



CHRISTIAN LAWYERS CENTRE LEGAL LINK



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

25th August, 2022

PRESS STATEMENT

9 FUNDAMENTAL FLAWS IN THE SETTING UP OF THE SPECIAL INVESTIGATIONS COMMITTEE TO LOOK INTO THE VIOLENT PROTESTS OF AUGUST 10, 2022.

Introduction

Christian Lawyers Centre (hereinafter referred to as **LEGAL LINK**) has religiously followed the events of August 8 & 9 as well as the violent protests that ensued on the 10th of August and the interim response by the security forces and the government in a bid to quell down the situation.

LEGAL LINK further notes the state funeral rites accorded to the security personnel that lose their lives during the violent protests and the handing over of the bodies of civilians that also lose their lives during the protests to their family members for burial.

In a bid to investigate the the violent protest of August 10, LEGAL acknowledges and applauds the move of the government in setting up of a Special Investigations Committee through a public notice dated 24th August 2022 to unearth the real causes, inciters as well as the effects of the violent protests.

Admittedly, while the setting up of an investigation framework of such nature may be welcoming, we do however maintain a few concerns regarding the setting up of the Special Investigations Committee which we would like to openly pass on to the relevant authorities for urgent action.

LEGAL LINK makes these observations out of good faith and in the interest of transparency, fairness and justice.

9 FUNDAMENTAL FLAWS IDENTIFIED BY LEGAL LINK

1) Conflict of interest looms large in the Special Investigations Committee

Save for a few, almost all of the members of the Special Investigations Committee are conflicted in one way or the other. This is the case because they are presently holders of public offices in the state and receiving salaries at the behest of the government.

For example, it is reported that the Chairman of the Special Investigations Committee, Emmanuel Saffa Abdulai is presently the Chairman of the Independent Procurement Review Panel and also a full time employee at the University of Sierra Leone. Also, it is rumoured that Edina Swallow, President of the Sierra Leone Bar Association is Director of Legal, Petroleum Unit and a Member of the Judicial and Legal Service Commission. Furthermore, Mrs Fatmata Clairia Carlton- Hanciles is the Executive Director of Legal Aid Board, Abdulai Caulker is National Security Coordinator at Office of National Security, Abdulai Bangura is the Chairman Political Parties Registration Commission, Dr. Victor Massaquoi is the Chairman of the Independent Media Commission while Sheka Mansaray is the Chairman of the Peace Commission.

From the above, it is clear as crystal that all of these committee members are public servants occupying various public offices appointed to by the president and serving at the behest of the President. Like one commentator succinctly opinionated, **"it would be highly unlikely for them to reach conclusions that are contrary to the public pronouncements which the President had already made regarding the terrorists and inciters of the violent insurrection against his government on August 10, 2022"**

In the opinion of LEGAL LINK, it was for good reasons why the Jenkins Johnston and Shears Moses Commissions of Inquiries were headed by independent legal practitioners or high standing and experience in the legal profession, and who held no public offices at the material time. This was to principally vitiate any objection of conflict of interest and or perceived or actual bias of the investigation process and outcome by the public.

At the very least, it would have made a huge difference had the Chairman of the Special Investigations Committee not been a person under the direct employ of the government. Sadly enough, the opposite is true in this case.

Consequently therefore, it raises an issue of conflict of interest and actual bias which may impute a need for recusal by these members where integrity reigns supreme.

2) A good number of the team members had already taken sides through prior commentaries and open statements

Without any gainsaying, it is no secret to opine that a good number of the members of the Special Investigations Committee had already made their positions known regarding August 10 either by way of commentaries, statements and or WhatsApp posts made by them during and after the events of August 8, 9 and 10 respectively.

There's evidence to show that bulk of the majority of them had already indicted the opposition as inciters of the violent protests and further categorized the violent protesters as terrorists set out to overthrow the legitimate government of President Julius Maada Bio.

As premature and unsubstantiated some of their comments were, it raises however an issue of conflict of interest and/ or perceived bias on their part which might raise the need for a recusal by these individuals.

Certainly, it would be highly unlikely to see any departure of earlier positions by some of these members no matter the evidence encountered during the Investigations.

3) The security sector representatives have no business to be appointed into such committee since they have been alleged as perpetrators of the violent deaths that occurred against civilians on August 10.

It is trite law that a man cannot be a judge in his own cause. But construing the composition of the Special Investigations Committee, we note an exception to this fundamental principle of natural justice.

We note that the security forces who have been allegedly indicted as perpetrators of the killings of about 25 civilians are represented in the investigations committee while the other side is not represented. In the Committee for example, there is the National Security Coordinator of the Office of National Security and the National Chairman, Retired Senior Police Officers Association.

The presence of these two members in the Committee certainly raises issues of conflict of interest and actual bias on the part of these members. Many hold the view that a lot of what happened beginning from August 8 to 10 was largely as a result of the failure of the security and intelligence community in Sierra Leone. It may therefore not be correct for them to now be conscripted as judges in their own cause.

4) The scope of the mandate of the Special Investigations Committee is limiting. It should have been broadened to also cover the events of August 8 and 9.

An accurate assessment of the facts of the protests as set out by the PPP coordinator in the diaspora would reveal that the actual date of the protests began from the 8th of August and spanned right on to the 10th of August where it became violent, fatal and destructive.

To focus therefore the investigations only on the events of 10th August may not only be misleading but limiting in scope and hence would be counterproductive in relation to fully understanding the underlying rhetorics and nuances that underpin the entire episode.

5) No representation of the Youths in the Special Investigations Committee or that of the Human Rights Commission of Sierra Leone

No doubt, the bulk of the majority of the population that took part in the violent protests on August 10 were youths. It would therefore be ironical, unfair and prejudicial to their case if an investigations were to be carried out in which the security forces were represented but not the Youths.

Also, it is important to emphasize that when it comes to investigations pertaining to violations of human rights and fundamental freedoms, the apt institution to rely on for guidance is the Human Rights Commission of Sierra Leone. This is the case because they have a comprehensive understanding of the legal frameworks and human rights obligations that Sierra Leone has under international, regional and domestic law.

That besides, the Human Rights Commission has a special mandate as well as the expertise and competence to preside over Public inquiries and proffer plausible recommendations for reform. To marginalize them from the investigation process in place of other institutions deprives the country of the required expertise that may have helped out in a positive way.

6) The setting up of a Public or Commission of Inquiry would have best served the purpose rather than a Special Investigations Committee

It is important to emphasize that for a detailed and comprehensive understanding of the causes and effects of any violent protests to be made handy, precedents and international best practice indicate that adopting either a Public Inquiry or a Commission of Inquiry can best serve the purpose.

Such is the case because these kinds of models are civil processes that are non-adversarial and can even attract a wide range of support and participation from the public.

Public or Commission of Inquiries are usually bestowed with powers to compel the attendance of witnesses to testify before it by way of subpoena. Their sittings are also done in the open and outcomes can be appealed against in the Superior Courts of Judicature. The previous Jenkins-Johnston and Shears Moses Commissions of Inquiries set up to look into violence and destruction of lives and properties are apt examples.

It is unclear from the public notice of 24th August 2022 as to whether the Special Investigations Committee will be operational in this way.

7) **No time limit is given to the Special Investigations Committee regarding the submission of report**

We note also in the public notice that no time line is given to the Special Investigations Committee to conclude with their investigations and submit their report.

This is certainly worrying especially when judged in the light of the forthcoming elections which are scheduled to take place in about 9 months time in the country. It may well be the case that the report of the Special Investigations Committee might be released months or even a week to the elections. No one can tell.

A clear cut indication of timeline in the public notice might have saved the SIC from such unwarranted suspicion from the public. **International best practice demands that such investigations are always given time lines so that they could not be prolonged unduly or used as a tool to suppress dissenting views and opinions within the state.**

8) **The composition of the Special Investigations Committee is too large and over-bloated with public officials that heads critical offices in the state**

No doubt, from the public notice of 24th August 2022, we note that the SIC is comprised of 15 members. This number is too large in terms of managing perceptions and inputs. A general meeting for example on a crucial issue might likely pose unnecessary arguments and delay in relation to outcome and consensus. Such might even affect the speed of the investigation process.

Furthermore, we note also that majority of the members comprising SIC are heads of critical institutions within the jurisdiction of Sierra Leone. Their involvement therefore in the SIC may undermine their day to day work, time and attention in their substantive offices.

9) **The setting up of the Special Investigations Committee is coming late in the day especially when almost all top government officials including the president have casted aspersions on the opposition for the violent protests and deaths that occurred on August 10.**

It is no gainsaying to opine that a good number of video recordings and written evidences exist in which top government officials including the President, Foreign Affairs Minister, Information Minister etc have all blamed the opposition for the carnage that took place on August 10. Some have even categorized it as acts of terrorism fueled and sponsored by the main opposition party in the country.

To what extent would the Special Investigations Committee be able to resist such conspiracy theories and outcome in their report (given the fact that most of the members of SIC are appointees of the president) is anyone's guess to make.

Recommendations

While we welcome the move by the government to establish an investigative process to unearth the real causes of and to hold to account those that were responsible for the carnage that ensued on 10th August 2022, it is vital however to emphasize that the makeup of such investigative body must be proper, just, fair, ethical and equitable in the given circumstances so that its work, processes and outcomes will be accepted by all.

If the above is to be achieved, the following recommendations must be implemented with urgency.

1). That a Public Inquiry be established in place of the Special Investigations Committee.

2) That clear cut terms of reference be set out for the Public Inquiry panel regarding its mandate, functions, scope and timeline.

3) That we recommend for an eight membership panel instead of fifteen.

4) That the president appoints a private legal practitioner of 20 years standing and who is not in the employ of the government as Chairman of the Public Inquiry hearings.

5) That the other 7 members shall be selected from key interest groups to form part of the Public Inquiry Panel. One representative from the Sierra Leone Bar Association, One from the Sierra Leone Association of Journalists, One from youth groups, one from women's group, one from Civil society, one from the Human Rights Commission and one from the Independent Police Complaint Board.

All of the above representatives must be selected by their constituent membership bodies and institutions with due consideration to conflict of interest issues.

6) That the public inquiry hearings be held in the open in the interest of transparency and accountability.

7) That the scope of the Public Inquiry be extended to also look into events of August 8 and 9 and not just the violent protests that ensued on the 10th of August 2022.

8) That powers to subpoena witnesses and or interested parties be given to the Public Inquiry panel and where such powers are disregarded, such acts shall amount to contempt and be punishable by law.

8) That it is made clear in the Terms of Reference that the findings of the Public Inquiry panel can be appealed against by aggrieved parties in the Court of Appeal.

9) That persons affected by conflict of interest be made to recuse themselves from the panel sittings.

10) That the Public Inquiry hearings lasts for 3 months so that any appealable issues can be dealt with before the 2023 elections.

Conclusion

Without prejudice to the individual capacity and prowess of the membership of the Special Investigations Committee as established in the public notice, it is vital to pinpoint that if the above issues raised are not addressed, such may have the proclivity to undermine fairness, objectivity and impartiality in the investigation process and outcome.

For in the words of a legal pundit, **"the legitimacy and outcome of an investigative process is of equal importance as the legitimacy and capacity of the men and women who preside over such investigations"**.

Where the above recommendations are blatantly refused, LEGAL LINK would certainly undertake a CSO independent investigations / inquiry into the events of August 8,9 and 10 in a bid to set the records straight and to ensure a fair and unbiased outcome of the investigative process.

May the souls of both the security forces and the civilians that were lost on that fateful day rest in perfect peace.

AMEN.

Rashid Dumbuya Esq



Executive Director of LEGAL LINK and former Commissioner for Human Rights in Sierra Leone.

On behalf of the LEGAL LINK team.

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ABOUT LEGAL LINK

Christian Lawyers Centre (a.k.a LEGAL LINK) is a non-profit legal advocacy group comprising of lawyers, law students and human right activists that seeks to provide legal assistance to religious communities as well as vulnerable groups in Sierra Leone through legal advocacy, education and training, public interest litigations, state and private sector accountability, enforcement of the rule of law and ensuring respect for domestic and international laws that guarantee fundamental human rights and freedoms.

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