

An Unpredictable Parliament: Governing without a Stable Majority

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The balance of power in Sierra Leone's parliament during the next five years suggests that crafting a stable majority for governance is likely to be tricky, if not messy. The ruling party, the Sierra Leone People's Party (SLPP), has 48 seats; the All People's Congress (APC), 68; the Coalition for Change (C4C), 8; and the National Grand Coalition (NGC), 4. There are three independent members, representing seats in districts dominated by the SLPP, and 14 paramount chiefs who are not elected by universal suffrage. The National Electoral Commission's Web page reports that the result for Constituency 39, in Falaba, is still under investigation.

A simple majority of 74 out of the 146 members is required to pass most bills in the House. Can the government or opposition parties build such a majority and sustain it over time? This essay is a follow up to my previous essay 'The Humbling of the All People's Congress: Understanding the March 2018 Presidential Run-off Election', in which I attempted, in the conclusion, to address the issue.

This is the first time in our history that the ruling party is not the largest party in parliament, making the task of majority-building to advance the government's agenda difficult. In 1996, although the governing party, the SLPP under Ahmad Tejan-Kabbah, did not have a majority of the seats, it was the largest party, and its alliance with the People's Democratic Party gave it a comfortable majority to enact laws and advance its programme.

The APC believes it has won a majority of the seats and should be in the driver's seat in the legislative process. This is true only if the votes of the paramount chiefs are excluded. However, the constitution grants paramount chiefs the same voting rights as MPs elected on universal suffrage. In other words, each member in the House is entitled to one vote, irrespective of the quality of the MP's mandate. This indicates that the APC cannot claim an automatic majority—while, undoubtedly, it is the largest party, it will have to build a majority or reach beyond its party if it wants to be the key driver of legislation.

Paramount chiefs to the rescue?

Can paramount chiefs rescue the SLPP or APC from this quagmire? The parliamentary seat distribution suggests that even if the SLPP gets the backing of the C4C and the NGC, it will not have a majority to pass the government's bills; adding the votes of the three independent MPs and the remaining Falaba seat will only get it to 64 votes, which is well short of the 74 votes required for a simple majority. It is only when the votes of the paramount chiefs are added that it can be assured of a reasonable majority (78). A working coalition or agreement with the C4C, the three independent candidates and the paramount chiefs, but without the NGC, will deliver a very basic majority (74) that is likely to be unstable. The votes of paramount chiefs is important in these two scenarios. In other words, the government will not have a working majority without the support of paramount chiefs, unless it crafts an agreement with the APC.

What are the chances of the SLPP constructing a majority with the support of paramount chiefs? Opinion is divided on the voting status of the paramount chiefs. Francis Gabbidon, a Freetown-based lawyer, recently argued in a WhatsApp message that paramount chiefs have always supported the governing party. However, he did not highlight any legal basis for this argument, which, at best, rests only on tradition.

The key problem is that we have not had a situation where the agenda of a governing party has depended on the votes of paramount chiefs. In 1967, Albert Margai and the SLPP wanted to use the paramount

chiefs, who were 12 at the time, to tilt the very close parliamentary election results in favour of the SLPP. But this did not work. Siaka Stevens, who had a slim majority because of the refusal of the independent MPs to support Margai, was sworn in as prime minister by the Governor General. The paramount chiefs supported the governing party only after Stevens assumed the premiership in parliament.

There is nothing in the 1991 constitution that compels paramount chiefs to automatically vote for the governing party. It is useful to consider the principle of representation, which might offer insights on one of the ways paramount chiefs might decide to vote. Each of the 14 paramount chiefs was elected indirectly or by a limited electorate to represent each of the 14 provincial districts—seven districts in the North and North-West, and seven districts in the South and East. The fact that paramount chiefs were elected at the district level, albeit indirectly, suggests that they are not an extension of the governing party and will not automatically support the government's bills.

If the intention of the Sierra Leone constitution was to provide the governing party with a working majority to break legislative gridlocks, it could have given the president the power to appoint the 12 or 14 paramount chiefs, even if this is a limitation on the principle of democratic representation. Indeed, it can be argued further that paramount chiefs are not an extension of any political party in parliament because Articles 77 (k) and 77 (m) of the constitution bars MPs elected on specific party platforms and independent MPs, respectively, from changing political affiliations.

There are quite a few non-Western democracies that have nominated members in parliament. In Africa, they include Kenya, Zambia, and Zimbabwe. In Kenya, for instance, 12 MPs can be nominated in the House of Assembly and 20 members in the Senate; 16 of the Senators are women nominated by parties based on vote shares. Under Zimbabwe's 1980 constitution, the president can nominate 20 members of parliament; and 10 MPs are elected by traditional chiefs. However, these nominated members and chiefs were transferred to the Senate in 2005. In Singapore, the president can nominate 9 individuals with distinguished public service as MPs, but such MPs have limited voting rights—they cannot vote on amendments to the constitution, motions on the budget and ending the tenure of governments. And Botswana has a House of Chiefs, which acts as an advisory, not a legislative, body.

What insight can we derive from the principle of representation in determining the voting inclination of the paramount chiefs? It is instructive to note that the seat distribution of the parties in our current parliament is more ethno-regional than the presidential distribution of votes. The APC won the majority of the seats in 6 out of the 7 districts in the North and North-West. The SLPP also won most of the seats in 6 out of the 7 districts in the South and East. The C4C was dominant in Kono district in the East; and the NGC had the majority of the seats in Kambia district in the North.

If the paramount chiefs follow the choices of the voters in their respective districts, the SLPP may have 6 extra votes; the APC, 6; the C4C, 1; and the NGC, 1. This may lead to the following distribution in voting power: SLPP: 54; APC: 74; C4C: 9; and NGC: 5. With this distribution, the APC may have a very basic majority (74) to drive the legislative process. However, such a majority may be unstable during the life of the parliament. The APC may still need to reach out to either the NGC or the C4C to sustain a legislative agenda. Furthermore, even if the APC can craft a working majority against the SLPP, Article 106 of the constitution gives the president the right to veto parliamentary bills. The high threshold of a two thirds majority required to override a presidential veto (Art.106: 8) suggests that compromise rather than confrontation may be the rule if both parties want to govern.

This analysis suggests that majority-building strategies to advance any legislative agenda will depend on the voting status or preferences of paramount chiefs. Who would have thought that an institution that is not governed by universal suffrage would be central in determining how our laws will be made in the next five

years? If the paramount chiefs are swayed by ‘tradition’ or loyalty to the government, the governing party stands a good chance of constructing a working majority, even if it is not the largest party in the House. However, if the paramount chiefs are sensitive to the principle of representation and wish to align their voting preferences to those of the voters in their respective districts, the APC will have an edge. The situation will become even more complicated if the paramount chiefs reject tradition and the principle of representation and vote as free or independent MPs.

Constructing a majority à la carte?

The scope for constructing a stable majority is high if the governing party can strike deals with individual MPs (*à la carte*). This is because our party system is not ideological or policy-based. There is very little that separates the SLPP from the APC on policy positions. Therefore, if MPs are allowed to vote as individuals, there is a high probability that the ruling party can overcome party rigidities and implement its legislative programme. With MPs as free agents, the government may even canvass individuals who belong to the APC. Vote-buying, either through handouts to individual MPs (common in African parliaments) or funding of constituency programmes for compliant MPs (referred to as pork-barrel legislation in the US), is the mechanism often used for building a stable majority based on individual deals.

MPs have a high level of autonomy in Western democracies, even though parties frown on defections, especially on crucial votes. This explains the importance of whips in some legislatures in getting party members to toe the party line. However, the sovereignty of individual MPs is entrenched in all Western democracies. MPs can even ignore the preferences of constituents and vote according to conscience on specific issues—although such MPs risk deselection during the primaries for the next election.

The situation is different in Sierra Leone’s parliament. Two provisions in the constitution limit the freedom of individual MPs to vote against their parties; and a third provision seems to empower individual MPs, but may undermine the principle of transparency needed by voters to hold their representatives to account.

Article 77 (k) of the constitution affirms that an MP can be dismissed from parliament if he/she ceases to be a member of the party on whose ticket the election was won; and Article 77 (l) states that the Speaker, in consultation with an MP’s party leader, can cause the expulsion of an MP if he/she sits or votes with a party other than the one on whose ticket the election was won. These two provisions severely limit the autonomy of individual MPs in our parliament. They make it difficult for any president to make deals with individual MPs without the backing of the MPs’ party leaders. The situation may even be more complicated if the APC provides the Speaker. In other words, the government will find it difficult to make deals with individual APC MPs, or even C4C and NGC MPs, without the consent of the leadership of each of these three parties.

Article 74 (3) provides, however, breathing space for individual MPs in elections for the positions of Speaker and Deputy Speaker: voting for these positions is by secret ballot. These are the only elected positions recognised in the constitution. In an environment of unpredictability, the role of the Speaker is likely to assume much importance. Therefore, we should expect the Speaker’s election to be hotly contested when parliament is convened in the next few weeks. While the Speaker can be elected by a simple majority after three rounds of elections requiring two thirds majority end in deadlock, he/she can only be removed by two thirds of parliamentarians (Art. 79: 4d). The Speaker’s position may, therefore, be locked-in—once elected, a party with a new majority may find it difficult to elect a new Speaker.

Although Article 91 (1) of the constitution affirms that decisions in parliament shall be determined by a simple majority, it does not specify whether voting on such decisions should be conducted by secret or open ballot. In any case, secret balloting for the posts of Speaker and Deputy Speaker undermines the

principle of transparency, which is necessary for voters to keep track of the voting behaviour of their representatives. After all, representative democracy makes sense only if voters know what their representatives do in parliament, including, very crucially, how they vote. Secret voting denies voters the right to hold their representatives to account. However, this provision may empower individual MPs to ignore party directives on voting. If MPs strike secret deals with the government, it might be very difficult for party leaders to know how their members voted. They might, therefore, be unable to punish members who defied the party's directive.

Interestingly, the positions of Majority Leader and Minority Leader are not recognised in the constitution—these are merely parliamentary inventions to facilitate the legislative process. In a situation where voting patterns for majority outcomes are likely to be fluid, the positions of Majority Leader and Minority Leader may even become redundant. The parliamentary game may instead be based one who has the ability to create a majority outcome on any given issue—not a permanent or stable majority.

Can the government use Article 74 (3) to side-track intransigent party leaders and reach out to individual MPs? Interesting times await the nation. It is instructive to note, however, that the secrecy of parliamentary ballots may also work against the government: it may empower individual paramount chiefs to defy the will of the government on issues they feel strongly about and vote with opposition parties; and rogue MPs could also strike deals, enjoy the benefits, and fail to deliver—a practice that is common among voters in national elections. Using Article 74 (3) to override party rigidities may also create an acrimonious atmosphere in the legislative body, witch-hunts within parties, threats of expulsion and instability. If the strategy backfires, it may render unsustainable majority-building strategies based on inter-party cooperation and produce legislative gridlock.

Conclusion

Majority-building strategies for law-making are likely to be complicated in Sierra Leone's new parliament. No party has an exclusive majority to define the parliamentary agenda. Both the governing party, the SLPP, and the largest party, the APC, can build working majorities, but only if paramount chiefs who lack a popular mandate are in the mix. The APC can technically ignore the paramount chiefs by canvassing the support of the smaller parties, the C4C and the NGC, but the animosity between the APC and these two parties during the election makes such a coalition unlikely. If the votes of these three parties coalesce in forming a majority, it is likely to be on specific issues rather than as an institutionalised arrangement. The SLPP does not have, however, the luxury of ignoring the paramount chiefs because of its weak parliamentary seat strength.

Unless the two largest parties, the SLPP and the APC, work out a scheme on how to drive the legislative process, any other arrangement that excludes either of the two parties is likely to be unstable as it will yield only a slim majority. It is possible that rather than have a permanent majority for the five year life of the parliament, as in our previous parliaments, the new parliament may be marked by ad hoc or shifting majorities, constructed largely on an issue by issue basis. This is likely to give smaller parties and paramount chiefs considerable power in the bargaining process.

As I concluded in my previous essay 'The Humbling of the All People's Congress', the unpredictability of the new parliament can be both a blessing and a curse. It can make for lively debate, contestation and bargaining as well as holding the government to account. But it can also lead to gridlock if parties refuse to compromise and opt instead for winner-takes-all outcomes.