



JOINT STATEMENT AT A PRESS CONFERENCE ORGANIZED BY LEGAL LINK AND CITIZENS ADVOCACY NETWORK REGARDING THE INDEFINITE SUSPENSION OF THE AUDITOR GENERAL AND ONE OF HER DEPUTIES BY THE PRESIDENT OF THE REPUBLIC OF SIERRA LEONE

Background Facts

Following the unprecedented move by the President of the Republic of Sierra Leone on the 11th November 2021 to indefinitely suspend the Auditor General and one of her deputies as reported on the BBC by Umaru Fofana, **LEGAL LINK** and **CAN** two leading civil society organizations advancing the course of human rights, accountability, democratic governance, rule and constitutionality in Sierra Leone, have jointly agreed to hold an emergency press conference over this shocking and unfortunate incident and to state our position regarding same.

About the Auditor General's Office

The Office of the Auditor General is one of Sierra Leone's leading institutions that ensure transparency and accountability in the governance system in Sierra Leone. It carries out this mandate among other things, through an annual audit report and special audit report on public institutions as well as the private sector in the country. For over ten years now, this institution has produced mind-blowing reports that have unearthed high level of corruption within the public sector in Sierra Leone.

The Auditor General's Office is a creature of the Constitution pursuant to section 119. The Auditor General is appointed by the president after consultation with the Public Service Commission and subject to the approval of parliament. By section 119 (6) of the Constitution, the Auditor General, in the exercise of his functions under this Constitution or any other law, shall not be subject to the direction or control of any person or authority.

Furthermore, by section 119 (9) of the Constitution, the provisions of section 137 of the 1991 Constitution relating to the removal of a judge of the Superior Courts of Judicature other than the Chief Justice from office, shall apply to the Auditor General.

Against this backdrop, and for the avoidance of doubt, it is vital for section 137 of the Constitution to be cited verbatim so as to know how the Auditor General ought to be removed by law:

"137. (1) Subject to the provisions of this section, a Judge of the Superior Court of Judicature shall hold office during good behaviour.

(2) A person holding office as a Judge of the Superior Court of Judicature—

a. may retire as a Judge at any time after attaining the age of sixty-five years; b. shall vacate that office on attaining the age of sixty-five years.

(3) Notwithstanding that he has attained the age at which he is required by the provisions of this section to vacate his office, a person holding the office of a Judge of the Superior Court of Judicature may continue in office after attaining that age, for a period not exceeding three months, to enable him to deliver judgement or do any other thing in relation to proceedings that were commenced before him previously thereto.

(4) Subject to the provisions of this section, a Judge of the Superior Court of Judicature may be removed from office only for inability to perform the functions of his office, whether arising from infirmity of body or mind or for statement misconduct, and shall not be so removed save in accordance with the provisions of this section

(5) If the Judicial and Legal Service Commission represents to the President that the question of removing a Judge of the Superior Court of Judicature, other than the Chief Justice, under subsection (4) ought to be investigated then—

a. the President, acting in consultation with the Judicial and Legal Service Commission, shall appoint a tribunal which shall consist of a Chairman and two other members, all of whom shall be persons qualified to hold or have held office as a Justice of the Supreme Court; and b. the tribunal appointed under paragraph (a) shall enquire into the matter and report on the facts thereof and the findings thereon to the President and recommend to the President whether the Judge ought to be removed from office under subsection (7).

(6) Where the question of removing a Judge of the Superior Court of Judicature from office has been referred to a tribunal under subsection (5), the President may suspend the Judge from performing the functions of his office, and any such suspension may at any time be revoked by the President, and shall in any case cease to have effect if the tribunal recommends to the President that the Judge shall not be removed from office.

(7) A Judge of the Superior Court of Judicature shall be removed from office by the President—
a. if the question of his removal from office has been referred to a tribunal appointed under subsection (5) and the tribunal has recommended to the President that he ought to be removed from office; and b. if his removal has been approved by a two-thirds majority in Parliament.

(8) If the President is satisfied on a petition presented to him in that behalf, that the question of removing the Chief Justice ought to be investigated, then—

a. the President shall, acting in consultation with the Cabinet, appoint a tribunal which shall consist of—

i. three Justices of the Supreme Court, or legal practitioners qualified to be appointed as Justices of the Supreme Court; and ii. two other persons who are not Members of Parliament or legal practitioners;

b. the tribunal shall enquire into the matter and report on the facts thereof and the findings thereon to the President whether the Chief Justice ought to be removed from office under subsection (10), and the President shall act in accordance with the recommendations of the tribunal.

(9) Where the question of removing the Chief Justice from office has been referred to a tribunal under subsection (8), the President may by warrant under his hand suspend the Chief Justice from performing the functions of his office, and any such suspension may at any time be revoked by the President, and shall in any case cease to have effect if the tribunal recommends to the President that the Chief Justice shall not be removed from office.

(10) The Chief Justice shall be removed from office by the President—

a. if the question of his removal from office has been referred to a tribunal appointed under subsection (8) and the tribunal has recommended to the President that he ought to be removed from office; and b. if his removal has been approved by a two-thirds majority in Parliament."

From the above excerpt of section 137 as provided under the Constitution, three sections are worth taking note of; section **5, 6 and 7**.

Beginning with section 5, it stands to reason that it is the Judicial and Legal Service Commission that must represent to the President regarding the question of removing the Auditor General who enjoys a judge like status by virtue of the Constitution and not the other way round. Also, it is required of the President to act in consultation with Judicial and Legal Commission to appoint a tribunal.

Several questions therefore remain: firstly, is the question of removal of the Auditor General a representation from the JLSC or was it a solo decision by the president? Secondly, to what extent has the JLSC been consulted regarding same?

By the construction section 6 also, it clear as crystal that the question of removing the Auditor General from office must first be referred to a tribunal before the President may suspend the Auditor General from performing the functions of his office. Had the tribunal ben set up and the issue refer to it before the president suspended the Auditor General? The answer is a big no! As a matter of fact, the reverse is true in this situation.

More interesting also is the provision of subsection 7 of section 137. Construing this section, one may note that this attempted overthrow of the Auditor General is far from being over as there are about three hurdles to climb before the president could finally succeed in this objective.

Firstly, a tribunal must be set up. Second, the tribunal must recommend to the president that the Auditor General ought to be removed from office; and thirdly but most important of all, the removal ***must be approved by a two-thirds majority in Parliament.***

From the above sections, one may note that there are indeed grave procedural errors regarding this move by the president to remove the Auditor General from Office as required by section 137 of the Constitution. Also worthy of note is the fact that it is parliament that will have a final say regarding the removal of the Auditor General of Sierra Leone.

From the foregoing, we hereby make the following recommendations:

Recommendations

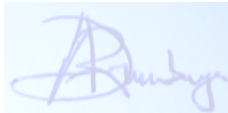
1. That while the president wields powers under the Constitution to remove the Auditor General as provided for under section 137, it is vital that due process be followed as set out under the very section 137. Any infraction will be deemed as a violation of the Constitution of Sierra Leone.
2. That the people of Sierra Leone be kept abreast with the reasons as to why the Auditor General and one of her deputies were suspended as required by the Right to Access Information Act.
3. That it is untimely and unprecedented to make such a move at a time very close to the publication of the 2020 Audit Report. Such a move will definitely be interpreted as a conscious attempt to not only interfere with the report, but also to undermine our nation's transparency and accountability aspirations.
4. That any attempt to replace the Auditor General will be deemed as illegal and inconsistent with the provisions of the Constitution.

5. That we call on the remaining deputy commissioners of the Audit Service of Sierra Leone to ensure that the sanctity of the 2020 Audit Report currently being developed is not compromised.
6. That if the tribunal is to be set up, we urge that men of character and with deep sense of cosmic responsibility and moral rectitude, and who are also apolitical be constituted to form the panel.
7. That the proceedings of the tribunal be made open to the public.
8. That parliament ensures to conduct the removal proceedings where practicable in a manner that is fair and transparent so as to determine whether the two-thirds majority was achieved or not to warrant a removal.
9. That the government of Sierra Leone must ensure to always respect the tenure of officials in institutions protected by the law as this is not the first time that this abrogation is being committed by the government. The illegal removal of the human rights commissioners, the ombudsman and the ACC commissioner are all bad precedents that have been laid.
10. That we note that before the suspension of the Auditor General and deputy they have been under widespread and systematic verbal attacks since the publication of the 2019 annual audit report and COVID19 audit report.
11. That the ultimate suspension of the Auditor General, Lara Taylor Pearce, who has displayed a high sense of integrity and cosmic responsibility regarding her work, undermines the president's commitment to women empowerment and also serves as a disincentive to many women who may have such aspirations in the future.
12. That we call on civil society, the press, religious bodies, the internal donor partners and the diplomatic and consular corps as well as the general public to decry and condemn at all times any attempt by any government to attack our democratic institutions.

End*

Dated 12th day of November 2021

Sign:



Rashid Dumbuya Esq.
Executive Director
LEGAL LINK

Sign:



Thomas Moore Conteh
Executive Director
Citizens Advocacy Network