commonwealth models; the United States, Germany, France, Italy, Brazil, Ireland, and Colombia, to show that Sierra Leone's design is unexceptional and that comparative practice supports a strict reading. The paper concludes with the legal materials on which Parliament, citizens, and the Supreme Court may rely, and identifies the strongest counterarguments available to the Speaker's position.

Keywords: constitutional amendment, entrenchment, manner and form, supermajority, Sierra Leone, Commonwealth constitutional law, unconstitutional constitutional amendment

Introduction

Constitutional amendment rules are the rules that govern the making of rules. They determine who may change the terms of political competition, and on what conditions. When the meaning of such a rule is itself contested (and contested in the middle of an amendment process, by the officer presiding over that

1 Dr. Ibrahim Sorie Koroma is a Lawyer and former Secretary-General of the Sierra Leone Bar Association. He is also a Law and Policy specialist and practitioner in Sierra Leone and the United States of America where he also teaches Law, Diplomacy and International Relations. He is the Head and Principal Solicitor at the law firm Kornel Law LPC in Freetown Sierra Leone. The views expressed in this paper are personal and do not any way represent those of the institutions he work for. (Direct: ibrahimsko@yahoo,com).

process) the dispute reaches beyond ordinary parliamentary procedure into the foundations of constitutional government.[2]

That is the situation in Sierra Leone. Parliament had before it the Constitution of Sierra Leone (Amendment) Bill, 2025, a wide-ranging instrument drawing on the Justice Edmond Cowan Constitutional Review Committee Report and the recommendations of the Tripartite Committee. Among other things, the Bill proposed to replace the 55% first-round threshold for presidential election with a simple national majority coupled with a geographic-spread condition, to adopt proportional representation as the permanent method of electing ordinary members, and to entrench a 30% quota for women in political leadership.[3]

On 10 August 2026 the process broke down. Reporting indicates that the immediate trigger was a proposal to establish a Search and Nomination Committee for Electoral Commissioners; a measure the opposition actually supported.[4] What the All People's Congress (APC) insisted upon was that the vote be taken by a two-thirds majority, in order to establish the threshold governing the remainder of the Bill according to the Sierra Leone Telegraph.[5] A governing party member, Hon. H.M. Gevao, has argued that section 108(2)(b) does not govern a vote on an individual clause, and invoked section 91(1), under which questions before Parliament are ordinarily determined by a majority of members present and voting. The Speaker, Rt. Hon. Segepoh Solomon Thomas, accepted that argument and ruled accordingly. The APC caucus withdrew from the Chamber, its leader Hon. Abdul Kargbo observing that a body of 96 or 97 members was purporting to alter a document that required 100 members' votes. Parliament proceeded, and the Bill was reported passed by a simple majority of those present, with no voting figures released as reported. Should the president now assent the bill, it will be law and I hope he doesn't. This is the crux of the constitutional *faux pas*. The Speaker, himself in further bewilderment and without the authority to do so, has indicated that the constitutional question be referred to the Supreme Court but he did not say how.[6]

The arithmetic on the question is such that; Parliament comprises 81 seats for the governing Sierra Leone People's Party (SLPP), 54 for the APC, and 14 Paramount Chiefs (149 members in all). Two-thirds of 149 is 99.33, so the threshold is 100 affirmative votes. On the Speaker's construction, a governing caucus of 96 suffices provided the opposition is absent. On the APC's construction, it does not, and no amount of absence can lower the bar.[7]

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[2] Albert, R. (2019). Constitutional amendments: Making, breaking, and changing constitutions. Oxford University Press

[3] Strong claims have been made by opposition parties that the ruling government's primordial concern is losing the next election which appears to be obvious than ever. The Attorney-General's draft bill is materially and significantly different with the recommendations in both the Cowan Committee and the Tripartite Committee.

[4] Sierra Leone Telegraph. (2026a, August 11). *Sierra Leone's constitutional faultline: A walkout, a two-thirds dispute and the stakes for 2028*. https://www.thesierraleonetelegraph.com/sierra-leones-constitutional-faultline-a-walkout-a-two-thirds-dispute-and-the-stakes-for-2028/.

[5] See supra

[6] AYV News. (2026, August 11). *Parliament okays Constitutional Amendment Bill… Speaker calls for Supreme Court clarification*. AYV Media Empire. https://ayvnews.com/parliament-okays-constitutional-amendment-billspeaker-calls-for-supreme-court-clarification/.

[7] Opposition leader in Parliament Hon Abdul Kargbo made this case strongly in the well of parliament and argued that any amendment of the constitution without the required two-thirds is a breach of constitutional requirement and thus consequentially treasonous which is why he admonished his team to step out of the well and the record of proceeds to show that the opposition did not take part in the unlawful act.

In the melee, and in contemplation of the different perspectives possibly taken or to be taken, this paper addresses four questions; what does Commonwealth case law say about amendment where a two-thirds requirement applies? What non-Commonwealth experience is instructive in this circumstance? What legal materials support a strict reading of section 108? And what are the strongest arguments the other way? A preliminary note on standpoint: what follows is comparative legal analysis, not a legal advice, and the Supreme Court of Sierra Leone is the only body competent to settle the main question authoritatively.

The Domestic Legal Framework

Supremacy

Section 171(15) of the 1991 Constitution declares the Constitution to be the supreme law of Sierra Leone and provides that any other law inconsistent with it is, to the extent of the inconsistency, void and of no effect.[8] Notwithstanding that, considering the importance of the supremacy clause to any argument especially on this issue, its placement in the chapter styled "Miscellaneous" must be publicly criticised as a drafting infelicity, although its normative force is not diminished by its location.[9]

The amendment procedure

Section 108 establishes a graduated procedure of increasing stringency. Under section 108(2)(a), the text of an amendment Bill must be published in at least two issues of the Gazette before its first reading, with not less than nine days between the first and second publications. Under section 108(2)(b), the Bill must be "supported on the second and third readings by the votes of not less than two-thirds of the Members of Parliament."[10]

Section 108(3) adds a further, more demanding requirement for a Bill enacting a new Constitution or altering specified entrenched provisions; a list that includes sections 46, 56, 72, 73, 74(2), 74(3), 84(2), 85, 87, 105, 110–119, and much of Chapter VII on the judiciary. Such a Bill may not be presented for assent unless, after passage by Parliament in the form in which it was passed, it has been submitted to and approved at a referendum. Section 108(4) fixes the referendum threshold: approval requires the votes of not less than one-half of all persons entitled to vote in parliamentary elections, and not less than two-thirds of all valid votes cast.[11] The Speaker must also certify compliance before the Bill goes for assent. In two earlier reform efforts (the 1993 Commission chaired by the late Ahmad Tejan Kabbah and the 2008 committee led by Dr. Peter Tucker) the constitution failed precisely for want of a referendum.

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[8]This is foundational to our general understanding of where things affected by the Constitution Act No. 6 of 1991, stand.

[9]The author's criticism of Sierra Leone's statutory drafting style and deficiency is well known and documented. Some statutes are badly written, unedited and curiously unverified in substantial figures.

[10]The Commonwealth Legal Information Institute (n.d.) Constitution of the Republic of Sierra Leone 1991; Chapter VI: The Legislature. https://www.commonlii.org/sl/legis/const/1991/6.html.

[11]The author notes the high and hard requirement for constitutional amendment for entrenched clauses. The same constitution would hardly have been drafted with ease of enabling an individual to authoritatively or simple act on his belief for a constitutional amendment of the non-entrenched clauses of the constitution even if such a person is the Speaker of the Parliament.

This layered design is not accidental. Publication ensures notice; the supermajority ensures cross-party assent; the referendum, where required, ensures popular ratification. Each stage protects a different constituency against a different risk.

Section 91 and the general rule

The now famous section 91(1) provides that, except as otherwise provided by the Constitution, questions before Parliament are determined by a majority of the votes of the members present and voting. This is the provision on which the Speaker's ruling rests. Its own terms, however, contain the answer to the question it is invoked to resolve. It ‘‘operates except as otherwise provided,’’ and section 108(2)(b) does otherwise provides. Taking the interpretation of Speaker Thomas regarding voting on particular clauses (at the Committee Stage as not requiring two-thirds), it would be an anomaly if at that stage the action of parliament was to amend any part of the constitution. If Speaker Thomas' interpretation were to be sound, it implies that the majority members of any party present in Parliament can alter the Constitution on their own by simple majority or when the opposing party members would be absent with two-thirds of their members present, at any time by simply changing the Parliamentary Standing Orders. That is an absurdity that was not contemplated at the making of the 1991 Constitution and it renders section 108 unnecessary.

Standing Orders

The Parliamentary Standing Order 44(1) reproduces the general rule that questions in Parliament or in a Committee of the Whole House are decided by a majority of members present and voting.[12] Standing Order 44(3), however, expressly recognises the exception, providing that a Bill altering the Constitution requires two-thirds support on its second and third readings, and doing so expressly by reference to section 108. The Standing Orders are subordinate instruments made under the Constitution; they cannot enlarge Parliament's competence, and on this point they do not purport to.[13]

Jurisdiction

Section 124(1) confers on the Supreme Court original jurisdiction, to the exclusion of all other courts, in all matters relating to the enforcement or interpretation of any provision of the Constitution, and where any question arises whether an enactment was made in excess of the powers conferred by the Constitution.[14]. Section 127 provides for enforcement. The Court has recently exercised this jurisdiction in an electoral-system dispute brought by Hon. Abdul Kargbo and another[15] concerning the proportional representation directive ahead of the 2023 elections, a reminder that the machinery is available and used.[16]

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[12]This S. O. may have an influence on decisions before the House and may also have grave consequences when misapplied.

[13]S. O. are not part of the constitution. They aid parliamentary procedures and have little contribution to parliaments duty to the constitution. They are self governing rules while the constitution has a universal legal order with consequences.

[14] Constitution of Sierra Leone, Act No. 6 of 1991. https://www.sierra-leone.org/Laws/constitution1991.pdf.

[15] Hon. Abdul Kargbo & Another v. Attorney General & Minister of Justice & Anothr (SC APP 6 of 2022) [2023] SLSC 1 (27 January 2023)

[16] allAfrica. (2023, February 8). Sierra Leone: Supreme Court okays PR system for 2023 elections. https://allafrica.com/stories/202302080429.html.

The critical point for present purposes is that section 124(1) expressly contemplates review of whether an enactment exceeded constitutional power. A Bill passed without the majority section 108 requires is precisely such an enactment.

Commonwealth Case Law on Supermajority Amendment Requirements

Commonwealth jurisprudence on this question is unusually settled. Five propositions emerge, each supported by authority at the highest level.[17]

Prescribed procedures are conditions of competence, not rules of convenience. The foundational authority is *Bribery Commissioner v. Ranasinghe [1965] AC 172*.[18] Section 29(4) of the Ceylon (Constitution) Order in Council 1946 provided that no Bill amending the Order could be presented for assent unless it bore a certificate under the hand of the Speaker that the votes in favour amounted to not less than two-thirds of the whole number of members, including those not present. The Bribery Amendment Act 1958 carried no such certificate. *Ranasinghe,* convicted by a tribunal constituted under that Act, contended that his conviction was void.

The Privy Council agreed. Lord Pearce rejected the proposition that a legislature, once established, possesses some inherent power derived from the mere fact of its establishment to make a valid law by bare-majority resolution where its own constituent instrument has said that no such law is valid unless made by a different majority or process.[19] He added the observation most directly on point for Sierra Leone: the minority are entitled under the Constitution to have no amendment that is not passed by a two-thirds majority, and the limitation thus imposed on some lesser majority does not limit the sovereign power of Parliament itself, which may always pass the amendment whenever it chooses with the requisite majority.[20]

That reasoning answers the objection that a strict reading gives the opposition a veto. It does not. It gives the opposition a ‘‘stake.’’ The government retains full power to amend on the condition, prescribed by the people in 1991, that it first assemble two-thirds support.

Ranasinghe also disposes of the argument that the courts must accept an official copy of an Act as conclusive of its validity. The Board held that the courts may look behind the amending Act to determine whether it was validly passed.[21] This is the doctrinal foundation of justiciability in every subsequent case discussed below.

Non-compliance produces invalidity, not irregularity

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[17] This analysis is tailored for the argument that has emerged since the passing of the bill. The case-law directly address the main question.

[18] https://www.cambridge.org/core/journals/federal-law-review/article/abs/bribery-commissioner-v-ranasinghe/6BA8CEEA303244EF359484023EBD8054.

[19] Colquhoun, J. R. (1965). *Bribery Commissioner v. Ranasinghe* (Constitutional law: Manner and form provisions). Federal Law Review, 1(2), 327. http://www.austlii.edu.au/au/journals/FedLawRw/1965/4.html.

[20] This understanding eluded the Speaker and the majority members of the governing party who have made a strong case for the amendment and in fact, pushed for the selling of the idea that a simple majority suffice to enable parliament move forward with the amendment.

[21] Colquhoun, 1965 supra

For citizens who argue that that the non-compliance produces an invalidity, the decision in *Harris v Minister of the Interior 1952 (2) SA 428 (A)*[22] is the classic illustration. Sections 35 and 152 of the South Africa Act 1909 entrenched the Cape franchise: it could be altered only by a two-thirds majority of both Houses sitting together in joint session. The Separate Representation of Voters Act 46 of 1951 was passed by the House of Assembly and the Senate sitting separately, by simple majority. The Appellate Division held that the Statute of Westminster had left the entrenched clauses intact, that the courts accordingly had power to declare an Act invalid for non-conformity with sections 35 and 152, and that the 1951 Act, being inseverable, was null and void and of no legal force or effect.[23]

There are two features of *Harris* to pay attention to. Firstly, the court distinguished between what Parliament may do by legislation and what the constituent elements must do in order to legislate; a distinction that maps exactly onto the Sierra Leonean argument that section 91(1) governs Parliament's ordinary business while section 108 governs its constituent function.[24] Secondly, the government's response was not to comply but to construct a High Court of Parliament, staffed by legislators, to review the judgment. The subsequent history is a cautionary tale about what happens when a government treats an adverse ruling on amendment procedure as an obstacle to be legislated around rather than a limit to be respected.[25]

The Privy Council reached the same destination in *Hinds v The Queen [1977] AC 195.*[26] The Jamaican Gun Court Act 1974 was passed as an ordinary Act, without recourse to the special procedures of sections 49 or 50 of the Jamaican Constitution, which classify certain provisions as entrenched or deeply entrenched. Lord Diplock held that provisions of the Act which encroached on constitutionally protected judicial functions were inconsistent with the Constitution and invalid, though severable. *Hinds* stand for a broader proposition too: Westminster-model constitutions in the Commonwealth share a common pattern of draftsmanship and are not to be construed like ordinary legislation.[27]

The line reaches back further still, to *Attorney-General for New South Wales v Trethowan [1932] AC 526*, where the Privy Council upheld a restraint on the presentation for assent of a Bill that had not satisfied a statutorily prescribed manner-and-form condition. The "manner and form" principle those cases articulate is the direct ancestor of the reasoning applied across modern African constitutional courts.[28]

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[22] https://r.search.yahoo.com/_ylt=Awr92wY94oFqSwIAqLcPxQt.;_ylu=Y29sbwNncTEEcG9zAzEEdnRpZAMEc2VjA3Ny/RV=2/RE=1788106557/RO=10/RU=https%3a%2f%2fwww.studocu.com%2fen-za%2fdocument%2funiversity-of-kwazulu-natal%2fconstitutional-law%2fharris-v-minister-of-the-interior-case-analysis-1952%2f140157831/RK=2/RS=XqR28XjlW3gl1EzTCSC6zj9oH5g-

[23] Studuco, 1953; Canadian Bar Review 1953: https://r.search.yahoo.com/_ylt=Awr93rQH5oFqOwIAlhMPxQt.;_ylu=Y29sbwNncTEEcG9zAzEEdnRpZAMEc2VjA3Ny/RV=2/RE=1788107528/RO=10/RU=https%3a%2f%2fwww.canlii.org%2fw%2fcanlii%2f1953CanLIIDocs23.pdf/RK=2/RS=_92RIN2lmoz7oidGaH39.5u4l8I-

[24] In my view, this is the confusion in the minds of majority MP Hon. H.M. Gevao which was transplanted into the mind of Speaker Thomas, resulting into the uncertainty created by the pronouncement in the well of Parliament of August 10, 2026.

[25] *Harris and Others v Minister of the Interior and Another 1952 (2) SA 428 (A) (South Africa).*

[26] See Hinds v The Queen [1977] AC 195 (PC); https://vlex.co.uk/vid/hinds-et-v-the-804976589

[27] The ordinary construction of this means not the unwritten nature, but the strength and intentionality of the constitution.

[28] The author has invested a lot of time to research constitutional provisions and constitutionalism in Africa and has written the West African volume of the series to be published.

How the African apex courts have applied the principle to modern amendment clauses

Paul K. Ssemogerere & Ors v Attorney General, Constitutional Appeal No. 1 of 2002 [2004] UGSC 10,[29] is the most closely analogous Commonwealth authority to the Sierra Leonean dispute, because it concerns 'how a vote is taken' and not merely 'how many votes are cast.'[30] The litigation began when the Referendum and Other Provisions Act 1999[31] was challenged for having been passed without the quorum required by article 88 of the Ugandan Constitution; the Constitutional Court struck it down in 2000. Parliament responded by enacting the Constitution (Amendment) Act 2000 (Act 13 of 2000), whose effect was, among other things, to nullify that judgment.

The Supreme Court of Uganda held Act 13 of 2000 invalid. The amendments to articles 88, 89, 90, and 257 were declared null and void because the method of voting used by Parliament in passing the Bill was not the head-count method required, and because the Bill presented for assent lacked the requisite certification.[32] The Court further held that the President is not authorised to assent to a Bill seeking, expressly or indirectly, to amend any provision of the Constitution unless it is accompanied by the Speaker's certificate of compliance, and that where an amendment reached provisions requiring popular ratification, Parliament acting alone could not effect it.[33] Justice Twinomujuni JA's characterisation, endorsed on appeal, was that such an amendment could survive only in a jurisdiction where Parliament is supreme in the United Kingdom sense; in Uganda it amounted to a subversion of the sovereignty of the people and the supremacy of the Constitution.

For the legal pundits and the court's consideration, *Ssemogerere* matters for three reasons; it confirms that the 'modality' of a constitutional vote (not merely its bare outcome) is justiciable; it confirms that certification by a presiding officer is a substantive condition rather than a formality; and it demonstrates that a court will not be deterred by an argument that invalidation will paralyse Parliament. When the Attorney-General later sought to have the judgment recalled on precisely that ground, the application failed.[34]

What the "Two-thirds of the Members" actually means is the constitutional membership

Also for the courts and legal pundits, *Gonese & Anor v. Parliament of Zimbabwe & Ors, Judgment No. CCZ 4/2020 (31 March 2020)* is the single most directly transposable authority. Section 328(5) of the Zimbabwean Constitution requires a Constitutional Bill to be passed by "the affirmative votes of two-thirds of the membership of each House." The Constitution of Zimbabwe Amendment (No. 1) Act 2017 obtained the necessary majority in the National Assembly but attracted only 53 affirmative votes in the Senate. The President of the Senate certified passage on the footing that the relevant denominator was

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[29] *Paul K. Ssemogerere and Ors v Attorney General (Constitutional Appeal No. 1 of 2002) [2004] UGSC 10 (Uganda)*. https://ulii.org/akn/ug/judgment/ugsc/2004/10/eng@2004-01-28.

[30] It is important to highlight that Speaker Thomas' decision impacted both the votes and the manner of taking the count.

[31] See Ulii; https://ulii.org/en/akn/ug/act/2005/1/eng@2023-12-31

[32] See Ulii supra

[33] See Ulii 2004a; *Attorney General v Paul K. Ssemogerere and Ors [2004] UGSC 3*. https://ulii.org/ug/judgment/supreme-court-uganda/2004/3.

[34] See Ulii; *Attorney General v. Paul K. Ssemogerere and Ors [2004] UGSC 3*. https://ulii.org/ug/judgment/supreme-court-uganda/2004/3.

the number of senators in office at the time of the vote, 79, one seat having fallen vacant on a death, rather than the 80 senators the Constitution allocates to the House.[35]

The Constitutional Court, in a judgment written by Chief Justice Malaba, held that this was a misinterpretation. "The membership" means the number of members allocated to each House by the Constitution; two-thirds of 80 is 54; 53 was one vote short.[36] The Senate's proceedings of 1 August 2017 were set aside, with the declaration of invalidity suspended for 180 days to allow a fresh vote to be conducted, as the Court put it, with a full appreciation of what the Constitution requires.[37] In later proceedings, the Court characterised the erroneous certification as a failure by Parliament to fulfill a constitutional obligation concerning the amendment process.[38] In 2023, the litigation returned once more.[39]

The parallel with section 108(2)(b) is close but not identical, and honesty requires acknowledging the difference. Zimbabwe's text says "two-thirds of the membership"; Sierra Leone's says "two-thirds of the Members of Parliament." Neither says "of the members present and voting" and that is the significant point. Where a constitutional drafter wishes to key a threshold to attendance, the drafter says so, as section 91(1) of the Sierra Leonean Constitution itself demonstrates. The contrast between the two formulations within a single document is a powerful indication that they mean different things. Elsewhere the 1991 Constitution reinforces the pattern: section 29(3) requires a resolution supported by the votes of two-thirds of the Members of Parliament to sustain a state of emergency, and section 51(2) and (5) require the votes of not less than two-thirds of 'all' Members of Parliament in the presidential impeachment process.[40]

One qualification though should be entered. Section 30(6), in the interpretation provision for Chapter III, states that in determining the appropriate "majority of all Members of Parliament," account shall be taken only of persons actually and validly existing as Members at the relevant time.[41] That provision is expressed for the purposes of Chapter III, and it addresses vacancies rather than absences. It supports the conclusion that vacant seats are excluded from the denominator; it does not support the conclusion that members who have walked out are excluded. A walkout does not create a vacancy.

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35 Veritas Zimbabwe. (2020). CCZ 2020-04; *Gonese & Another v Parliament of Zimbabwe & 4 Others: Constitutional Court judgment of 31 March 2020*. https://www.veritaszim.net/node/4064.

36 See Veritas supra

37 The irony in the configuration of the parliamentary vote count is that on the day of the voting, Deputy Speaker Hon I. T. Conteh of the governing party said on radio (Truth Radio Morning Devotion) program that the bill will fail to progress without opposition support. Whatever happened thereafter, all the members of the governing party appear to be in support of the Speaker's understanding of the constitution.

38 Zimbabwe Legal Information Institute. (2021). The President of the Senate and 2 Others v Gonese and 3 Others (CCZ 1-21). https://old.zimlii.org/node/9990

39 See ZimLii 2023.

40 The author's emphasis is hereby highlighted on the concerns he shares (as earlier indicated)about statutory drafting in Sierra Leone. The inconsistency in the drafting language and style is nearly alarming. For example the expressions ''two-thirds of Members of Parliament present and voting,'' ''two-thirds of Members of Parliament'' and, ''not less than two-thirds of Members of Parliament'' appear to connote three different scenarios. The court should be circumspect in providing clarity.

41 See Act No. 6 of 1991, section 30(6).

Substantive limits: Koroma's doctrine of unconstitutional constitutional amendment

Beyond procedure lies a further body of doctrine. The Supreme Court of India's basic structure doctrine, developed in *Kesavananda Bharati v. State of Kerala (1973)*[42] and applied in *Minerva Mills v. Union of India (1980)*[43], holds that the amending power cannot be used to destroy the constitution's essential features. In Kenya, that doctrine was accepted by the High Court and Court of Appeal in the Building Bridges Initiative litigation, but the Supreme Court, in *Attorney General & 2 others v Ndii & 79 others [2022] KESC 8 (KLR),*[44] held by majority that the basic structure doctrine is not applicable in Kenya, while nonetheless declaring the Constitution of Kenya (Amendment) Bill 2020 unconstitutional on other grounds, including that the President could not initiate amendment through the popular-initiative route.[45]

The Building Bridges Initiative (BBI) outcome of Kenya is instructive precisely because of its structure. The Court declined the more adventurous substantive doctrine and nonetheless struck the Bill down on procedural grounds. Where amendment procedure is concerned, the strict-compliance route is both narrower and more secure than the basic structure route.[46] That is the route available in Sierra Leone, and it does not require the Supreme Court to embrace any contested theory of implied limits.

Comparative Practice Beyond the Commonwealth

Sierra Leone's design is unexceptional by international standards, and comparative practice tends to confirm rather than undermine strict reading. The two-thirds model is the international norm. The European Commission for Democracy through Law (the Venice Commission) surveyed amendment rules in its 'Report on Constitutional Amendment,'[47] adopted at its 81st Plenary Session in December 2009. The Commission concluded that there is no single best model and no magic formula, the challenge being to balance rigidity against flexibility. It nonetheless identified a widespread pattern: a qualified parliamentary majority, most often two-thirds, combined with one or more additional obstacles, either multiple decisions in parliament separated by a time delay, or ratification by other actors, most often through referendum.[48] Section 108 of the Sierra Leonean Constitution is a textbook instance of that pattern: two-thirds at second and third readings, plus gazette publication with a delay, plus referendum for entrenched matters.

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[42] *Kesavananda Bharati v State of Kerala, (1973) 4 SCC 225 (India); https://indiankanoon.org/doc/1939993/*

[43] *Minerva Mills Ltd v Union of India, (1980) 3 SCC 625 (India);*

[44] *Attorney General & 2 others v Ndii & 79 others; Dixon & 7 others (Amicus Curiae) (Petition 12, 11 & 13 of 2021 (Consolidated)) [2022] KESC 8 (KLR) (Kenya)*. https://new.kenyalaw.org/akn/ke/judgment/kesc/2022/8/eng@2022-03-31.

[45] Kenya Law. (2022). Supreme Court declares the Constitution (Amendment) Bill, 2020 unconstitutional (Weekly Newsletter 041/21-22). https://kenyalaw.org/kl/index.php?id=11620; Supreme Court of Kenya. (2022, March 31). *The Attorney General & 2 others v David Ndii & 79 others, SC Petition No. 12 of 2021*: Media summary. https://www.jurist.org/news/wp-content/uploads/sites/4/2022/04/BBI-Media-Summary.pdf.

[46] On AYV on Sunday program a week after the Speaker's proclamation, participants and contributors called on the President to refuse to sign the already passed bill into law only hanging on the thread of hope that he doesn't. The manner of its passing and the content of the bill represents potentially reprehensible outcomes.

[47] ECD CDL-AD(2010)001

[48] Venice Commission, 2010, as summarised in Venice Commission, 2023.

The Commission has separately stressed the importance of protecting the basic principles of a national electoral system at constitutional level in such a way that a simple majority cannot easily change or circumvent them. [49] Given that the 2025 Bill alters the presidential victory threshold and the parliamentary electoral system, this observation is directly relevant.

Selected national models

For a better understanding about the seriousness of this act of constitutional alteration, guidance is sought from other democracies;

United States. Article V of the Constitution requires a two-thirds vote of both Houses of Congress (or an application by two-thirds of state legislatures) to propose an amendment, and ratification by three-quarters of the states. Both thresholds are keyed to the whole body, not to those present. The result is an amendment rate among the lowest in the world.

Germany. Article 79(2) of the Basic Law requires the consent of two-thirds of the members of the Bundestag and two-thirds of the votes of the Bundesrat. Note here the reference to 'members,' not to those voting. Article 79(3), the 'Ewigkeitsklausel,' places the federal structure, the participation of the Lander in legislation, and the principles of Articles 1 and 20 beyond amendment altogether.

France. Article 89 of the Constitution of 1958 requires passage in identical terms by both assemblies, followed either by referendum or, for government-initiated revisions, by approval of three-fifths of the votes cast at a Congress of both houses.

Italy. Article 138 requires two successive deliberations in each chamber at intervals of not less than three months. Where a revision is carried by less than a two-thirds majority in each chamber, it may be submitted to referendum on the demand of a specified minority; a mechanism that converts a bare majority into a trigger for popular ratification rather than a licence to proceed.

Brazil. Article 60 of the 1988 Constitution requires approval in two rounds in each house by three-fifths of the respective members, and Article 60(4) declares certain matters; the federal form, the direct secret universal periodic vote, separation of powers, and individual rights and guarantees, to be ''clausulas petreas,'' immune from abolition.

Ireland. Articles 46 and 47 permit no amendment whatever without approval by the people at referendum. Ireland's example is worth noting for a specific reason: it demonstrates that a demanding amendment rule need not produce constitutional sclerosis. Ireland has amended its Constitution repeatedly, including on the most divisive social questions, because the rule channels rather than blocks change.

Colombia. The Colombian Constitutional Court's ''doctrina de sustitución'' is the most developed non-Commonwealth analogue to the Indian basic structure doctrine. Beginning with ''Sentencia C-551/03'' and culminating in ''Sentencia C-141/2010,'' the Court held that the derived constituent power may amend any article but may not replace the Constitution with a different one. In ''C-141/2010'' it struck down a referendum proposal that would have permitted the President a further consecutive term, reasoning that, given the appointment architecture for high court judges and other state agencies, a second

[49] Venice Commission. (2010b). Report on the role of the opposition in a democratic parliament (CDL-AD(2010)025). Council of Europe. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)025-e.

re-election would replace the principles of checks and balances, alternation in power, and equality.[50] Notably, the Colombian Constitution contains no eternity clause; the Court derived the limit from a broad reading of "procedural."[51]

What lessons can Sierra Leone take from these examples?

Three lessons stand out. Firstly, thresholds expressed by reference to ‘‘membership’’ are the international norm for constitutional amendment, and jurisdictions that intend a lower attendance-based threshold say so expressly. Secondly, several systems layer a referendum onto the supermajority, exactly as section 108(3) does; the referendum is a distinct and cumulative safeguard, not an alternative. Thirdly, and most relevant to the present controversy, the Colombian and Indian experiences show that where amendment rules are used to alter the terms of political competition in favour of an incumbent, courts across legal traditions have been willing to intervene. Landau's account of "abusive constitutionalism" describes exactly this pattern[52]: the use of formally valid amendment procedures to erode democratic structures. Where the procedure is not even formally satisfied, the case for intervention is stronger still.

Is there a Legal Basis for Insisting on Two-Thirds?

We cannot now say the issues are unclear to us after reading to this end. By a stretch of imagination we should have noted the strength of an argument in favour of protecting the constitution and holding section 171(15) as a bastion. Drawing the threads together, the following materials support a strict reading of section 108(2)(b).

Textual and structural arguments

Firstly, *s*ection 108(2)(b) is expressed as a prohibition. The Bill "shall not be passed" unless supported on second and third readings by the votes of not less than two-thirds of the Members of Parliament. A prohibition on passage is a limit on competence, not a rule of order.

Secondly*,* section 91(1) is expressly subordinate in the context of constitutional alteration. It applies "except as otherwise provided" by the Constitution. Section 108 otherwise provides. Reading section 91(1) as controlling section 108 inverts the express subordination in section 91(1)'s own text.

Thirdly, the Constitution uses two different formulations deliberately. Section 91(1) speaks of "members present and voting." Sections 29(3), 51, and 108(2)(b) speak of "Members of Parliament" or "all the Members of Parliament." On ordinary principles of construction, different language within a single instrument is presumed to carry different meaning.

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[50] Bernal, C. (2013). Unconstitutional constitutional amendments in the case study of Colombia: An analysis of the justification and meaning of the constitutional replacement doctrine. International Journal of Constitutional Law, 11(2), 339–357. https://academic.oup.com/icon/article/11/2/339/753642 ; Ramírez Cleves, G. (2025). Limits and methodological criteria for the substitution of the Constitution doctrine in Colombia. Revista Derecho del Estado. http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S0122-98932025000300033.

[51] IACL-AIDC Blog. (2022, May 17). The unconstitutional constitutional amendment introducing life imprisonment in Colombia. https://blog-iacl-aidc.org/new-blog-3/2022/5/17/the-unconstitutional-constitutional-amendment-introducing-life-imprisonment-in-colombia.

[52] Landau, D. (2013). Abusive constitutionalism. UC Davis Law Review, 47, 189–260.

Fourthly, section 171(15) makes any inconsistent instrument void to the extent of the inconsistency. A Standing Order, a ruling from the Chair, or an Act purporting to alter the Constitution without the prescribed majority cannot survive that clause.

Furthermore, the committee-stage argument proves too much. If substantive decisions on the content of a constitutional Bill may be taken by simple majority in committee, and the two-thirds requirement attaches only to a formal vote on the Bill as a whole, then the substance of the amendment is settled by a body that the Constitution says may not settle it. The Bill that goes to the two-thirds vote is the Bill the simple majority wrote. The safeguard becomes formal rather than real. As the Sierra Leone Telegraph put it, the question is whether ordinary rules of legislative procedure may be used to make substantive decisions about constitutional alteration before the extraordinary safeguards begin to operate.[53]

Case law summary

The cases already discussed in this piece are *res ipsa loquitur.* Summarised together*,* *Bribery Commissioner v. Ranasinghe [1965] AC 172 (PC)* emphasises that a legislature has no inherent power to make valid law by bare majority where its constituent instrument requires a different majority; the courts may look behind an Act to verify valid passage. In *Harris v. Minister of the Interior 1952 (2) SA 428* (A), the court was clear that legislation passed otherwise than in conformity with entrenched manner-and-form provisions is null and void; the courts have jurisdiction to say so. Whatever argument there is about the Speaker's ruling falling under section 94(2) of the constitution also falls flat in the face of the decision in *APC & Others v. The Speaker of Parliament, 13 of 2000 (2002) SLCA 10(2002).*[54] A reliance by Mr. Speaker or any of his allies on the common law position laid in the *Bradlaugh v. Gossett (1884) 12 QBD 274* as a basis of superior authority of the Speaker over the Supreme Court is mischaracterization of the basic principle in procedural legal protection encapsulated in section 94(2) and thus attempting to put the Speaker above the constitution and the court. Needless to say that unlike the UK Parliament, the Speakers and or the Members of Parliament in Sierra Leone, do not enjoy sovereignty. They are as a unit, a separate arm of government supposed to be operationally independent of the other two arms does not make them sovereign. Thus, in *Hinds v. The Queen [1977] AC 195 (PC),* where a Westminster-model constitution prescribes special procedures for altering entrenched matters, an ordinary Act that trespasses on them is invalid to that extent. That principle follows the decision in *Attorney-General for New South Wales v. Trethowan [1932] AC 526 (PC*) where is was made clear that, manner-and-form requirements bind and may be enforced prospectively.

In the more clear decision of the court in *Ssemogerere v. Attorney General [2004] UGSC 10 (Uganda SC),* the court considered the method of voting and the presence of the required certification as being justiciable conditions of a valid constitutional amendment. Faintly, the Speaker himself may recall his own ruling on December 20, 2024 on the matter of the removal of then Auditor-General Lara Taylor-Pearce and her deputy Tamba Momoh. While emphasising respect for the constitution and distinguishing Members ''in Parliament'' from Members ''of Parliament,''Mr. Speaker was clear that, the phrase ''Members of Parliament'' in the constitution means the totality of the constitutionally elected Members of the House of Parliament and not Members who were merely present ''in Parliament'' and voting. His interpretation was that, the ''Members in Parliament'' requirement (in section 137(7)(b) for the removal

[53] Sierra Leone Telegraph. (2026a, August 11). Sierra Leone's constitutional faultline: A walkout, a two-thirds dispute and the stakes for 2028. https://www.thesierraleonetelegraph.com/sierra-leones-constitutional-faultline-a-walkout-a-two-thirds-dispute-and-the-stakes-for-2028/.

[54] *APC & ORS v The Speaker of Parliament (13 of 2000) [2002] SLCA 10 (10 January 2002)*

of judges and the Auditor-General means members present. Less than two years later in this constitutional amendment calamity, does Speaker Thomas want the nation to accept his ruling that the ‘‘Members of Parliament’’ requirement of the totality of elected members, now suddenly somehow, also means the members present and voting?

The recent decisions in *Gonese & Anor v, Parliament of Zimbabwe, CCZ 4/2020*, which considered and defined "two-thirds of the membership" of Parliament to mean two-thirds of the constitutionally allocated seats, not of those in the chamber, the erroneous certification by a presiding officer as a failure to fulfill a constitutional obligation; *Attorney General v. Ndii [2022] KESC 8 (Kenya SC)* holding that an amendment Bill may be struck down for failure to comply with the constitutionally prescribed initiation and process requirements independently of any substantive-limits doctrine, aligns with the requirements of the law in Sierra Leone and provides a perfect scenario for the same outcome.

Institutional and soft-law materials

Also in a summary comes the soft law or we do sometime say, the persuasive authority, Venice Commission report earlier referred that insists on the two-thirds-plus-additional-obstacle model is the prevailing international design; electoral ground rules in particular should be insulated from simple-majority alteration. Roznai (2017)[55] and Albert (2019)[56] provide the leading scholarly treatments of amendment thresholds, entrenchment, and the enforcement of amendment rules. Landau[57] supplies the analytical frame for assessing amendment processes that alter the terms of electoral competition.

Remedies and standing

The Supreme Court's original jurisdiction under section 124(1), read with section 127, provides the vehicle for remedies and standing. On the Zimbabwean model, the available remedies are not limited to outright nullification and in *Gonese,* the Constitutional Court suspended the declaration of invalidity for 180 days and directed a fresh vote conducted in accordance with the correct threshold.[58] A comparable order, setting aside the proceedings and directing a properly constituted vote which would vindicate the Constitution without gratuitously destabilising the reform agenda, much of which enjoys broad support.

One procedural point deserves emphasis at this stage. The Speaker ruled first and proposed a reference afterwards. The Sierra Leone Telegraph observed that where the validity of the legal basis for proceeding is genuinely in doubt, the stronger institutional course is to resolve the question before continuing rather than to proceed and seek clarification later.[59] That criticism is well founded as a matter of institutional prudence, whatever the ultimate merits. A reference under section 124 is available before as well as after passage, and the sequence chosen has an avoidable cost in public confidence.

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55 Roznai, Y. (2017). Unconstitutional constitutional amendments: The limits of amendment powers. Oxford University Press.

56 Albert, R. (2019). Constitutional amendments: Making, breaking, and changing constitutions. Oxford University Press.

57 Landau Supra.

58 See Veritas supra.

59 Sierra Leone Telegraph. (2026a, August 11). Sierra Leone's constitutional faultline: A walkout, a two-thirds dispute and the stakes for 2028. https://www.thesierraleonetelegraph.com/sierra-leones-constitutional-faultline-a-walkout-a-two-thirds-dispute-and-the-stakes-for-2028/.

More importantly, the opposition APC members of parliament waking out at the Committee Stage was apparently premature for fear of partaking in treasonous act of altering the constitution because, at that stage, clearly, the governing SLPP had the majority and the vote, it should be said, if required at that stage could be taken as simple majority on a clause-by-clause basis.[60]

There is a fundamental flaw in the parliamentary procedure which appears to indicate that there was an assumption of approval of legislation at the second reading rather than a vote. Clearly, without a vote of two-thirds of the Members of Parliament the procedure to push the bill to the committee stage was also wrong even if we can be complicit without partaking but by assuming that the absence of objection presupposes approval. The law should be followed to the latter.

The Counterarguments

I imbibed the long and odious tradition being fair to the other side. Intellectual honesty requires setting out the governing party's position at its strongest, because it is not frivolous. For this reason, this piece considers the following:

Firstly, section 108(2)(b) is textually keyed to "the second and third readings." A committee-stage vote on an individual clause is neither. On a literal reading, the two-thirds requirement attaches at two identified moments, and section 91(1) fills the gaps. This is the core of Hon. Gevao's argument and of the Speaker's ruling as well, and it has real textual purchase in clear view.

Secondly, there is a functional response to the "proves too much" objection such that the committee stage produces a text, and that text must then survive a two-thirds vote at third reading. If the governing party cannot muster 100 votes at that point, the Bill fails regardless of what happened in committee. On this view alone, the safeguard is preserved in full at the moment that counts.

Thirdly, it may be argued that a construction which allows an absent minority to defeat an amendment by simple non-attendance converts a supermajority requirement into a quorum-based veto and creates a perverse incentive to boycott. Under that impression and understanding, *Ranasinghe* answers this in principle; the minority is entitled to the protection the Constitution gives them, but the practical concern about legislative paralysis is genuine, and the Ugandan government made precisely this argument in the recall application in *Ssemogerere.*

The strict-compliance response to the first and second arguments is that the third reading is a vote on a Bill whose contents have already been fixed, and that a supermajority which can only take or leave a text drafted by a simple majority holds a weaker protection than the one section 108 appears to confer. Whether that functional argument overrides the literal reading of "second and third readings" is exactly the question the Supreme Court must decide. On the ‘separate’ and more fundamental question i. e., whether "two-thirds of the Members of Parliament" means two-thirds of 149 or two-thirds of those present, the weight of Commonwealth authority, and of the internal architecture of the 1991 Constitution, points firmly in one direction.[61]

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[60] At this Committee Stage, the Speaker’s rule in applying section 91(1) of the Constitution, as a matter of procedural law. This must not be confused with the exceptional requirement under section 108(2).

[61] Politicians are usually scared of political reprisals when they are aware that the people will be hurt but a law which they resent. Whether this argument can be traded is entirely speculative.

Conclusion

The Sierra Leonean constitutional dispute is a variation on a question Commonwealth courts have answered consistently for three-quarters of a century. From Bloemfontein in 1952 to Colombo in 1964, from London in 1977 to Kampala in 2004 and Harare in 2020, the answer has been the same: a legislature holds its amending power on the terms the constituent instrument prescribes, those terms are conditions of competence rather than rules of internal convenience, courts may look behind the face of an enactment to verify compliance, and a threshold expressed by reference to membership means membership.

Two conclusions follow. On the narrow question of the denominator, the authorities strongly support the view that section 108(2)(b) requires 100 affirmative 'votes' out of 149, and that a walkout cannot reduce that number; a proposition for which *Gonese* is directly in point and *Ranasinghe* directly in principle. On the wider question whether the two-thirds requirement governs substantive committee-stage decisions, the textual argument is more evenly balanced, though the structural and purposive considerations favour the stricter view.

There is a final observation that transcends the legal analysis. Much of what the 2025 Constitutional Amendment Bill proposes; a gender quota, reform of electoral commission appointments, adjustments to the electoral system, has genuine cross-party appeal. The constitutional cost of securing those reforms through a contested procedure will be paid over decades, in the form of a precedent that a governing majority may set its own threshold for changing the rules of political competition. The 1991 Constitution was itself approved at a referendum by roughly 80% of a 75% turnout.[62] Its amendment rules were written by people who had lived under one-party rule and who intended, in the words of one commentator, to admonish future generations to make haste slowly. A reference to the Supreme Court under section 124 offers the opportunity to settle the matter authoritatively before the precedent hardens. That opportunity is worth taking as others have suggested, Mr. President should wait for the court.[63]

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[62] Wikipedia.org 1991. https://r.search.yahoo.com/_ylt=AwrjZSIxXIJqPgIAUB8PxQt.;_ylu=Y29sbwNncTEEcG9zAzEEdnRpZAMEc2VjA3Ny/RV=2/RE=1788137777/RO=10/RU=https%3a%2f%2fen.wikipedia.org%2fwiki%2f1991_Sierra_Leonean_constitutional_referendum/RK=2/RS=sgjpa9KCgopdjTSk5rZW0EQVK_s-

[63] A word of caution for all readers. This piece was written on air while traveling from Freetown to California on the August 10, after proceedings in parliament just concluded and the public was engaged in the outcome. Three items were not directly retrieved from their original sources and should be verified against the primary text ; *Attorney-General for New South Wales v. Trethowan [1932] AC 526, Kesavananda Bharati (1973) 4 SCC 225,* and *Minerva Mills (1980) 3 SCC 625.* The description of Standing Orders 44(1) and 44(3) of the Parliament of Sierra Leone is also derives from the Sierra Leone Telegraph rather than from the Standing Orders themselves because I was out of the country in speed to share these my thoughts on a very crucial national subject-matter.