



# CHRISTIAN LAWYERS CENTRE LEGAL LINK



Motto: "Defending the Rights of Vulnerable Groups in Society"

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## PRESS STATEMENT

13<sup>th</sup> October, 2021

**JOINT COMMUNIQUE ON JUSTICE SECTOR REFORMS ADOPTED AT THE 1<sup>ST</sup> LEGAL COLLOQUIUM ORGANIZED BY LEGAL LINK AT THE AFRICELL AMERICAN CORNER, BATHURST STREET, FREETOWN ON WEDNESDAY 13<sup>TH</sup> OCTOBER 2021**

**WE, THE MEMBERS OF LEGAL LINK AND AUGUSTINE SORIE-SENGBE MARRAH ESQ, JOINED BY LAWYERS IN THE LEGAL PROFESSION IN SIERRA LEONE, LAW STUDENTS, CIVIL SOCIETY ORGANIZATIONS, REPRESENTATIVES FROM THE RELIGIOUS COMMUNITY AND VULNERABLE GROUPS, THE PRESS, REPRESENTATIVES FROM MDA'S, POLITICAL PARTY ASSOCIATIONS ETC.** recognize that Sierra Leone's formal justice system has been particularly beset with various clogs in its operation, leaving much of the sector that had already seen a devastation after the civil war in gradual decline in management and independence.

**CONCIOUS** that the most dangerous of these clogs have been the lack of independence and competence of our judiciary;

**HOLD** the view that the reasons for such lack of independence and competence have predominantly been structural flaws, politicization of judicial appointments, insistence on discretion for bail for misdemeanor offences, and the lack of clear policy in the judiciary on transfers and promotions;

**THEREFORE WHOLEHEARTEDLY AGREE AND STAND UNITED** in our commitment on this 13<sup>th</sup> day of October, in the year of our Lord 2021 for mining for justice in a bid to attaining the full realization of an independent, impartial, and competent judiciary with foundational principles safeguarding our democracy and good governance.

**WE THEREFORE TOGETHER** as a colloquium, aspiring for an independent judiciary and a nation that respects the rule of law, democratic good governance and judicial accountability call for the following reforms:

## **1. REMOVE THE COURT OF APPEAL IN THE COURT HIERARCHY**

**WE WITHOUT DOUBT** recognize that appellate courts in Sierra Leone are the Magistrate Court (as a District Appeals Court), pursuant to section 40 of the Local Court Act 2011, the High Court, pursuant to section 132 (4) of the 1991 Constitution (hereinafter called the Constitution) and section 41 of the Local Court Act 2011, the Court of Appeal, according to section 129 of the Constitution and the Supreme Court, pursuant to section 122 of same.

**WE HOWEVER HOLD** that this cross-cutting provision of appeals by every court but one in the hierarchy amounts to over production, redundancy, superfluidity, unnecessary cost in men and money, confusion, and workload intensiveness.

**WE FURTHER HOLD** that, since all the above-named courts do enjoy appellate jurisdiction, the appeal work for the Court of Appeal is henceforth moribund, redundant and/or superfluous in practice.

**WE FOUND** in fact that the Court of Appeal cannot boast of its efficacy in relation to impact and jurisprudence, as its jurisdiction is legally stolen by other courts, thereby preventing it from accessing appeals in most circumstances.

**AS A MATTER OF FACT**, the final court of appeal is not the Court of Appeal itself but rather the Supreme Court.

**WE, THEREFORE, CALL** for a constitutional amendment stripping the Court of Appeal of its jurisdiction entirely, thereby removing it at sight to reduce the number of courts dealing with appeals in the country.

## **2. CHANGING THE NAME AND CONVERTING THE SUPREME COURT TO A SUPREME COURT OF APPEAL**

**WE RECOGNIZE** that the Supreme Court is the final court of appeal in the land.

**WE HOLD** that it will be but fitting that it becomes a new Supreme Court of Appeal.

**WE GUARANTEE** that such will both compensate for the removal of the Court of Appeal, and as well achieve the reduction of the number of courts dealing with appeals in the country.

**AS SUCH**, we call for the name of the current Supreme Court to read, in the amendment making for it, '**the Supreme Court of Appeal**'.

**FURTHERMORE, THE SUPREME COURT OF APPEAL SHOULD ONLY DEAL** with cases sent to it from the High Court, and except for the Constitutional Court, no other court should change its decisions. **THIS IS TO SAY**, only itself should be allowed to change its own decisions.

**IN TERMS OF THE CONSTITUTION**, the Supreme Court of Appeal should not deal with any issue touching on it in piecemeal or in whole.

**WE HOLD THEREFORE THAT**, the Supreme Court of Appeal should remain the highest court in non-constitutional matters.

### **3. CALLING FOR THE ESTABLISHMENT OF A CONSTITUTIONAL COURT IN SIERRA LEONE**

**WE ALSO NOTE** a structural flaw in the lack of a Constitutional Court to protect the Constitution and guarantee the fundamental human right enshrined therein;

**WE HOLD** that the jurisdiction of the current Supreme Court as both a final appeal court and a constitutional court is presently causing a distraction of it with non-constitutional related matters to the extent that the country's constitutional law jurisprudence is to a greater extent non-existent;

**WE FURTHER HOLD** that with a trend of incessant bastardization of the country's Constitution by the political actors in both recent and in time past, the need for such a court cannot be overemphasized;

**THEREFORE, WE REITERATE for the** establishment of a new Constitutional Court in Sierra Leone;

**WE CALL THAT SUCH COURT**, after its creation should be charged with the responsibility of interpreting and protecting our country's Constitution.

**WE, FURTHER CALL THAT** it remains the highest court in Sierra Leone on constitutional matters and that it serves as a protector of the country's Constitution and the enabler of its constitutional law jurisprudence.

**WE AVER THAT THE MAKE-UP** should consist of nine judges, and **ITS JURISDICTION** - the scope of its authority to hear cases – should be restricted to constitutional matters and issues connected therewith.

**WE AGREE THAT NORMAL APPEAL MATTERS** that are not constitutionally related must only be dealt with at the Supreme Court of Appeal.

**FINALLY**, we call that procedure for accessing the Constitutional Court after its creation should be tailored in a manner as simple as writing a letter **alleging breach of** Constitutional-related matters.

### **4. CALLING FOR THE REPLACEMENT OF PRESIDENTIAL APPOINTMENT OF JUDGES AND/OR CHIEF JUSTICE WITH CALL FOR APPLICATIONS**

**WE REAFFIRM** the view that the present procedure for appointment of judges under Section 135 of the Constitution is largely driven by political considerations.

**WE SAY** this because, through it, the President is blessed with the powers to make appointment of judges on the advice of Judicial and Legal Service Commission (JLSC) subject to the approval of parliament. However, in practice, what only continues to be adhered to is an approval from parliament and not the receipt of pieces of advice from the JLSC. This is because such advice-seeking, pursuant to section 53(3) of the Constitution is not compulsory within the context of the Constitution.

**WE HOLD** that such has exposed such appointment to political considerations and has as well opened the floodgate for the president to have much influence on who may be appointed as a judge.

**THEREFORE, WE** in good faith call for constitutionally entrenched appointment processes- that will ensure that persons selected have the necessary qualifications and experience.

These processes specifically include the following:

1. A Call for Applications by Judicial and Legal Service Commission and Advertisement of Judicial Vacancies by the Judicial and Legal Service Commission.
- 2.
3. A Shortlisting of Candidates by The Judicial and Legal Service Commission Based on The Suitability of The Candidate for Appointment Against the Criteria Set for That Appointment.
4. Transparent Interview of Shortlisted Candidates by the Judicial and Legal Service Commission.
5. A Public Call for Vetting of Successful Candidates Interviewed by JLSC.
6. Final Recommendation to President by the Judicial and Legal Service Commission.
7. Successful appointees sent to parliament for approval.

## **5. CALLING FOR NO USE OF DISCRETION ON BAIL FOR MISDEMEANOUR OFFENCES**

**WE NOTE** with offence that bail is set at discretion for misdemeanor offence, as provided under section 79(3) of the Criminal Procedure Act 1965 in our jurisdiction.

**WE FIND** this offensive, because allowing discretion to hold sway in determining issues of bail for misdemeanor offences is inimical to the ends of justice; since it gives rise to malicious prosecution, overcrowding of correctional facilities, undermining the chances of a fair trial, impairing the preparation of an adequate defense, hampering the access to counsel, and preventing the location of witnesses etc.

**WE ALSO FIND** this offensive because our country's Constitution tells us to deem these people innocent until they plead or are proven guilty, pursuant to section 23(4).

**WHILST THE USE** of discretion regarding bail may be quite understandable for felonious offences, a misdemeanor offence, on the other hand, is theoretically a less serious crime with less serious consequences. In short, the impact of being denied bail on those charged with misdemeanors can be disastrous.

**WE, SANDWICHED** as one, and push for an amendment of section 79(3) of the CPA to guarantee bail as of right to misdemeanor offenders charged before the court and for the entrenchment of clear-cut bail provisions in the Constitution.

## **6. CLEAR POLICY IN THE JUDICIARY ON TRANSFERS AND PROMOTIONS**

**We RECOGNIZE** that there is no clear-cut express and approved policy on transfers and promotions in the judiciary.

**HENCE**, transfers and promotions are largely left in the hands of the Chief Justice and administrators of the judiciary.

**WE FOUND** that this status quo has exposed many judicial officers and staff to instances of wrong transfers or promotions.

**WE REAFFIRM** the view that arbitrary power to promote and transfer judges, magistrates and/or judicial officers poses a clear and present danger to judicial independence, probity, and impartiality within the justice system of our country.

**WE FURTHER EXPRESS** the view that this lack of a clear policy or law on transfers and promotions continues to fester unwise discretion regarding same.

**WE HOLD** that such reality violates the United Nations Basic Principles on the Independence of the Judiciary (1985) – which in fact advises for one or both of such frameworks to exist to ensure fairness in transfers and promotions of judicial officers.

**WE THEREFORE** call for the judiciary of Sierra Leone to introduce a clear, fair and comprehensive policy on promotions and transfers in the judiciary- that will be impregnated with appropriate safeguards in a bid to ensure equitable outcomes.

## **7. RECRUITMENT OF COMPETENT CLERKS FOR JUDGES**

**WE RECOGNIZE** that the work of judges is extremely enormous, and that such work is crucial for the realization of a competent judiciary.

**WE NOTE** that with competent clerks around them, the enormousness of their work will be lightened and the ends of justice will be wheeled smoothly.

**WE, THEREFORE, CALL** for:

1. Pupil barristers to be allowed to intern with judges as research officers for their period of pupillage.
2. Clerks with proven academic proficiency in the area of legal research to be recruited for judges by the administrators of the judiciary.

## **8. ABOLITION OF PAPER-BASED FORM AND LONGHAND STYLE OF RECORDING PROCEEDINGS**

**WE FIND** that section 120 (4) of the 1991 Constitution in cumulative operation with section 23(6) of same and Common law principles views our courts as the court of record.

**WE THEREFORE HOLD** that preservation of records from our courts-especially our superior court is a Constitutional mandate.

**WE FURTHER EXPRESS** a concern however that such mandate continues to be violated with a reliance on paper-based system and a longhand style of recording.

**WE STRONGLY AVER THAT** a paper-based and long-hand style of recording proceedings undermine sustainable preservation of records and speedy dispensation of justice.

**WE THEREFORE CALL** for the adoption of digital form of recording like allotments of recorders to judges and/or magistrates and the hiring of stenographers to ensure the speedy record of proceedings.

**WE ALSO CALL UPON** the Directorate of Science and Technology to help the judiciary in ensuring that all records of the court are recorded digitally through sophisticated Information and technology methods.

## **9. TIMING JUSTICE**

**WE REAFFIRM** the view that untimed justice was one of the reasons for the 11 years bloody civil war.

**WE AFFIRM** the view that delay in judgment delivery amounts to denial of justice.

**WE THEREFORE RECOMMEND** a denial of salaries to a judge and/or magistrate refusing to give judgment within the three months Constitutional period as established by law.

## **10. TERMINATION OF SELECTIVE JUSTICE IN OUR JUSTICE SYTEM**

**WE HOLD THE VIEW** that selective justice is a cancer prevalent in this country and has been happening both in recent and in time past.

**WE REAFFIRM** the view of the Truth and Reconciliation Commission saying that selective justice was another reason for our recent historical war.

**THEREFORE, WE RECOMMEND** for all persons to be deemed equal before the law in practice, as it is confirmed by section 23 of the 1991 Constitution and for allocation of cases by the Chief Justice to be informed by a law impregnated with safeguards against unaccountable discretion.

## **CLOSING REMARKS**

We as a colloquium call on **HIS EXCELLNCY THE PRESIDENT, THE CHIEF JUSTICE, THE SPEAKER OF PARLIAMENT, THE ATTORNEY-GENERAL AND MINISTER OF JUSTICE AND THE DIPLOMATIC COMMUNITY IN SIERRA LEONE** to ensure that all of the above stated recommendations in this communiqué are implemented forthwith for the benefit of the Sierra Leonean people and the prevalence of a fair, equitable, transparent and independent judicial system in Sierra Leone.

**SIGNED:**  
**RASHID DUMBUYA ESQ.**  
**EXECUTIVE DIRECTOR, LEGAL LINK**

**SIGNED:**  
**AUGUSTINE SORIE-SENGBE MARRAH**  
**LEGAL PRACTITIONER AND HUMAN RIGHTS ADVOCATE**

**SIGNED:**  
**THOMAS MOORE CONTEH**  
**REPRESENTATIVE FROM THE CIVIL SOCIETY ORGANIZATIONS**

**SIGNED:**  
**ALPHA AMADU BAH**  
**REPRESENTATIVE FROM THE LAW SOCIETY, FOURAH BAY COLLEGE**

**SIGNED:**  
**MICHAEL DUMBUYA ESQ**  
**REPRESENTATIVE FROM THE SIERRA LEONE BAR ASSOCIATION**

**SIGNED:**  
**SAHR MATTIA KODYOMBO**  
**PRESIDENT OF LAW SOCIETY, UNIVERSITY OF MAKENI**

**SIGNED:**  
**CYPHAS WILLIAMS**  
**REPRESENTATIVE FROM THE HUMAN RIGHT COMMISSIION OF SIERRA LEONE**

**SIGNED:**  
**REVEREND GIBRILLA KARGBO**  
**REPRESENTATIVE FROM NATIONAL COMMISSION FOR DEMOCRACY**

**SIGNED:**  
**MADAM MISSIONARY PEACE**  
**REPRESENTATIVE FROM THE INTER-RELIGIOUS COUNCIL**

**SIGNED:**  
**MOMOH MANSARAY**  
**REPRESENTATIVE FROM SIERRA LEONE UNION ON DISSABILITY ISSUES**

**SIGNED:**  
**MOHAMED OSMAN KAMARA**  
**PRESIDENT, SIERRA LEONE ASSOCIATION OF PERSONS LIVING WITH ALBINISM**

**SIGNED:**  
**ANTHONY VANDY**  
**REPRESENTATIVE FROM SIERRA LEONE ASSOCIATION OF JOURNALISTS**

**CC:**  
**His Excellency, Dr Julius Maada Bio, President of the Republic of Sierra Leone**  
**The Chief Justice of the Republic of Sierra Leone**  
**The Attorney General and Minister of Justice**  
**The Honourable Speaker of Parliament**  
**The Diplomatic Community in Sierra Leone**  
**Civil societies**  
**The Press**