

**STATEMENT BY THE HON. CHIEF JUSTICE DESMOND BABATUNDE EDWARDS AT THE BAR AGM IN KENEMA, 12<sup>TH</sup> NOVEMBER, 2020 ON THE THEME: “THE TAX REGIME AND LEGAL PRACTICE IN SIERRA LEONE”**

Mr Chairman, Attorney-General & Minister of Justice, Mr. President, Sierra Leone Bar Association, Colleagues at the Bar, Distinguished Guests, Ladies and Gentlemen, all protocols observed.

Let me start by thanking the President and members of the Sierra Leone Bar Association for inviting me to be your Special Guest and to make a Statement at this auspicious occasion of your Annual Bar Association Conference under the theme: “THE TAX REGIME AND LEGAL PRACTICE IN SIERRA LEONE”

This is the first time since my appointment as Chief Justice in December, 2018 that I am opportune to do the same. Last year I was unavoidably absent. My absence was as a result on matters of State and as the Chief Justice had to participate together with other Chief Justices in the Arusha-Hague Conference of Chief Justices held from the 2nd -12th July 2019. I sincerely apologise for my absence.

Words perhaps would be insufficient to explain how gratified I am today to join you this year as you celebrate and mark yet another Annual Bar Association Conference, this time on the theme: “THE TAX REGIME AND LEGAL PRACTICE IN SIERRA LEONE”

Before commenting on the Conference theme, I think it is pertinent and normal for me to acknowledge the fact that while it is not always the case that the chief Justice would comment on the daily multiplicity of issues that come up in a Seething Debating Society like ours where the debate never stops and people never stop talking, occasions like this, provide an opportunity to make a comment or two. Under this coverage and illusion, it behoves me at this juncture to comment on one or two issues.

I take this opportunity to brief you on the Judiciary. The Judiciary under my leadership is set for a number of changes and has gone through a series of changes. Since I took up office I do recall that one of my first changes was to use Constitutional Instrument (C.I.) No. 4 of 2019 to divide the High Court into eight (8) Divisions. Hitherto, there were only five (5) Divisions and while these five divisions existed, they were only in name with no Special Assignment of Judges to those divisions. However, pursuant to the High Court Divisions Order, C.I. No. 4 of 2019, three (3) completely New Divisions were created with the Property Division and the Admiralty and Commercial Division transformed to a Lands, Property & Environment Division and the Fast Track Commercial Court Division respectively. The three (3) completely New Divisions were:

- (i) Industrial & Social Security Division;
- (ii) The Anti-Corruption Division; and
- (iii) The Sexual Offences Division

These three New Divisions had specially designed Courts assigned to each. On the 9th of December, 2019 the Social Security Courts were established and so too the Anti-Corruption Courts while on the 24th July 2020, the Sexual Offences Model Court (SOMC) was launched. These Courts are unique in themselves in that they have independent registries. The impact of the Social Security Court is that it punishes impunity as result of which there is now a marked improvement in the way employers pay social security

contributions for their staff. With the ACC Court we have now had more Cases completed within a short time than we ever had before; while with the Sexual Offences Court there is a marked improvement in the speed with which such matters are handled. There is however room for much improvement.

At the time of my taking over there were Institutional weaknesses in the Administration of the Judiciary in that the Judiciary's overall administration was overburdened and weak. Apart from the Master & Registrar (M&R) and Deputy Masters who were graduates, we had only one (1) graduate in the entire administration. The workload was concentrated in the hands of the then Master & Registrar who had some accounting deficiencies and lacked the capacity for a Vote Controller and had to combine Court operations with Judicial Professional Support.

In addition, there was No Registrar Supreme Court, No Registrar Court of Appeal, No Court Operations Manager, No Human Resource Manager, No Procurement & Logistics Manager and No Chartered Certified Accountant, all of which made administering the Judiciary very daunting.

My administration had to separate Court Operations from judicial Professional Support and appoint, Key Officers most of whom had not only graduate but post graduate qualifications:

- (i) Court Operations Manager
- (ii) Human Resource Manager
- (iii) Procurement & Logistics Manager
- (iv) Registrar, Supreme Court
- (v) Master & Registrar
- (vi) Registrar, Court of Appeal
- (vii) A Certified Accountant was seconded to the Judiciary from the government of Sierra Leone.

Before I took up office, it was not in the practice of the Judiciary for Criminal Sessions to be held on a regular basis. All Criminal Sessions were done under the sponsorship of UNDP or ASJP.

Now it is gratifying to note that since I took up office no less than three (3) Criminal Sessions of the High Court had been successfully organised and conducted and all under the auspices of the Judiciary under its Budgetary allocation from the Government of Sierra Leone.

Criminal Sessions are appointed and held in areas where there are no sitting Judges and until 2019, since 1965 were held only in Port Loko, Sefadu and Moyamba. Under my leadership such Sessions have been more frequent than over the years. Sefadu - Kono is now a Resident area where the Courts sit as the same times as in Freetown, Bo, Makeni and Kenema. But over and above that High Court criminal sessions are now being held pursuant to the Appointments of High Court Criminal Sessions Ordinance 2019 in New Areas such as:

- (1) Kailahun (twice)
- (2) Kabala (twice)
- (3) Matru-Jong (twice)
- (4) Pujehun (twice)
- (5) Magburaka (Tonkolili) just recently apart from Portloko and Moyamba.

While the current situation of holding High Court Criminal Sessions is ameliorating the gap in access to justice nationwide; it is certainly not the best possible solution. Consequently we propose to graduate above just the holding of Criminal Sessions by the hosting of Resident



Judges for the very first time in Moyamba, Port Loko, Kabala, Kailahun and the York/ Waterloo Axis as we further address the issue of Access to Justice. The Judicial and Legal Service Commission (JLSC) recently appointed thirty-one (31) State Counsel and there are plans for the Appointment of more Judges.

We have spent time and money in transforming the physical edifice of the Law Court Building and its environs. This was with a view, noting that the Courts are Lawyers and Judges domain and a public place of relevance to make it comfortable and conducive for human habitation and work.

We intend to replicate such distinctions of excellence and fabulous environment in Bo, Port Loko, Kenema, and Kailahun this coming year and in fact further extend same gradually. We shall be needing your efforts to help us reach that point.

Time will not permit to recount or recall the many developments that have taken place including the repeal and replacement of the Fast Track Commercial Court Rules by the 2020 Fast Track Commercial Court Rules. The use of Virtual Courts and more. We are in the final stages of putting into effect the Small Claims Commercial Court Rules replacing the Magistrate Court Rules PN No. 41 of 1966 and amending portions of the court Act 1965 which restricted civil commercial practice to just Le 5m.

We now have a Client's Support Office and Waiting Area and Intercom links in every Court in the Law Court Building. The Waiting Room is being provided for all the Court Rooms in the Law Court Building. The Client's Support Office will operate among other things as an Information Desk. Before the month ends, every person using our Courts will have to have obtained a pass to wit; Court users pass, Jurors pass, contractors pass, Staff ID cards or Accredited users pass without which you will not be allowed to enter into the Law Court Building.

It is my fervent hope and desire that these developments are replicated in other areas of the country. The on-going training of support staff is *inter alia* with a view to equip them so as to man these changes.

Before I delve into the issue of the theme: "THE TAX REGIME AND LEGAL PRACTICE IN SIERRA LEONE", it behoves me to say a word or two on the ratification and accession of Sierra Leone to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards – known as the "New York Convention of 1958". This as you very well know happened on the 28th of October 2020.

In July 2018, I was opportune to be Special Guest of the Sierra Leone Bar Association and to make a Statement under the Conference Theme: "Expanding the Scope of Alternative Dispute Resolution: The Case/Need for change in the landscape of Arbitration in Sierra Leone". In that Conference I had this to say about the New York Convention.

"To compound the above problems Sierra Leone is not a party to the NEW YORK Convention 1958. As of today there are 159 Member states to the New York Convention but Sierra Leone is sadly not a party. This convention obliges the Courts of state parties to decline jurisdiction and stay proceedings when an action is brought under a contract containing an arbitration clause and recognize the Arbitration Agreement by referring the parties to arbitration in whatever country or place unless that arbitration clause is null and void, inoperative and incapable of being performed. Secondly, it allows for the recognition and enforcement of foreign Arbitral awards without any review of the arbitrators

award/decision subject to limited exceptions. This not only breeds and engenders finality in the dispute resolution process but constitutes easy enforcement as compared to the process of reciprocity of judgments. Thus New York Convention has been held to be “the single most important pillar on which the edifice of international arbitration rests” see SCHWEBEL ‘Celebration of the United Nations New York Convention on the Recognition and Enforcement of Foreign Arbitral awards” pp83-87.

The practical effect of Sierra Leone not being a party to this Convention is that where the seat of arbitration is Sierra Leone you cannot enforce the award/decision in any other country. Similarly too when you obtain an award say in another state say Switzerland, England, Ghana or Nigeria against a Sierra Leonean Party /businessman you would be unable to enforce the award in Sierra Leone because Sierra Leone is not a party except there is some reciprocity Agreement between the two countries. Sierra Leone thus becomes an unfriendly place for Arbitration. Ghana became a party to the NY Convention on the 8th of July 1968; Nigeria on the 15TH of June 1970, Guinea 23rd April 1991 and Liberia 15th December 2005. We in Sierra Leone cannot afford to wait any longer.”

My words, it would appear, have not fallen into deaf ears. On the 9<sup>th</sup> of November, 2018 the Parliament of Sierra Leone ratified the United Nations CONVENTION on the RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS (THE NEW YORK CONVENTION ) .

This was, however, it would appear never submitted and it was not until the 28th of October 2020 that Sierra Leone again submitted its Instrument of Ratification and most importantly, its Instruments of Accession by it had made 3 reservations and through which after 90 days Sierra Leone becomes a party to the UN CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF Foreign Arbitral awards the NEW YORK Convention. ....

This is most commendable by the Government and cannot go unnoticed. Thus on the 26th of January 2021 Sierra Leone will definitely become the 166th Country out of a total about 190 to become a Member of this Single most important convention in international arbitration.

While all this is good it is however most important to observe that while we are rightly pursuing the International Agenda we are still not yet there.

The outmoded nature of Cap 25 of the laws of Sierra Leone 1960 WHICH IS OUR ARBITRATION LAW poses a serious hindrance. Unless and until it is amended we are still not yet poised to enjoying the full benefits of the New York Convention. This is so because while the New York Convention is International, and applies to recognition and enforcement of Foreign Arbitral Awards..... Cap 25 has its applicability rooted in Domestic Arbitrations. We must change this law

“Ours is a changing civilization and the courts cannot hope to decide/ resolve today’s controversies adequately with the outmoded rules.....of bygone centuries” by Sir David Hughes Parry “Reflections on the Process of Law Reform” (1959) CLR p.1.

Also to quote Justice Bankole Thompson “The law is not like an antique to be taken down, dusted, admired and put back on the shelf .....but is rather like a vigorous tree which has its roots in history, but takes on new graft put on new sprouts and occasionally drop dead.”

Cap 25 has passed its time; it no longer has a place in Sierra Leone and should be abandoned in the sea of oblivion. We need something better and it is an Arbitration Act 2020 along the lines of the UNCITRAL model law and with a domestic and international flavour. You the



lawyers need it, the Judges need and so too the arbitrators. Most importantly we cannot attract investors with the current Cap 25

We therefore urge the Government to repeal the Arbitration Act Cap 25 and do so even before we become the 166th Member, It only means continuing with and Completing the work the Law Reform Commission had already started. As I speak there is draft arbitration bill in a modern form which requires work of the AG's office and Parliament to become Law. The AG's office is aware and are only rearing to go at warp speed. We ask that the same speed and determination be put be parliament.

Finally, I will be remiss if I fail to mention anything about comportment at the Bar.

Lawyers, as you well know, have a duty to their clients and that duty includes:

- (i) A Duty of Confidentiality
- (ii) Duty of Competence and Diligence;
- (iii) Duty to act in the best interest of their clients; and
- (iv) Duty to avoid conflicts but that duty is not the-be- it- all-end- all.

Perhaps of more importance is their duty to the profession and of most importance their duty to the Law and to the Courts.

A Lawyer's duty to the profession is while pursuing a client's litigant's interest to do so within the bounds limits and perimeter of the Law while at the same time maintaining of professional courtesies and civil attitude towards their colleagues and all persons interacted in litigation. While layers do have competing duties or loyalties their overriding duty is to the law and the courts. If you think that the lawyers overriding duty is to the courts because the courts are creatures of the law it is invariable an overriding duty to the law and this brings me to the theme of this year's conference "THE TAX REGIME AND LEGAL PRACTICE IN SIERRA LEONE" the tax regime is an embodiment of the law and we as lawyers will do well by upholding the law

## TAXATION

Taxation is a compulsory financial charge or some other type of levy imposed on a tax-payer (an individual or legal entity) by Government in order to fund government spending and various public expenditures. It provides the most important source of Government revenue and it is a compulsory levy. A failure to pay along with evasion of or resistance to taxation is punishable by law.

### Purposes of Taxation

The prevalent idea is that taxes are there mainly to finance the Government. Other than fiscal purposes the American Economist, Richard A. Musgrave has said that taxation is a form of Resource allocation, Income re-distribution which lessens inequality in the distribution of Income and Wealth and brings about Economic Stability through tax policy.

Taxation is not a new thing. The history of taxation goes way beyond time immemorial and the practice is even recorded in biblical times. Not less than five types of Taxation are identified or recognized in the Bible.

1. Income Tax – an Income Tax is a levy based on the Income of a person or the yield of property such as farmland, or herds of livestock;

In Genesis 47: 26 it is recorded: "So Joseph established it as a law concerning land in Egypt that a fifth of the produce belongs to Pharaoh." This is a 20% tax on the yield of the



property, a precursor to a Government imposed Income Tax. Thus Agricultural produce was taxed a hefty 20%. After the Hebrews left Egypt the rate was dropped to 10% - the tithe rate. See Leviticus 27:3

2. Property Tax – In 2nd Kings 23:35 it is recorded:

“Jehoiakim paid Pharaoh Necho, the silver and gold, he demanded. In order to do so, he taxed the land and exacted the silver and gold from the people of the land according to their assessments”

The difference between the Income Tax and this form of Property Tax is that the former was based on the increase of yield whereas this was a function of the value of the property. Since it was based on value, increase or yield, was not important.

3. The Special Assessment Tax – In 2nd Chronicles 24:5 it is recorded:

“He called together the priests and Levites and said to them, “Go to the towns of Judah and collect the money due annually from all Israel, to repair the temple of your God.”

The immediate purpose of this levy or tax was to repair the temple that had been built by King Solomon in the United Monarchy – 1050 – 880 BC at very huge expense.

4. The Poll Tax – this tax was a flat sum levied on a per capita basis. It is like what we call today our local tax. A Poll Tax is recorded in Exodus 30:12. Where a tax was levied on each person 20 years old or older at the time of the Departure of the Israelites from Egypt.

“Then the Lord said to Moses: When you take a census of the Israelites to count them, each one must pay the Lord a ransom for his life at the time he is counted.”

5. Indirect Taxes – Indirect Tax is when the tax comes from your profits or otherwise. There are several instances in the Bible where you will find this.

In Ezra 4:20 & Mathew 17: 24-27 – they are called tribute or duty.

Other words used in various Scriptures in the Old Testament are “mas” (forced labour) See 1st Kings 5:13

“massa” (burden) See 2nd Chronicles 17:11

“mek-hes” (measure) See Numbers 31: 25-31

In the New Testament Paul admonishes the people to pay taxes whether direct or indirect when he said in Romans 13:6-7

“This is also why you pay taxes, for the authorities are God’s servants, who give their full time to governing. Give everyone what you owe him. If you owe taxes, pay taxes; if revenue, then revenue; if respect, then respect; if honour, then honour.”

If God is particular about taxes and reinforces the need for the same to be paid it goes without saying that as servants of the State of Sierra Leone we must pay taxes whether lawyers doctors etc. Render unto Caesar the things that are Caesars and unto GOD THE things that are GODS. Let us give the government its legal dues.

As lawyers we owe a duty to pay tax as obedience to the law is our duty; to not pay tax will be lack of comportment. Without taxes government will not be able to provide the multifarious services it ought to provide SEE FUNDAMENTAL PRINCIPLES OF STATE POLICY chapter 2 of the Constitution of Sierra Leone Act No 6 of 1991. As Lawyers and the very people who criticise Government for not providing such services for the people, it will be unethical and unconscionable, if we ourselves fail to contribute to help the Government.

I must commend the Sierra Leone Bar Association for raising this thorny issue of Taxation. Like everybody including my good friend Donald Trump we certainly do not want to pay tax

but try ways and means through tax evasion and tax avoidance not to pay or pay as little as we can but we must as a matter of love and participation endeavour to pay and pay promptly.

As I end may I take this opportunity to wish you quite engrossing and fruitful deliberations. I hope that as you set about to choose an executive you will choose one that will work as partner with the government and further the aspirations of not only the Bar but the Country as a whole.

I thank you all.

