
*Views on the Constitutionality of the Suspension of the Auditor General and
Deputy Auditor General of Sierra Leone*

Following the indefinite suspension of the Auditor General, Mrs. Lara Taylor-Pearce and her Deputy, Mr. Tamba Momoh without disclosure of the motives and taking into consideration

- 1) The existence of an independent Supreme Audit Institution (SAI) and its protection from undue Executive interference is a key element of democracy and adherence to the Rule of Law. The United Nations General Assembly in its 69th Session (A/RES/69/228), after recognizing the key role of SAIs in the promotion of accountability, stresses that SAIs can only accomplish their tasks objectively if they are independent and protected against outside influence. The Mexico Declaration on SAI Independence (INTOSAI P-10), which is the benchmark on SAI Independence and establishes essential requirements of proper public sector auditing, postulates that the Head of a SAI should benefit from security of tenure and legal immunity in the normal discharge of their duties.
- 2) The major criticisms that the suspension decision as well as its timing has drawn from diagonal accountability actors (CSOs and media) locally and internationally, who questioned the constitutionality as well as the opportunistic timing of the decision. In addition to those concerns, it was also stressed, by us and others, that this decision may negatively affect the Audit Services' ability to perform its accountability function without fearing retaliation and/or repercussions. This may ultimately hinder the SAI's ability to freely decide on the content and timing of its audit reports, as encapsulated in principle 6 of the Mexico Declaration on SAI Independence

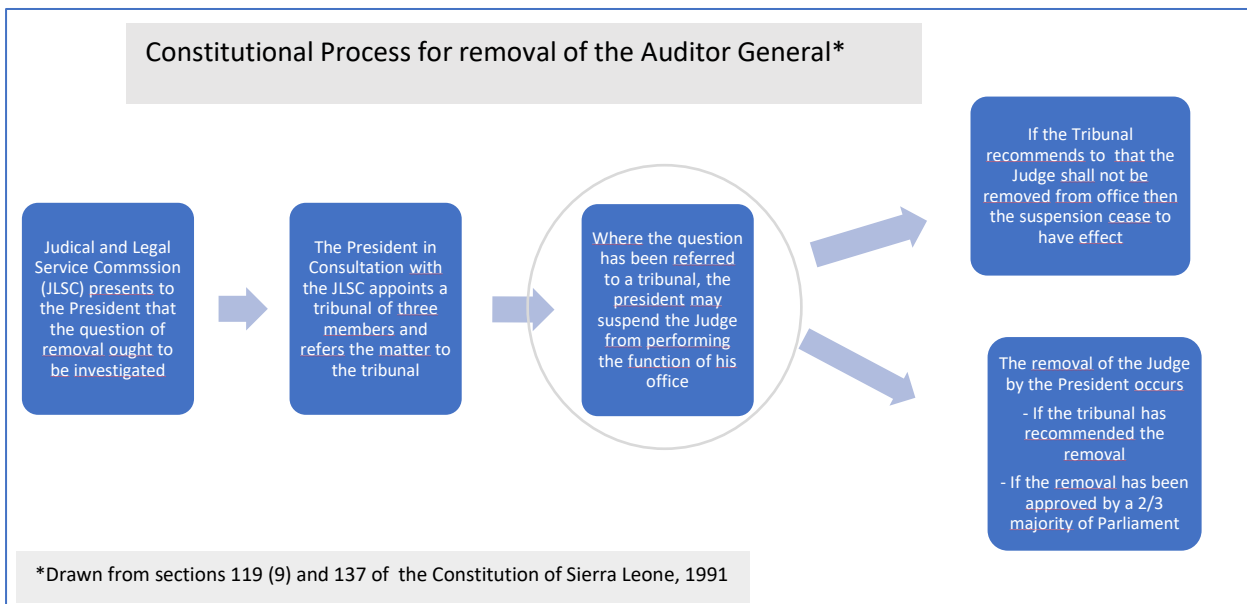
We conducted a review of the Constitutional provisions surrounding the removal of the Auditor General and assess whether there had been deviations from that process in the current case. The intent of the paper is not to serve as a legal analysis of the case as we are not in a position to interpret the laws of Sierra Leone, but it is rather to serve as an input to our advocacy and stakeholder communication on the case.

Constitutional Procedure for the Removal of the Auditor

The Constitution of Sierra Leone highlights the procedure and the grounds for removing the Auditor General in its section 119 and 137. The Section 119 (9) stipulates that the provisions relating to the removal of a Judge of the Superior Court of Judicature...shall apply mutatis mutandis to the Auditor-General. 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 stated misconduct (Section 137 (4)) and “shall not be so removed save in accordance with the provisions of this section”. Section 137 (5-7) further defines the removal process and identifies the actors involved, including the Judicial and Legal Service Commission (JLSC), the President of Sierra Leone, the Tribunal, and the Parliament.

The Judicial and Legal Service Commission is the body constitutionally mandated for initiating the removal procedure of the Auditor General, by representing to the President that the question of removing a Judge of the Superior Court of Judicature ought to be investigated.

Once the matter has been referred to the President, he/she, acting in consultation with the JLSC appoints a Three Members tribunal to enquire into the matter. The Tribunal will report on the facts



and the findings and will recommend to the President whether the Judge ought to be removed from office.

Where the question of removing a Judge of the Superior Court of the Judicature from office has been referred to a tribunal, 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.

Finally, a Judge of the Superior Court shall be removed from office by the President if the question of his/her removal from office has been referred to a tribunal and the tribunal has recommended to the President that he/she ought to be removed from office; and if this removal has been approved by a two-thirds majority in Parliament

From the above it appears that the suspension of the Auditor General is part of the suite of measures that can be taken the President when investigating for the Removal. It can also be drawn from the Sierra Leone Constitution that the suspension can only occur once several steps have been followed, including the presentation of the question of removal to the President by a dedicated body, and the establishment of a tri-member tribunal to whom the question of the removal will be referred.

Deviations from the Constitutional process

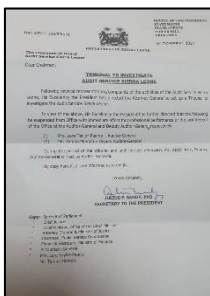
The suspension of the Auditor General in Sierra Leone seems to have deviated from the Constitutional process in three areas:

- **Prior formalities where not completed before the suspension occurred**
- **the Auditor General and the DAG where subjected to the same disciplinary rules**
- **The designation of the Acting Auditor General**

1. Prior formalities where not completed before the suspension was decided

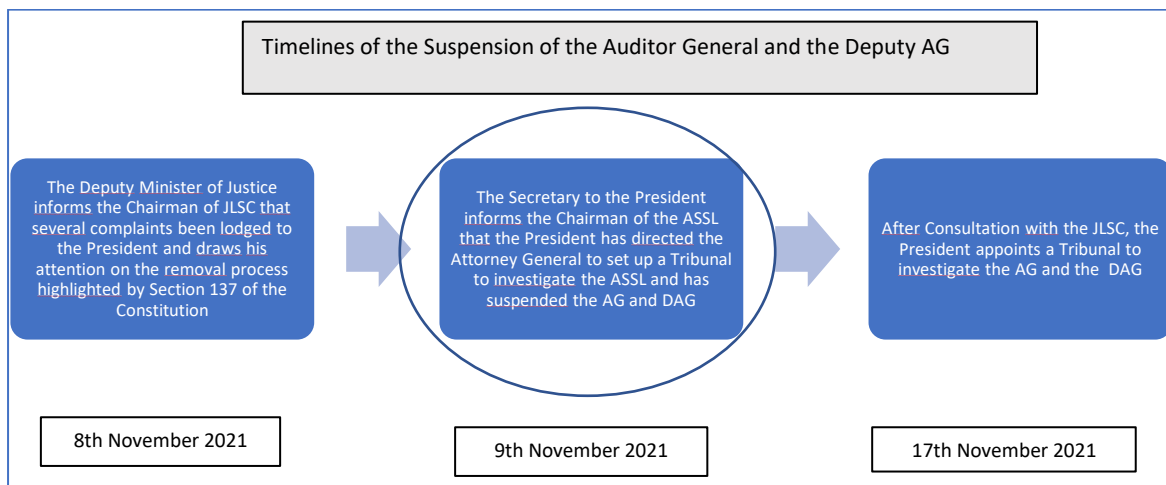
The record of events shows that on **November 8th 2021**, the Deputy Minister of Justice (in the Office of the Attorney General) writes to the Chief Justice, who is also Chairman of the Judicial Legal Service Commission (JLSC) (letter copied to the President and Attorney General), to inform him of allegations against the AG and one of her Deputy amounting to misconduct or lack of professional performance.

The letter also draws the attention of the Chairman of the JLSC on the removal process highlighted by the section 137 of Constitution, and specifically refers to the representation of the matter by the JLSC to the President.



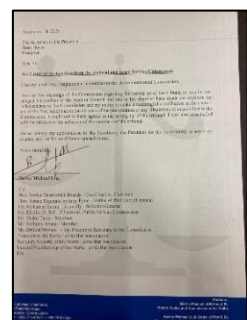
On November 9th, the Secretary to the President informs the Chairman of the ASL Board of the President’s directions to the Attorney General to set-up a tribunal to investigate the ASL. Furthermore, the Chairman of the ASL Board is informed that the President has directed that Auditor General and Deputy Auditor General should be suspended from Office with immediate effect.

Finally, on **November 17th, 2021**, the office of the Press Secretary and Presidential Spokesman informs the General Public of the appointment of the Tribunal, its object, and its composition. The notice also refers to the consultation with the JLSC pursuant to section 137 of the Constitution.



From the above, we can conclude that the decision to establish the tribunal was not informed by a representation of the question of removal by the JSLC to the President but rather the other way around (President to Chair of the JSCL through the Deputy Minister of Justice). The only body constitutionally empowered to represent to the President that the possible removal of the Auditor General be investigated never did so. In the absence of such a representation, there is no constitutional grounds for the President to establish a tribunal. Furthermore, the decision to suspend the Auditor General and the Deputy was taken before rather than after the formal appointment of the Tribunal, the designation of its members and the referral of the matter to the Tribunal.

This constitutes in our view a significant deviation from the constitutional process which can lead to question the motives behind such a decision. This is supplemented by notable positions at the country level, including former member of the JSCL who in its resignation letter from the Commission quoted “I am of the firm belief that in the absence of the presentation of any allegations of misconduct to the Commission, it ought not to have agreed to the setting up of the Tribunal”. Other members of the Legal community in Sierra Leone also challenged the constitutionality of the suspension¹.



¹ <https://thecalabashnewspaper.com/indefinite-suspension-of-lara-taylor-pearce-is-unconstitutional-an-affront-to-our-democracy-sorie-sengbe-marrah-esq/>

2. The Auditor General and the Deputy Auditor General where subjected to the same disciplinary rules.

The rules under Section 137 of the Constitution apply to the Judges of the Superior Court of the Judicature and are extended to the Auditor General by virtue of the section 119 (9) of the Constitution. They do however not apply to the Deputy Auditor General, who by virtue of the section 3 of the Audit Service Act, 2014, falls under the category of personnel managed by the Audit Service Board.

In fact, Section 3 of the Audit Service Acts reads “the Audit Service Board shall be an advisory Board responsible for the appointment of persons, other than the Auditor General, to hold or act in offices as members of the Audit Service and to exercise disciplinary control over such persons, including the power to suspend or remove any of them, and to determine their terms and conditions of service.

It reads from the above that 1. Deputy Auditors General fall under the category of staff managed by the Audit Service Board and 2. The Audit Service Board exercises disciplinary control them, including suspension and removal.

It is therefore worthwhile questioning if an ad-hoc tribunal established for holders of constitutional offices such as the Judges of the Superior Court of the Judicature and the Auditor General, can have jurisdiction over the Deputy Auditor General.

3. The Designation of the Acting Auditor General

As indicated above, on the 9th of November 2021 the Secretary to the President informs the Chairman of the ASSL Board that the President has directed that the Auditor General and Deputy Auditor General should be suspended from Office with immediate effect. The Secretary also informed the Chairman that during the period of the Tribunal and until advised otherwise, Mr. Abdul Aziz, Deputy Auditor-General will act as Auditor-General.

Section 119 (14) of the Constitution reads that whenever the Office of the Auditor-General is vacant or the holder of the office is for any reason unable to perform the functions of the office, the President may, in consultation with the Public Service Commission, appoint a person to act in the office.

Considering that the suspension falls into the group of reasons preventing the holder of the office from performing his/her functions, the designation of an Acting Auditor General, should have been done in consultation with the Public Service Commission (PSC), whose chairperson sits on the Audit service Board.

From our perspective, the consultation of the PSC in the process constitutes a mechanism to insulate the nomination of an acting Auditor-General from Presidential discretion. It might be worthwhile checking if the designation of the acting Auditor General was done in accordance with the Constitution, and with proper consultation of the PSC, as it is not indicated clearly in the letter of the Secretary of the President.