

**INFORMATION AND COMMENTARY FROM THE REPUBLIC OF
SIERRA LEONE
on the Existing Procedure for Nomination of Candidates for Appointment to the
Highest Judicial Office, as required by article 36(4)(a)(i) of the
Rome Statute of the International Criminal Court**

29 May 2020

I. Introduction

1. The Republic of Sierra Leone welcomes the opportunity to submit information and commentary on the existing nomination and selection procedure for appointment to the highest judicial office in Sierra Leone, adopted for the process of nominating a candidate for the position of judge of the International Criminal Court (ICC or Court) pursuant to article 36(4)(a)(i) of the Rome Statute of the ICC (Rome Statute),¹ and relevant resolutions of the ICC Assembly of States Parties (ICC-ASP).¹ This submission is made under paragraph 6 of the resolution on the review of the procedure for the nomination and election of judges of the ICC adopted in the 18th session of the ICC-ASP dated 6 December 2019.²
2. In adopting the procedure for appointment to the highest judicial office in Sierra Leone, due consideration was given to the encouragement of States Parties ‘*to also take into account good practices at the national and international levels when conducting their national procedures for the nomination of candidates to the Court*’.³
3. Sierra Leone notes with appreciation the efforts being made by the ICC-ASP to improve the effectiveness and efficiency of the Court through, inter alia, ensuring a merit-based election of highly qualified candidates as judges, with a strengthened process for judicial nomination and election. Accordingly, Sierra Leone is committed to a transparent and merit-based process, and therefore consents to the publication of this submission by the Secretariat of the ICC-ASP, in addition to the compendium to be prepared by the Advisory Committee on Nominations of Judges (ACN) as a reference document for the use of States Parties to the Rome Statute.⁴

II. Information on the National Procedure for Appointment to the Highest Judicial Office in Sierra Leone

The Judiciary and Highest Judicial Office in Sierra Leone

¹ See art. 36(4)(a)(i) of the Rome Statute of the International Criminal Court, July 17, 1998, UN Doc. A/CONF.183/9 *reprinted in* 37 ILM 999 (1998).

¹ See paragraph 6 (f) of resolution ICC-ASP/3/Res.6 (Procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court) as amended by resolutions ICC-ASP/5/Res.5, ICC-ASP/12/Res.8, ICC-ASP/14/Res.4, and ICC-ASP/18/Res.4 respectively.

² ICC-ASP/18/Res.4, para 6.

³ *Ibid*, para 5.

⁴ *Ibid*, para 7.

4. As a preliminary issue, judicial power in Sierra Leone is vested in the judiciary headed by the Chief Justice.⁵ The judiciary comprises the Supreme Court, the Court of Appeal and the High Court, constituting the Superior Court of Jurisdiction on the one hand, and other inferior courts on the other hand.⁶ The judiciary is responsible for the administration of justice in Sierra Leone and in the exercise of its functions, the judiciary is subject only to the Constitution or any other law, and not subject to the control or direction of any other person or authority.⁷
5. The Supreme Court is the highest court in Sierra Leone and consists of the Chief Justice and not less than four Justices of Supreme Court and such other Justices of the Superior Court of Judicature. The Chief Justice may for the determination of any particular cause or matter request to sit in the Supreme Court such other Justices of the Superior Court of Judicature for such period as the Chief Justice may specify or until the request is withdrawn.⁸

Appointment of Judges of the Superior Court of Judicature

6. The Constitution provides that the President of Sierra Leone shall, acting on the advice of the Judicial and Legal Service Commission (JLSC),⁹ appoint the Chief Justice (from among persons qualified to hold office as Justice of the Supreme Court) and the other Judges of the Superior Court of Judicature.¹⁰

⁵ Section 120(1) of the Constitution of the Republic of Sierra Leone, Act No. 6 of 1991.

⁶ Ibid, sec. 120(2). The inferior courts comprise the Magistrates courts and the Local courts. The Magistrates Courts exist in each district. Local courts administer customary law in provincial communities outside the Western Area.

⁷ The Constitution of Sierra Leone (n 6), sec 120(3).

⁸ Ibid, sec 121(1).

⁹ See note 17 hereunder on the Judicial and Legal Service Commission.

¹⁰ Ibid, sec 135 states:

[...] (2) The other Judges of the Superior Court of Judicature shall be appointed by the President by warrant under his hand acting on the advice of the Judicial and Legal Service Commission and subject to the approval of Parliament.

(3) A person shall not be qualified for appointment as a Judge of the Superior Court of Judicature, unless he is entitled to practise as Counsel in a Court having unlimited jurisdiction in civil and criminal matters in Sierra Leone or any other country having a system of law analogous to that of Sierra Leone and approved by the Judicial and Legal Service Commission, and has been entitled as such Counsel in the case of appointment to— a. the Supreme Court, for not less than twenty years;

[...]

(4) For the purposes of subsection (3), a person shall be regarded as entitled to practise as Counsel if he has been called, enrolled or otherwise admitted as such and has not subsequently been disbarred or removed from the Roll of Counsel or Legal Practitioners.

(5) For the purposes of this section, a person shall not be regarded as not being entitled to practise in a court by reason only that he is precluded from doing so by virtue of his holding or acting in any office.

Under Section 135 of the Constitution, domestic appointments are subject to the approval of Parliament. On international matters, the practice is rested on the powers bestowed on the President to conduct international relations (including nominations and appointments in the international system as provided for in section 40(4).

Qualification for appointment as a Judge of the Superior Court of Judicature

7. A person shall not be qualified for appointment as a Judge of the Superior Court of Judicature unless she is entitled to practice as counsel in a court having unlimited jurisdiction in civil and criminal matters in Sierra Leone or any other country with a system of law analogous to that of Sierra Leone or approved by the JLSC and has been entitled as such, in the case of appointment to the Supreme Court for not less than 20 years; the Court of Appeal for not less than 15 years; and the High Court for not less than ten years.¹¹
8. A person is entitled to practice as counsel in a court having unlimited jurisdiction in civil and criminal matters (Court of Superior Judicature) in Sierra Leone when admitted and enrolled as a legal practitioner,¹² and has not subsequently been disbarred or removed from the roll of counsel or legal practitioners.¹³ An application for admission to practice law in Sierra Leone must be accompanied by two testimonials of good character.¹⁴ The Sierra Leone Judicial Code of Conduct, which is binding on all serving judicial officials, imposes on the judicial officials well recognized judicial principles of conduct, inter alia, judicial ethics, integrity, impartiality, competence and diligence.¹⁵

The Judicial and Legal Service Commission (JLSC) – its Role and Composition

9. The JLSC is established by the Constitution of Sierra Leone, to “advise the Chief Justice in the performance of his administrative functions and perform such other functions as provided in the Constitution or by any other law”,¹⁶ including advising the President on the appointment of judges of Superior Judicature in Sierra Leone.¹⁷ The JLSC also has powers to appoint and promote other judicial officials.¹⁸
10. The JLSC is made up of seven members, and include the Chief Justice (who is chairperson), the most senior justice on the Court of Appeal; the Solicitor-General; the Chairman of the Public Service Commission; one practicing counsel of not less than ten years standing nominated by the Sierra Leone Bar Association and appointed by the President; and two other persons, who cannot be legal practitioners and who are appointed by the President subject to the approval of Parliament.¹⁹ To safeguard judicial independence, the majority of the members of the JLSC are members of the judiciary and the legal profession in Sierra Leone.
11. Following the provisions of the law in Sierra Leone, the national procedure for appointment to the Supreme Court (the highest judicial office), requires a recommendation by the autonomous JLSC

¹¹ Ibid, sec 135(3).

¹² See the Legal Practitioners Act 2000 (as amended), sec 9. Section 1 of the Act defines a “legal practitioner” to mean “any person admitted and enrolled to practice law [in Sierra Leone] as a barrister and solicitor”.

¹³ The Constitution of Sierra Leone (n 6), sec 135(4).

¹⁴ Ibid, sec 12(2)(a).

¹⁵ Code of Conduct for Judicial Officers of the Republic of Sierra Leone (September 2005).

¹⁶ The Constitution of Sierra Leone (n 6), sec 140(1) and (2).

¹⁷ Ibid, sec 135 (1) and (2).

¹⁸ Ibid, sec 141 (1) and (2) which respectively provide that: “The power to appoint persons to hold or act in an office to which this section applies (including the power to make appointments on promotion and transfer from one office to another and to confirm appointments) and to dismiss and exercise disciplinary control over persons holding or acting in such office shall vest in the Judicial and Legal Service Commission”. The judicial offices include, inter alia, Registrar and Deputy Registrar of the Supreme Court, Registrar and Deputy Registrar of the Court of Appeal, Master and Registrar of the High Court, Deputy Master and Registrar of the High Court, any Registrar of the High Court, any Principal Magistrate, Senior Magistrate and Magistrate.

¹⁹ Ibid, sec 140(1).

and subsequent appointment by the President. To qualify for such recommendation and appointment, the appointee must have been enrolled and entitled to practice law as counsel (legal practitioner) for not less than 20 years in Sierra Leone, and has not been removed or disbarred from the roll as counsel. In other words, conformity with the well-recognized principles of judicial conduct must be evident for character testimonials.

III. Commentary on the National Procedure for Appointment to the Highest Judicial Office in Sierra Leone

12. The Government of Sierra Leone considers that, as a State Party to the Rome Statute, Sierra Leone is entitled to nominate candidates for elective posts in the ICC in line with the relevant provisions of the Rome Statute. As regards nominations of judges, Sierra Leone recalls that the terms of article 36(4)(a) provide two alternative procedures. The first provides for a procedure for the nomination of candidates for appointment to the highest judicial offices in Sierra Leone, whereas the second entails a procedure providing for the nomination of candidates for the International Court of Justice. Both options are equally available to States Parties and there is no hierarchy as between the two. The use of one procedure in the case of a given candidacy in a given year does not prejudice the Government's election to use the other in a future election, consistent with the terms of the Rome Statute.
13. The Government of Sierra Leone in utilizing the existing procedure for appointment to the highest judicial office in Sierra Leone for the purpose of nominating a candidate for the position of judge at the ICC pursuant to article 36(4)(a)(i) of the Rome Statute of the ICC has been guided by the relevant provisions of the Rome Statute,²⁰ the desire to accomplish a measure of uniformity in appointment of judges whether for the ICC or the domestic Superior Court of Judicature in view of the complementarity principle, previous experience and due regard to good practices at the national and international levels, in particular, the nomination of judges by the Government of Sierra Leone to the Special Court for Sierra Leone,²¹ and its successor Residual Special Court for Sierra Leone.
14. The practice on the appointment of judges to the Superior Court of Judicature in Sierra Leone is well settled, developed mainly to effectively implement the constitutional provisions effectively. The settled practice is based on two recruitment tracks. The first track being recruitment that proceeds from an open and general call for applications by the judiciary based on the qualification requirements as set out in the Constitution. This track is most suitable for judicial appointments to the inferior courts and the High Court (being the first instance Superior Court of Judicature). The second track used mainly for the Court of Appeal and Supreme Court is based on internal evaluations and promotions on the basis of meritorious service as determined and recommended by the JLSC.
15. For the purposes of the selection and nomination of a candidate for election as a judge in the 19th session of the ICC-ASP,²² the second track was employed, having been deemed as the most

²⁰ *Supra*, (n 1 and 2).

²¹ The *Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone* (UN-Sierra Leone Agreement), to which was annexed the *Statute of the SCSL* (SCSL Statute), was signed on 16 January 2002. See the *UN-Sierra Leone Agreement* and the annexed *Statute of the SCSL*, reprinted in 2178 U.N.T.S. at p. 138 and 145. The legislative history of the SCSL is available in *Report of the Secretary-General on the establishment of a Special Court for Sierra Leone*, UN Doc. S/2000/915, 4 October 2000.

²² Note verbale of 26 September 2020 (UN/ICC/6TH/307) on the nomination of Justice Miatta Maria Samba for election as Judge of the ICC by the Government of Sierra Leone.

suitable and efficient track to select a highly qualified candidate, given the existing expertise and representative composition of the JLSC. The second track which is based on internal evaluations and promotions on the basis of meritorious service requires only administrative modifications to enable the Ministry of Foreign Affairs and International Cooperation (Foreign Ministry) to perform its facilitating/liaison role.

Public Information on the Call for Nomination (the Judiciary and the Sierra Leone Bar Association)

16. The Foreign Ministry upon receipt of the note verbale²³ from the Secretariat of the ICC-ASP conveying the decision of the Bureau of the Assembly, taken on 18 December 2019, to open the nomination period for the election of six judges of the Court, in accordance with the Rome Statute and relevant resolution, immediately made the information public. The Foreign Ministry, by memorandum, further forwarded the note verbale to the Judiciary, through the Chief Justice, and to the Sierra Leone Bar Association. This was to ensure effectiveness and efficiency in notifying the institutions with the most qualified candidates in Sierra Leone.

The Role of the JLSC and the Selection Process

17. Following the transmission of the information on the opening of the nomination period, authority and control over the process of selection was immediately ceded to the JLSC. The JLSC, chaired by the Chief Justice, being responsible to assess the skills and qualifications of all judicial candidates in Sierra Leone opted from the track based on evaluations and promotions on the basis of merit and meeting the qualifications set out by article 36(3) Rome Statute.
18. The Chief Justice on receipt of the note verbale which detailed the procedure for the nomination and election of Judges to the ICC from the Foreign Ministry, summoned a meeting of the JLSC to consider the selection and recommendation for nomination(s) of suitably qualified candidate(s) by the Government of Sierra Leone. Akin to the constitutional provisions in Sierra Leone²⁴ on the appointment of justices to the Superior Court of Judicature, the JLSC in a meeting²⁵ resolved that the President of Sierra Leone be advised of its recommendation to nominate Justice Miatta Maria Samba for election to the position of Judge of the ICC.
19. In the meeting of the JLSC, according to its established practice, the candidate was interviewed, and the Commission adjudged the candidate to be eminently qualified, with the necessary experience, including her existing judicial functions as Justice of the Court of Appeal and Chair of the Legal Aid Board in Sierra Leone, as well as her outstanding moral character and integrity.

Final decision to nominate Justice Miatta Maria Samba

20. The final decision to nominate Justice Miatta Maria Samba was made by the President of the Republic of Sierra Leone, which essentially is an approval of the advisory decision of the JLSC pursuant to section 135 (2) of the Constitution of Sierra Leone.

²³ ICC-ASP note verbale of 20 December 2019 (ICC-ASP/19/SP/01).

²⁴ The Constitution of Sierra Leone (n 6), sec 135(2).

²⁵ The JLSC in its first meeting on Tuesday the 7th January 2020 consider the agenda item on the selection and nomination of Justice Miatta Maria Samba for election for the position of judge of the ICC.

Civil Society Engagement in the Nomination Process

21. There are two layers for a participatory approach to the selection and nomination process. Firstly, the membership of the JLSC,²⁶ includes a representative of the Sierra Leone Bar Association, and two persons not legal practitioners. This means in the workings and decision of the JLSC, the only association of legal practitioners in Sierra Leone is given an official voice and vote, together with two representatives of citizens who are not lawyers and whose appointments are approved by parliament.
22. The second layer in the case of the nomination of Justice Miatta Maria Samba is the informal consultations and broad endorsement of the decision by the Sierra Leone Bar Association, and 21 non-governmental organizations in Sierra Leone,²⁷ including Sierra Leone Coalition for the International Criminal Court, and the leading gender equality advocacy organization in Sierra Leone, that is, Legal Access through Women Yearning for Equality Rights and Social Justice (L.A.W.Y.E.R.S) and the 50/50 Women's Group.

IV. Conclusion

23. Sierra Leone attaches great importance to the work of the ICC and the effective functioning of the Rome Statute system, and is firmly associated with the fight against impunity for atrocity crimes, as part of the global efforts to end impunity. The adoption of the Rome Statute has significantly transformed the landscape of international criminal justice, especially with respect to transitional justice in conflict and post-conflict societies of which the recent history of Sierra Leone exemplifies the role of accountability as a fundamental building block for the consolidation of peace and pursuit of economic and social development.
24. Sierra Leone's experience with the Special Court for Sierra Leone (SCSL), a hybrid-criminal tribunal, has deepened and consolidated our abiding commitment in the effectiveness of international criminal justice through ownership and partnership at the domestic and international levels. Delivering on the mandate of the ICC, therefore, requires the collective will of the States Parties to the Rome Statute. The SCSL is credited with completing its mandate²⁸ with judicial efficacy, with significant contribution to the development of the jurisprudence on international criminal justice. As part of the legacy and significant contribution of the Special Court, Sierra Leoneans, including Justice Samba, have gained considerable experience in international criminal

²⁶ The Constitution of Sierra Leone (n 6), sec 140(1).

²⁷ The non-governmental organizations are: Centre for Accountability and Rule of Law, Sierra Leone Coalition for International Criminal Court, Institute of Governance Reform, Campaign for Good Governance, Society for Democratic Initiatives (SDI), Campaign for Human Rights and Development International, Caritas Justice and Peace Commission, Movement for the Restoration of Democracy, One Heart Sierra Leone, Movement for Resettlement and Rural Development, Women's Empowerment for Development, Community Organization for Mobilization and Empowerment – Sierra Leone, Foundation for Human Rights and Development, Community Mobilization for Human Rights and Development, RYDO-SL, PRIDE-SL, Women Against Violence and Exploitation in Society, Women's Forum for Human Rights and Democracy, Sierra Leone Citizens Rights Association, Legal Access Centre, and National Centre For Human Rights and Development (NaCFoHRD). See "Sierra Leone Civil Society Endorses Nomination of Judge Miatta Maria Samba as Candidate for Judge of the International Criminal Court" (March 24, 2020) <<http://www.carl-sl.org/pres/sierra-leone-civil-society-endorses-nomination-of-judge-miatta-maria-samba-as-candidate-for-judge-of-the-international-criminal-court/>> .

²⁸ The mandate of the SCSL was to prosecute those who bore the greatest responsibility for war crimes, crimes against humanity and other serious violations of international humanitarian law committed between November 1996 and January 2002.

justice, and we therefore see the nomination of a competent and highly qualified candidate as one way of contributing to the global efforts to end impunity for atrocity crimes.