

How absence of rules deforms the COI outcome(s)

Augustine Sorie-Sengbe Marrah Esq.
October 4, 2020

First things first. I stand for accountability. I believe that public officers must account to the people they serve, during and after their occupancy of public offices. I support fully every legitimate endeavour to recover looted and siphoned resources from political leaders, whenever they are found wanting for misappropriation and illegal enrichment. The law must take its absolute course. I am also for the rule of law and procedural propriety. It is the rule of law that removes arbitrariness and the foul proclivities of political power.

I am a fanatic for rule of law and constitutional order. I believe that all processes must conform to and comply with the highest law of the land—the Constitution.

Accountability and the rule of law are not diametrically opposed to each other, rather they are powerful allies. Accountability complements the rule of law. It does not undermine it. Accountability affirms the rule of law. It does not injure it or borrowing the slanguage of Generation-Z ‘*diss*’ it.

And every accountability-driven course must first and foremost be accountable to the rule of law as laid down in the Constitution. Unless an act or process seeking accountability and anti-graft scrutiny, conforms with the Constitution, it cannot truly be characterized as an accountable process.

Accountability must be first be inward before it can be outward. Can we correctly refer to a few folks kicking a ball about without a referee as a football match? It is called a match because of the rule-implementer—the Referee. The Rule of Law is the referee in every accountability process. Without compliance with the rule of law, an accountability endeavour would just become another round of political exercise, with or without good intent. One cannot give that which they do not have!

The latest findings and recommendations by the Commissions of Inquiry (COIs) set up by President Bio read like a horror script. They paint a picture of meticulous and systemic scramble for and siphoning of state resources by some folks in the last government like in the era of the scramble for Africa. Contrast the figures allegedly embezzled and misappropriated with the grim levels of poverty, it would seem that there is no escape in the offing for those people trapped in hole of poverty. And the implicated persons of interest seem like slavers who had shipped their own people across into new and cruel poverty

plantations. But truth be told, during the tenure of the APC government, there were indeed varying scandals, rumors and telling perceptions of colossal levels of corruption and abuse of office defying statistical quantification and precision in any language. But most were gossip and perception only! It was the responsibility of the COIs to investigate those rumors and perception to determine their evidential value. They were to do so by rules of practice and procedure to be formulated by the Rules of Court Committee in accordance with Section 150 of the Constitution of Sierra Leone. The COIs were begun in great political and legal hurry, without compliance with the said mandatory provision of the Constitution. The Bar Association petitioned the COI process in the Supreme Court, urging proper formulation of Rules of Procedure and Practice as mandated by the Constitution. Sadly, the only thing that happened to those papers was that they were received by the Supreme Court registry. End of story!

The COIs findings and recommendations, as adopted by the Government in their White Papers, have been released. Men and women accused of misappropriation and abuse of office have been asked to refund sums amounting to humongous millions of US Dollars. Certainly, it is not the dramatic figures in the findings and recommendations that is a problem. It is the manner in which they have been done. In law, the process/procedure is as significant as the facts. The absence of rules was an albatross on the neck of the entire process, ergo its outcome. It is the absence of rules that has produced findings against persons, such as O. B. Sisay, Karefa Kargbo etc. who were never summoned before the COIs. This is a serious breach of a rule of natural justice. It is the absence of rules that fed the appetite for findings against entities like Messrs. BDO and Basma & Macaulay, that provided professional services, which said services were never in fact subject of investigations by the COIs.

The Rules of Procedure by the Rules of Court Committee would have prevented the blight on the outcome. While the COI outcomes pander to political agenda and satisfy political expectations, legally-speaking the absence of rules deforms the process and eventual outcome. Politics may have won but at the expense of the deformity of the rule of law and Constitutionalism. The outcome of the COI would have been above board, but as it is it has provoked many questions than the answers they were intending to give to the people of Sierra Leone.