Sierra Leone, a country on the west coast of Africa, is a very small country that is roughly circular in shape, extending from north to south a maximum distance of 210 miles (332 km) and from west to east a distance of about 204 miles (328 km).¹ The country lies between the sixth and tenth degrees of north latitude and the tenth and fourteenth degrees of west longitude and is bounded on the north by the boundary line delimited under the provisions of the Anglo-French Convention² and also on the south by the Anglo-Liberian boundary line delimited under the provisions of the Anglo-Liberian Conventions.³

The country is a constitutional republic with a directly elected president,⁴ a unicameral legislature⁵ and a population of approximately seven (7) million.⁶ The President of Sierra Leone is both the head of state and head of government, for which executive powers are exercised by him as head of the executive arm of government.⁷ Legislative powers are vested in the Parliament of Sierra Leone⁸ which consists of the President, the Speaker, and Members of Parliament,⁹ whilst Judicial powers are vested in the Judiciary, of which the Chief Justice of the Republic of Sierra Leone is the head.¹⁰

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¹ Joe A. D. Alie, A New History of Sierra Leone, 1st edn. Macmillan Publishers Ltd 1990, page 1
² The Convention was signed by His Britannic Majesty’s Principal Secretary of State for Foreign Affairs and the Ambassador of the French Republic on the 28th day of June 1882.
³ Signed and dated on the 11th day of November 1885 and on the 21st day of January 1911
⁴ Section 42(2) Act No. 6 of the 1991 constitution
⁵ Section 73(1) Act No. 6 of the 1991 constitution
⁷ Section 40 (1) Act No. 6 of the 1991 constitution.
⁸ Section 73 (2) and 105 Act No. 6 of the 1991 constitution.
⁹ Section 73 (1) Act No. 6 of the 1991 constitution
¹⁰ Section 120 (1) Act No. 6 of the 1991 constitution.
The judiciary of Sierra Leone, like any other country, is a very important arm of government that is very crucial to ensuring a fair and transparent justice system in the country. It is mainly entrusted with the responsibility of interpreting the constitution and all other laws of Sierra Leone, including convicting lawbreakers and offenders\(^{11}\) through a hierarchical court structure established by the 1991 constitution of Sierra Leone.\(^{12}\)

Sierra Leone’s judiciary has a rich history in relation to the development of the justice system in West Africa. During the British colonial period (of which Sierra Leone gained independence from),\(^{13}\) Sierra Leone is the first country in West Africa that hosted the first Vice Admiralty Court to preside over slave-trade cases.\(^{14}\) The country also served as the Chief Administration of the British West African States (comprised of Sierra Leone, Ghana, Nigeria, and The Gambia).\(^{15}\) For many years during the colonial period, Sierra Leone hosted the West African Court of Appeal, and on the 19\(^{th}\) of February 1866, when the United West African Settlement was established, Sierra Leone’s Supreme Court was recognized as the Supreme Court of Nigeria, The Gambia, and the Gold Coast (Ghana).\(^{16}\)

During the post-colonial period, the judiciary was relatively independent in terms of dispensing fair and transparent justice, especially during the reign and leadership of Sir Milton Margai.\(^{17}\) Government interference and the non-independence of the judiciary became intensified under Siaka Steven\(^{18}\) after he passed both the 1971 republican constitution\(^{19}\) and the 1978 one-party State constitution,\(^{20}\) which laid a firm foundation for the executive to dominate the judiciary. In August 1991, a referendum was held in Sierra Leone for a new constitution to restore multi-party politics after the country had been a one-party state for thirteen (13) years.\(^{21}\)

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\(^{11}\) Section 120 (2) Act No. 6 of the 1991 constitution.
\(^{12}\) Section 120 (4) Act No. 6 of the 1991 constitution.
\(^{13}\) History of the Sierra Leone Judiciary. Available at: [https://www.judiciary.gov.sl/](https://www.judiciary.gov.sl/) (accessed on the 4\(^{th}\) of January 2022)
\(^{14}\) Ibid
\(^{15}\) Ibid
\(^{16}\) Ibid
\(^{17}\) The first Prime Minister (from 9\(^{th}\) July 1960 to 28\(^{th}\) April 1964) of the Republic of Sierra Leone.
\(^{18}\) The third Prime Minister (from 17\(^{th}\) March 1967 to 19\(^{th}\) April 1971) and the first Executive President (from 21\(^{st}\) April 1971 to 28\(^{th}\) November 1985) of the Republic of Sierra Leone.
\(^{19}\) The 1971 Constitution Act No. 4 of 1971.
\(^{21}\) The 1991 Constitution Act No. 6 of 1991
THE CONCEPT OF JUDICIAL INDEPENDENCE

One of the fundamental principles and prerequisites of any fair trial is that a tribunal that is charged with the responsibility of adjudicating or making decisions in a particular case should and must be established by law, which is competent, impartial, and independent. The independence of any judiciary around the world requires its freedom from any influence or control by the executive or legislative branches, even though the concept of checks and balances should be encouraged to foster good governance. As stated by Joseph Koroma:

“A judge must be free to decide matters before them impartially, on the basis of the facts and in accordance with the law, without any interference, pressures, threats or improper influence, direct or indirect, from any quarter or for any reason. Different organs of the State have exclusive and specific responsibilities, and the other organ must under no circumstances interfere with the judicial arena.”

THE IMPORTANCE OF A JUDICIAL COUNCIL

Judicial Council (terms such as Judicial Service Commission, Judicial Appointments Commission, or Council of the Judiciary may be used) is an independent institution that includes a mixture of judicial members and non-judicial members that are established to muffle the functions of appointments, promotions, and discipline of judges to ensure some level of accountability and independence in the judiciary.

France was the first country to establish the High Council of Judiciary (Conseil Superieur de la Magistrature) in 1946. The Council oversaw managing judicial personnel, but only a few of the members were themselves magistrates elected directly by judges. Italy’s judicial council

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23 A precursor for judicial councils can be seen in the use of formal nominations committees composed of various governmental officials.
24 Cheryl Thomas, Judicial Appointments in Continental Europe, Lord Chancellor’s Department, Research Series 6/97, 1997
a model that has been duly followed in other judicial reforms around the world. However, Portugal and Spain introduced slightly a different model after the fall of their dictatorship regime in the mid-1970s of which judges constitute a major proportion of the members. The councils in Spain and Portugal have the final decision-making in all cases that has to do with tenure, promotion, and removal of judges.

Most International and regional human rights treaties make provisions for the recognition of the right to an independent and impartial judiciary as a guarantee of the right to a fair trial. Guidelines and principles have been drafted to define the scope and the meaning of judicial independence which have also been complemented by case laws of some regional human rights courts.

The United Nations Basic Principles on the Independence of the Judiciary calls for the guarantee of judicial independence by the State, and freedom from all forms of undue influence in the judicial decision-making process, but it does not mention the creation and role of judicial councils. However, the Universal Charter refers to judicial councils in broad terms and recommends that the selections of judges and the judicial disciplinary process “be carried out by an independent body that includes substantial judicial representation”. Similarly, the Beijing Principles recognized the use of judicial councils in the appointment of judges and also called for the membership of the Councils to be by “representatives of the higher judiciary and the

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25 Ibid
26 The Spanish Council (Consejo General del Poder Judicial) has twenty members, twelve judges, and eight lawyers, all appointed by the Parliament and the Chief Justice ex officio. For prosecutors, there is a council made up of twelve prosecutors (Consejo Fiscal).
27 There are three councils in Portugal, one for the administrative courts (Conselho Superior dos Tribunais Administrativos e Fiscais), one for the judicial courts (Conselho Superior da Magistratura), and one for the prosecutors (Conselho Superior do Ministerio Publico).
31 Articles 9 & 11 of the Universal Charter of the Judge, 1999, International Association of Judges.
independent legal profession”. In the Commonwealth, the *Latimer House Guidelines* emphasized that the appointment of judges should be made on the advice of the judicial council, “established by the Constitution or by statute with a majority of the members drawn from the senior judiciary”.

**HOW INDEPENDENT IS THE SIERRA LEONE JUDICIARY?**

In Sierra Leone, the judiciary is not entirely independent even though the drafters of the 1991 constitution, among many other things, included a provision that gears to give the judiciary complete independence from other branches of government. The said provision states that,

“In the exercise of its judicial function, the judiciary shall be subject only to the constitution or any other law and shall not be subject to the control or direction of any other person or authority”.

Presumably, the abovementioned provision in the 1991 constitution gives a clear impression the Sierra Leone judiciary is independent. However, this is not the case as there are many factors in the 1991 constitution which contribute to the notion that the judiciary system in Sierra Leone is not independent, and this includes the manner of appointment and removal of judges in Sierra Leone, duration of their terms in office and the non-security of tenure for Judges appointed on contractual basis etc.

The appointment of the Chief Justice and all other judges of the Superior Court of Judicature is made by the President on the advice of the Judicial Legal Service Commission (JLSC) but is subject to the approval of parliament. It is worth noting that the provision inserted in the constitution strictly adheres to the principles of separations of power and/or checks and balances, which gears to promote good governance and the rule of law.

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34 Section 120 (3) Act No. 6 of the 1991 constitution.
35 Section 135 and 137 Act No. 6 of the 1991 constitution
36 Section 137 (2) Act No. 6 of the 1991 constitution
37 Section 136 Act No. 6 of the 1991 constitution
38 Section 135 (1) (2) Act No. 6 of the 1991 constitution
So, the essence of parliamentary approval is to make sure that presidential nominees are vetted based on merit so that individuals with the relevant ability and appropriate training or qualifications, integrity, and credibility will be appointed as judges as mandated by Article 10 of the UN Basic Principles on the Independence of the Judiciary.\textsuperscript{39}

However, the 1991 constitution also makes provisions that may undermine judicial independence as mandated by the constitution of Sierra Leone\textsuperscript{40} and reaffirms Article 1 of the UN Basic Principles on the Independence of the Judiciary.\textsuperscript{41} The provision allows the president to bypass parliamentary approval by appointing a judge on a contractual basis who has already attained the age of retirement or the age at which he/she is required to vacate office.\textsuperscript{42} The contracts of those judges are subject to renewal by the president or until such period when their appointments are revoked by the President.\textsuperscript{43} So, in essence, those judges effectively serve at the pleasure of the president with no security of tenure, unlike countries like Belgium\textsuperscript{44} and the United States of America (USA), where judges are appointed for life.\textsuperscript{45}

**CONCLUSIONS**

The United Nations Basic Principles on the Independence of the Judiciary clearly state that “The term of office of judges, their independence, security, condition of service . . . shall be adequately secured by law. Judges . . . shall have guaranteed tenure until mandatory retirement age or the expiry of their term of office”.\textsuperscript{46} The International Bar Association’s Minimum Standards of Judicial Independence state that “Judicial appointments should generally be for life, subject to

\textsuperscript{39} Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26th August to 6th September 1985 and endorsed by General Assembly resolutions 40/32 of 29th November 1985 and 40/146 of 13th December 1985

\textsuperscript{40} Supra note 34.

\textsuperscript{41} Supra note 30.

\textsuperscript{42} Section 136 (2) & 136 (4) Act No. 6 of the 1991 constitution

\textsuperscript{43} Section 136 (3) and 136 (5) Act No. 6 of the 1991 constitution

\textsuperscript{44} The 1831 Belgian Constitution

\textsuperscript{45} Article III of the US Constitution 1789

the removal for cause and compulsory retirement at an age fixed by law at the date of appointment. The grounds for removal of judges should be fixed by law and shall be clearly defined”. Also, the Latimer House Guidance on Parliamentary Supremacy and Judicial Independence, which applies only to members of the Commonwealth (of which Sierra Leone is), states that “arrangements for appropriate security of tenure and protection of levels of remunerations must be in place”. Therefore, the provision of the Sierra Leone constitution that allows the President of Sierra Leone to unilaterally appoint judges without parliamentary approval where there is a judicial vacancy on a contractual basis and until such appointment is revoked by the president not only undermines the independence of the judiciary as affirmed by several guidelines and principles drafted to conform with judicial independence but also the concept of separation of powers and checks and balances.

References:

Constitution of Sierra Leone, Act No. 4 of 1971.
Constitution of Sierra Leone, Act No. 12 of 1978.
Constitution of Sierra Leone, Act No. 6 of 1991.

47 Article 22 & 29 (a) of the IBA Minimum Standards of Judicial Independence: Adopted 1982
49 Supra note 42.
50 Supra note 43.
51 Supra note 29.

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