Decolonizing the Sierra Leone Legal System: Time to Pluck Off the Remaining Feathers of Imperial Statutes

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Most, if not all domestic legal systems are transplants (direct or indirect derivatives) of some ancient corpus of legal codes or an amalgam of two or more foreign legal systems. Universally, one of the most popular legal systems is the English common law. The common law of England itself evolved from series of legal codes and procedures dating back to the Anglo-Saxon era. Later, royal courts were established to codify the rules, local customs and practices of the circuit courts throughout England and the uniform law which evolved in application became known as the "common law". During the British imperialistic expeditions, this system of law was exported to several nations and peoples including their self-assumed "civilization".

Sierra Leone, like several nations in Africa was colonised by Great Britain and the common law and other statutes in force in England became the governing laws in what they termed "a British colony", by the doctrines of *terra nullius* and reception. In addition, the Privy Council of England became the final (supreme) arbiter for all legal suits, matters and disputes which arose in Sierra Leone. On 27th April 1961 after more than a century and half of colonial rulership, Sierra Leone was declared an independent state. But that was neither an absolute political independence nor an utter economic autonomy from her former self-imposed colonial master, not to even mention her legal system, which if ever was only minutely affected by that proclamation of independence. In effect, the British colonial structures especially in her economic and judicial spheres were never dismantled hence survived the proclamation and celebration of independence on 27th April 1961. In fact, since 1961 to present, the imperial legislative and judicial pillars continue to influence Sierra Leone's metaphorical edifice, and so Great Britain's hegemony over her socio-political and economic facets of statehood still endures.

The common law of England enjoys a constitutional recognition in Sierra Leone, and continues to be the fulcrum of the Sierra Leone legal system and the administration of justice as provided for under section 170(1) e & (2) of the Constitution of Sierra Leone. It seems therefore that the common law of England has been eternally inscribed on the

tablets of the heart of the state of Sierra Leone. The post-colonial practice of patterning a nation's legal system after the English common law does not, *without more*, blight the colouration of the legal system of that nation. Matter-of-factly, many legal systems around the world including about half of the Federal US states are founded on the borrowed English common law. So, while it is not an atypical socio-legal norm to adopt the whole or segments of the English common law in a legal system, it is quite unorthodox and an indictment on the legislative sovereignty of a nation to retain wholesale several ancient English statutes, some of which have been repealed in England more than a century ago.

As if the British parliament is her proxy, Sierra Leone might have more borrowed statutes from England than those enacted by its sovereign parliament. Some of the English statutes Sierra Leone adopted during the British colonial are as follows: The Imperial Statutes Act (Laws of Property) Adoption Act, Chapter 18 (Laws of Sierra Leone 1960) which in 1933 adopted the following statutes passed by the British Parliament: The Conveyancing Act and Law of Property Act 1881, 1882, 1892 & 1911; The Settled Land Act, 1882; The Trustee Act, 1888 & 1893; The Trustees Appointment Act, 1890; The Voluntary Conveyances Act, 1893. Etc. Similarly, the Imperial Statutes (Criminal Law) Adoption Act Chapter 27 (Laws of Sierra Leone 1960) also adopted in 1933 the English Perjury Act, 1911; the Forgery Act, 1913, The Larceny Act, 1916 etc.

As if the overbearing presence of the common law coupled with the litany of already adopted statutes could not suffice, few years after the declaration of independence, the Courts Act of 1965 was passed by Sierra Leone's new independent House of Representatives. Section 74 of the Courts Act provides as follows:

> *Subject to the provisions of the Constitution and any other enactment, the common law, the doctrines of equity, and the statutes of general application in force in England on the 1st day of January, 1880, shall be in force in Sierra Leone.*

The Section 74 provision cited above (which is still validly in existence) did not only reiterate the already entrenched position of the common law, it swung open the door to all laws/statutes which were applicable in England as at 1st January 1880 to be legally applicable and enforceable throughout the sovereign nation of Sierra Leone. For

instance, a statute which was extant in England as at 1st January 1880 but was repealed on 2nd January 1880, continues to be applicable and enforceable in the regulation of social conduct and the administration of justice in Sierra Leone. The Courts Act supra does not include a list of the statutes which were in application in England on 1st January 1880. Equally so, there is an apparent lacuna in that there is no mention of what would become of the status of those statutes in Sierra Leone when they are repealed or amended in England. So, the natural interpretative deduction is that amendments to the 'Section 74 statutes' made by the English parliament post 1st January 1880 do not apply in Sierra Leone whether or not those amendments were spurred by judicial decisions or socio-political evolution or even legal dynamism. Also, notwithstanding the repeal of some of these Section 74 statutes in England as far back as over a century ago, they remain valid laws in the sovereign state of Sierra Leone.

Section 74 of the Courts Act supra like the many other adopted imperial statutes should be repealed and/or revised in order not to stunt the budding legal dispensation in Sierra Leone especially after the socio-political upheavals which scarred her conscience for over a decade. While the common law of England can continue to be a constitutive part of the pluralistic legal system of Sierra Leone, reference to and adoption of all statutes in application in England as at 1st January 1880 should be deleted or repealed. Apart from the abiding putrid colonial stench of this provision, it continues to portray our nation (whether veritable or otherwise) as a barren legislative and juridical terrain. There is nothing wrong in drawing inspiration from existing legislation(s) in other jurisdictions in developing one's law on a particular issue, but the wholesale adoption of the laws of England which were in force over a century and half ago, not only stultifies but would continue to undermine the growth of Sierra Leone's homegrown jurisprudence. This is because invariably recourse would be had to English case law authorities and judicial reasoning to reach decisions or adjudicate matters which border on or are founded on an applicable English statute in Sierra Leone.

Secondly, section 74 provision convulses our legal system into uncertainty and unpredictability. It is near impossible for even the aces of the legal profession in Sierra Leone to enumerate all those statutes in England which were in application as at 1st January 1880. Section 74 provision is therefore a hovering mist of uncertainty in the legal system

of Sierra Leone. Such uncertainty only heightens the constraints that the nation faces in the area of access to justice and pervasive abuse of judicial authority. Certainty of laws especially in criminal proceedings is a fundamental human right issue and a crucial aspect of the rule of law, the administration and dispensation of justice.

Thirdly, section 74 statutes and most if not all the adopted imperial statutes have either been overtaken by the advancement of the common law or the modern intercourse between municipal laws and international laws, treaties, conventions etc. Also, while the section 74 statutes might have constituted a necessity at that time when legislative frameworks of Sierra Leone were in their infancy and the existing laws of England were readily available to fill the void, most if not all have been rendered obsolete by socio-political and legal evolutions of the Sierra Leonean society. Hence their retention would not only amount to maintaining antediluvian legal residues of the past but would be an infelicitous sticker on the body politic of Sierra Leone.

Finally, jettisoning section 74 statutes and re-modeling some of the imperial statutes to fit Sierra Leone's current legal milieu would be a stimulus to compete with other regional or sub-regional nations like Ghana, South Africa, Kenya and Nigeria in exporting domestic jurisprudence based on local legislations to jurisdictions far and near. This undoubtedly would give international exposure to Sierra Leone's legal system uneclipsed by any foreign leverage and would help restore her glory as the Athens of West Africa.

Therefore, as Sierra Leone gazes into the future with a new/revised constitution on the offing, it is about time that the conscience of the nation was laundered of every enduring vestige of British legal imperialism. While the pending revised constitution promises more human rights provisions than the extant Constitution, Section 74 statutes and the several other adopted imperial statutes unless repealed or modified, would be an anachronistic blight on the fresh slate of the mind of Sierra Leone. This, I believe would set the stage for a new and glorious legal system, constitutional, a pathway towards the political, social and economic rediscovery and development of Sierra Leone.

About the author:

Augustine S. Marrah graduated from the Sierra Leone Law School top of class in 2009. The following year he obtained a Masters' degree in Human Rights Law and democratisation at the University of Pretoria, South Africa where he was also awarded first prize in the annual debate competition at the Faculty of Law. Augustine is the immediate past secretary of the General Legal Council — the statutory body that inter alia admits persons to practise law in Sierra Leone — and its disciplinary committee. He was the youngest to have been so appointed. He is also a Senior Associate at one of Sierra Leone's leading firms of solicitors —Yada Williams & Associates.

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