Proportionate Punishment for corruption offences, through prosecution and conviction, has almost always proved to be an effective deterrence tool in the fight against corruption. However, for quite a while in Sierra Leone’s anti-corruption campaign, anti-graft crusaders have questioned and objected to the minimal threshold posture of judicial sentencing in anti-corruption cases. This critique has mainly been advanced from a deterrence perspective and its gravamen is informed by the view that penalties that are imposed by the courts for convictions in anti-corruption cases ought to be potent enough to positively impact people’s attitude toward corruption prevention and eradication. There cannot be any denial of the fact that human behavior, whether good or bad, deviant or conforming, is the key focus of every good legal regime. Inasmuch as the formulation and promulgation of laws are imparted by human behavior, the law must equally impact the behaviors of its subjects.

The social science disciplines, including anthropology, political science, psychology, sociology and economics, are all replete with empirical and theoretical analyses that proffer various explanations of general human behavior and its response to the law. While some social scientists, especially sociologists, psychologists and economists, have espoused the idea that individuals sometimes commit crimes because of their biological make-up, the majority of them are in agreement that criminal conduct is mostly the product of behavior that is influenced by the complexities of society and its legal regime. These complexities and variations across various societies also presuppose, to a large extent, variations in the commission of crimes between and amongst societies. For example, while it is less likely that a teenager in Sierra Leone will indulge in the deviant behavior of indiscriminate and mass shooting in a school leading to multiple fatalities, history has shown that it is comparatively more likely that such a tragedy will occur in the United States of America. It is on the foundation of this reasoning that Karl Max, Max Weber and George Simmel, to name a few, explained the proclivity of crime on the basis of a social conflict between the bourgeoisie and the proletariat, while Emile Durkheim and Robet K. Merton predicate their theories of criminal conduct on functionalism and the ramifications of societal structures.

There is a preponderance of theoretical explanations, backed by empirical evidence, that aid the illumination of our understanding of crime vis-a-vis human behavior. Sociologists, in particular, generally view criminal conduct as a deviant behavior that violates
established norms and also argue that the commission of crime *per se* is good for society because it serves as a constant precursor for social regulation, integration and change, including provoking change even of the law. As much as this sociological proposition is debatable, corruption is one particular kind of crime that can never be good for society and quite a number of economists are in agreement with the veracity of this assertion. Corruption breeds nothing but poverty, societal division, gross inequality, political subservience, bad governance, underdevelopment and the perpetuation of a neo-colonial order in African societies. The malevolence of corruption is evidenced in the fact that it robs even the partaker of his integrity and deprives the victims (members of society) of legitimate reward, benefit and the essential amenities of a good life.

From an economic perspective, corruption imposes immense cost on our society. The resulting social harm of corruption, according to the standard view among economists, equals the net loss in value. Put simply, the net loss of the misappropriation of free health care drugs by a nurse who works at a pediatric clinic, for example, equals the amount of children who remain sick or die as a result of the misappropriation of the drugs that could have been used to cure their illnesses if those drugs were still available in the clinic. Similarly, the resulting net loss in value of corruption in the energy sector equals the eroding of excellence in the cognitive understanding and performance of students due to the absence of electricity that should enable their night study, or the untimely death of patients because of a sudden blackout that occurs in the middle of their surgery in a hospital that lacks a functioning stand-by generator, or the negative macro-economic impact on the economy as a whole. Whatever form it takes, corruption is a monster with no sympathy. The effect of corruption on the agenda of our national development is so enormous that an attempt to quantify it with exactitude will certainly fail because corruption, when it becomes systemic, paralyses the vibrancy and effectiveness of every sector.

There is no doubt that Sierra Leone has succeeded in creating a robust anti-corruption legal regime and has generally made unprecedented gains in the fight against corruption. The Parliament of Sierra Leone enacted the Anti-corruption Act No. 1 of 2000 which was repealed and replaced by the Anti-Corruption Act No. 12 of 2008, which was amended by the Anti-Corruption (Amendment) Act No. 9 of 2019. However, there is also no denial of the fact that a law, no matter how well intentioned, will generally be seen as ineffective or contemptible if its application lacks the ability to adequately address the mischief it was intended to remedy. The veracity of this assertion equally applies to the judicial application of the laws on some of our anti-corruption offences in recent years, especially with regard to their penalties. The ultimate objective of any criminal legislation on corruption is not prosecution and convictions, which are merely means to an end; the ultimate objective is the deterrence of corruption. Anti-corruption laws are created with a view to drastically minimize the cost of corruption and reduce its harm to the barest
minimum, and this is why the litmus test of every anti-corruption legislation includes; first, what conduct should be punished, and second, to what extent must that conduct be punished?

It is therefore on the strength of this background that I strongly hold the view that the imposition of very minimal penalties in anti-corruption cases does not aid the fight against corruption in Sierra Leone. In fact, it undermines the anti-corruption efforts of the Anti-Corruption Commission and the general national anti-corruption campaign. The Sierra Leone Parliament, by virtue of Section 13 of the Anti-Corruption (Amendment) Act No. 9 of 2019, increased the general penalty for corruption offences from a fine of not less than Thirty Million Leones to a fine of not less than Fifty Million Leones and from a term of imprisonment of not less than three years to a term of imprisonment of not less than five years. This increment in penalty was made with a view to not only bolster the fight against corruption but to also serve, to a large extent, as a strong deterrence to corruption in Sierra Leone. However, it has become apparent from quite a considerable number of sentences in our anti-corruption cases that some of our judges, respectfully speaking, seem to be more inclined towards imposing the minimal fine of Le50,000,000 aforesaid with an alternative minimal five years term of imprisonment. This has been demonstrated in a plethora of anti-corruption cases, a few examples of which include the following: On the 19th January 2018, Saidu Bobson Kamara was convicted of conspiracy to commit a corruption offence contrary to section 128 (1) of the Anti-Corruption Act 2008 and he was sentenced to pay a fine of Le15,000,000 (Fifteen Million Leones) or serve a term of imprisonment of three years; on the 15th October 2021, Daniel Kapri Serry was convicted of the offence of Accepting an Advantage contrary to section 28 (2) (a) of the Anti-Corruption Act of 2008 as amended (the advantage being the sum of $5000 [Five Thousand United States Dollars], 15 kilograms of gold and an iPhone 11) and he was sentenced to pay a fine of Le50,000 Fifty Thousand [New] Leones or serve a term of imprisonment for five years; on 5th August 2021, Yeabu M.D. Kamara, former Chairperson of the Board of Trustees of National Social Security and Insurance Trust, was convicted on four counts of various anti-corruption offences and she was fined the sum of Le50,000 (Fifty Thousand [New] Leones) on one count and then cautioned and discharged on the other three counts; on the 19th January 2018, Bobson Kamara was convicted on one count of Conspiracy to commit a Corruption Offence contrary to Section 128 (1) of the Anti-Corruption Act and he was sentenced to pay a fine of Le15,000, 000 (Fifteen Million [Old] Leones) when, in fact, the minimum fine at the time was Le30,000,000 (Thirty Million [Old] Leones), to mention just a few.

My view is that a successful national fight against corruption demands a consistent and corresponding judicial synergy, predicated on the social cost of corruption, between a purposive judicial application of anti-corruption laws on one hand and the menace of corruption on the other hand. This means that the extent of the potency of application
of anti-corruption laws, especially their penalties, must equal the cost of the harm from corruption. This is because the least act of corruption has the proclivity of spreading and causing great harm to society. Hence, the severity of the punishment for corruption offences should be judicially calibrated with a view to minimize social cost and guarantee deterrence. This proposition is based on the fact that even a minor change in punishment can tilt the decisions of people who have an inclination to engage in corruption one way or another. An increase in punishment will generally discourage acts of corruption while a decrease in punishment, or even a semblance of it from the sentencing in anti-corruption cases, will serve as a precursor for many to decide in favor of engaging in corruption. This is one reason, among others, why in 2022 the Judiciary of Sierra Leone in partnership with the UK Probono Network and the Anti-Corruption Commission promulgated a Sentencing Guideline with a view to ensuring uniformity of sentencing in anti-corruption cases and enhancing deterrence.

Unlike many other criminal conducts, corruption mostly involves intentional decision-making and deliberate choice; those who engage in corruption almost always have the time and chance of weighing the benefits of their involvement in it and the expected punishments. Thus, just as how consumers are said to act as if they are constantly computing marginal utilities, so also do those who engage in corruption act as if they are comparing the marginal benefits of corruption and the expected punishments. This is the reason why most anti-corruption offences require proof of an element of criminal intent. It is therefore my view that a continuation of the imposition of minimum fines or terms of imprisonment for convictions in anti-corruption cases can lead to unintended consequences. It can embolden the corrupt to engage in corruption, discourage the fight against corruption and gradually erode our national collective gains in the fight against graft.

In the fight against corruption, the Judiciary is more than simply an arm of government, it is also a critical partner and the Judges are at the center of this invaluable partnership. As partners, and in view of the submissions herein, I therefore respectfully entreat our Honourable Judges in the Anti-Corruption Division of the High Court of Sierra Leone to accord great consideration to the act of corruption and its consequences to our society and impose punishments (both fines and custodial) for convictions with the broader view of ensuring deterrence. In 2019 the People of Sierra Leone, through Parliamentary enactment of the Anti-Corruption (Amendment) Act No. 9 of 2019, unambiguously expressed a clear desire to impose tougher penalties in anti-corruption cases and thereby make corruption unprofitable and unfashionable. This was a national call to the Judiciary of Sierra Leone to give expression to the intention of Parliament and aid the fight against corruption; a call which I now re-echo to the good conscience of our esteemed judges.