

1. TABLE OF CONTENT
2. **I. Introduction**
3. - Highlighting the problem of access to documentation does this mean access to cases? Rules of court? Other?
4. Presumption: It is supposed that a Constitutional Court is the highest court of a country, either on top of the court hierarchy or an extra institution standing aside. If in a respective country a constitutional court may be a lower court form which appeals are taken to the higher Court (e.g. Supreme Court), please indicate that clearly and consider that while responding to the questions below.
- 5.
6. **II. The relevance of different legal systems as a source of inspiration for judicial systems in West Africa**
7. 1. Common Law (to be answered by researchers for Ghana, Liberia, Nigeria, Sierra Leone, Gambia)

General Structure	
What are relevant features of the Common Law system with regard to constitutional review and the institutional setting allowing for constitutional review?	Different people from different sectors of work can be selected as a panel to entrench a constitutional review. After which a formation of constitutional review committee can table a review through referendum after which it is tabled to parliament for review. S.108 of 1991 Constitution.
To what extent and in what ways is the legal system of the respective country (still) influenced by the Common Law system insofar (related to constitutional review / institutional setting allowing for constitutional review)?	British Common Law is premised on case law and binding precedent which is reflected. (<i>sec 122 (2)</i>) M. Partington, <i>Introduction to the English Legal System.</i> , p63 -4 th Edition
What are relevant features of the Common law system with regard to the judiciary	Independent organ, interpretation of the constitution, adjudication of matters S. 124.

3. Religious / Customary / Mixed Legal Systems

Religious / Customary elements in the judicial system	
Does the judicial system in the respective country have religious courts / customary courts?	Customary/Local Courts are available. Religious Courts are not available. (<i>Local Courts Act No 20 of 1963</i>) <i>Courts Act of 1965</i>
Do (lower) courts apply / accept customary law or religious law?	Yes – Local Court Act 2011
Does customary law or religious law has a formal status in the country?	Yes – S. 170 and 171
Are customary courts established under the constitution / a statute? Are they part of the regular court system? Are appeals from them taken to the regular court system?	The Customary (Local) Courts are established by an Act of Parliament –And they are part of the regular court system. Appeals from the Local Courts go to the District Appeals Court (Magistrate Court) Local Court Act 2011.

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III. Historical Background of Constitutional Justice in West Africa

Development of Judicial Systems	
<p>Has the judicial system changed in comparison to the one included in the independence constitution? If so in what respects?</p> <p>Is there an autonomous constitutional review in the country (only focusing on the constitutional question of a case)?</p> <p>If so, since when?</p>	<p>Yes. The Supreme Court was the High Court; the West Africa Court of Appeal was the Appellate Court. Today's Court Structure includes: Supreme Court, Appeal Court, High Court, Magistrate Court, Local Court</p>

(Political Control)

IV. Different Models of Constitutional Justice

1. Different Constitutional Institutions

What kind of judicial institutions are available in the respective country	
Which institution is considered "the highest court" in the country?	Supreme Court (<i>sec 122 (1)</i>)
Does the "highest court" in the country also stand at the top of the regular court system (highest court of appeal)? Or is it a separate institution?	Yes (<i>sec 122 (1)</i>)
Are there various highest courts in the country dependent on the issue to be addressed (e.g. highest court of administration, highest tax court)	There is just one High Court which has several Divisions that address specific matters.
Which courts can the question the constitutionality of acts or of laws?	Supreme court (<i>sec 122 (2)</i>)
Does the country have a judicial commission / judicial council, etc.	Yes, Judiciary Service Commission. (<i>sec 140</i>)

2. Systems of Control

If a lower court assumes that a regulation relevant to the case before it violates the Constitution, what can it do?	
Nothing, no power to question the constitutionality of the law/regulation.	There is the possibility to challenge the constitutionality of any law in the Supreme Court.
If the court has serious doubts about the constitutionality of the law/regulation related to a specific case, it might pause the proceedings and requests a statement of constitutionality from another institution (constitutional court, constitutional council, etc.), which may declare the regulation/law for unconstitutional.	The Supreme Court shall have supervisory jurisdiction over all other courts in Sierra Leone and over any adjudicating authority; and in exercise of its supervisory jurisdiction shall have power to issue such directions, orders or writs including writs of habeas corpus, orders of certiorari, mandamus and prohibition as it may consider appropriate for the purpose of enforcing or securing the enforcement of its supervisory powers (<i>sec 125</i>)
The lower court may declare the regulation/law to	

be inapplicable in the specific context.	Yes of course, certain pieces of legislation are made for specific purposes and as such may not be applicable in specific context.
The lower court declares the regulation/law to be unconstitutional.	Any issue that requires interpretation of the constitution must be dealt with by the Supreme Court. S. 120 of the 1991 Constitution

- a. Diffuse System of Constitutional Review: The Supreme Court
- b. Concentrated System of Review: The Constitutional Court
- c. Hybrid Systems of Constitutional Review

V. Some Relevant Aspects of Judicial Independence

- 1. Independence of the Judiciary vs. Independence from the Judiciary – the Judiciary as Legislature
- 2. The Administration of Courts and the Budget of the Judiciary

Administration of the Judiciary	
Which body / institution is administering the judiciary?	Yes, The Judiciary Service Commission (sec 140)
Is the Ministry of Justice involved in the administration of the "highest court"? If so, to what extent? Or is it administered by the judiciary?	The administration of the highest court (Supreme Court) is entirely under the purview of the Judiciary. S. 120 of the 1991 Constitution.
Is there a body within the Judiciary / highest court that is responsible for administering the resources? To whom is this body accountable? Is there any kind of external oversight?	The Master & Registrar is the chief administrator of the resources, though there is a sub-treasury that operates within the judiciary. The resources from the sub-treasury are directed to the consolidated fund. S. 111 (1)a of the 1991 Constitution.

What kind of impact does the judiciary / the constitutional court has in the process of drafting / approving its budget	
What kind of involvement does the judiciary in devising its budget (who originally submits the budget of the judiciary)?	The judiciary is totally in charge of developing its own budget. The judiciary budget is originally submitted by the Master & Registrar. Though currently this role is being performed by the Consultant Master & Registrar.

Who might have the right to alter the budget (of the judiciary / of the highest court) within the approval procedure?	The Parliament has to deliberate on the proposed budget and may alter it. Standing Orders (Revised) of Sierra Leone Parliament 2006 (S.O.) 63 and
In how far do court statistics (case workloads, etc.) play a role in the determination of the budget)	The workload influences the number of Judges, Magistrates, Registrars and other court personnel to be recruited. This consequent determines the budget.
Is the budget (of the judiciary / the highest court) an integral part of the overall budget or is it separated?	It is an integral part of the overall state budget

3. Judicial Commission / Judicial Council

Judicial Commission / Judicial Council	
Is there any institution like a Judicial Commission / Judicial Council (see also IV.1)?	Yes. (<i>sec 140</i>)
If so, what are the tasks of the Judicial Commission / Judicial Council?(might be a considerable discrepancy between common law approach and civil law approach)	Administrative functions- advice the Chief Justice for effective and efficient administration of the Judiciary. (<i>sec 140 & 140 (2)</i>)
What are the criteria of eligibility for membership?	A practicing Counsel of not less than 10years standing (<i>Sec 140 (1) (d)</i>) and two others who not Legal practitioners, but appointed by president and approve by Parliament. (<i>sec 140 (1) (d)& (f)</i>)
How is the Judicial Commission / Judicial Council composed?	Chief Justice as Chairman, Senior Justice of the Court of Appeal, Solicitor-General, One Practicing Counsel by the Sierra Leone Bar Association, Chairman of the Public Service Commission and Two other persons appointed by the President and approve by the Parliament. (<i>sec 140 (1) (a)-(f)</i>)
Do ex-officio members have the same authorities like other members?	No.
Who selects members of the Judicial Commission / Judicial Council?	The Sierra Leone Bar Association, the Judiciary and other Public Service Institution nominate people to the president for appointment and then Parliament approves (<i>sec 140</i>)
What kind of relation exists between the “highest court” and the Judicial Commission / Judicial Council?	

4. Challenges of Neutrality and Impartiality

VI. Composition

Composition of Constitutional Courts / Supreme Courts	
Eligibility: (a) minimal age / (b) maximal age / (c) legal education / (d) special legal qualification (e.g. sitting judge; being an expert in one legal system (for example Sharia law)/ (e) years of professional experience / (f) limitations (no party membership, no other positions while sitting in the court) /(g) other requirements	Appointment of Judges in Supreme Court shall not be less than twenty (20) years of legal practice, Appeal Court fifteen (15) years, and High Court ten (10) years of legal practice (<i>sec 135 (3) (a)-(c)</i>)
Selection of Constitutional Court / Supreme Court Judges: all judges selected in the same manner? /who / which institution is involved in the selection process?	In the appointment of judges in the Selection process, the Judiciary and Legal Service Commission nominate to the President, President appointment and Parliament approves. (<i>sec 135 (2)</i>)
Selection of Constitutional Court / Supreme Court Judges: if selected in different processes: who / which institutions are involved in the respective processes?	<i>See above or section 135 (2)</i>
How many institutions are involved in the selection process?	Three (3) – Judiciary, Legal Service Commission and Parliament.
Sequence of the selection process (recommendation, advise; election, consultation; appointment; cooption)	Judiciary and LCM nominate to the president, President appoints and Parliament approves.
What are the terms of office	Until 65 years. (<i>sec 137 (2) (a) & (b)</i>)
Is a re-selection possible?	No. see (<i>sec 137 (2) (b)</i>)
Is the representation of minorities guaranteed (are ethnic, linguistic, religious differences to be considered)? How?	Religion, ethnicity and sex are not a barrier
Is the opposition involved in the selection process?	No.

1. Eligibility for Appointment as a Constitutional Court Judge / Supreme Court Judge
2. Selection of Judges of the Constitutional or Supreme Court
3. Terms of Office
4. Representation of Minorities

VII. Competences

1. Preliminary Review

Preliminary Review	
Available?	Not Available
Who can trigger the procedure (or is it part of the legislative process) (who has standing)? What is required to take action?	
At which state of the legislative process can the	

preliminary review be triggered?	
Applicable to all bills / drafts?	
Also consultative opinions available?	

2. Abstract Review

Abstract Review	
Available?	Not Available
Who can trigger the procedure (who has standing)? What is required to take action?	
Applicable to all laws (or are there any restrictions: (organic laws?))?	
What kind of judgments may be rendered (nullification; directions to the legislature to fix the unconstitutional parts of a law within a specific period of time; others)?	

3. Specific or Incidental Review

Incidental Review	
Available (are courts authorized to review the constitutionality of laws)?	Yes, the Supreme Court. S. 124 of the 1991 Constitution.
What happens if the court presumes that a law relevant to the case at hand is unconstitutional?	The law is declared null and void. S. 171 (15) of the 1991 Constitution
Is the doctrine of "stare decisis" legally applied?	Yes. All other courts are bound to follow the decisions of the Supreme Court on points of law. S. 122 (2) of the 1991 Constitution
Are there restrictions to incidental review?	Only the Supreme Court can hear constitutional matters. S. 124 of the 1991 Constitution.

4. Direct Action before the Constitutional or Supreme Court (individual complaint)

Direct action	
Available?	Yes
Who can trigger the procedure (who has standing)?	An aggrieved person file matters to the Supreme Court
Are there restrictions to the right of individual complaint?	No.

5. Limits on the Review of Constitutionality

Limits of Review	
Are there explicit limitations to the review of the constitutionality (for example international treaties, laws approved by referendum, laws that were valid before the constitution came into force, legislation past under emergency power, limitation to manifestly unconstitutional acts)?	Except limitations under the Constitution; i.e. those requiring alteration by referendum, S. 108 of 1991 Constitution.

6. Review of Constitutional Amendments (formal regularity and substance)

Review of Constitutional amendments	
Is it possible to review amendments to the constitution itself?	Yes. S. 108 of 1991 Constitution
If so, is the review limited to a formal review of	Both are possible under S. 108 of the 1991

constitutionality or is a review on the substance of the constitution also permitted?	Constitution. Constitutional Review Commission and Parliament can Review
Does the constitution contain immutable clauses (provision that are excluded from constitutional amendment)?	Certain clauses are entrenched only referenda can change the arid society, Parliament, the Executive, Law Reformation etc. See S. 108 (3).
Who can trigger the procedure (who has standing)? What is required to take action?	Parliament. S. 108 (8)

7. Unconstitutional Omission

Unconstitutional Omission	
Is it possible to take action against constitutional obligations that haven't been implemented?	Yes.
Who can trigger the procedure (who has standing)? What is required to take action?	Constitutional Review Commission and Parliament can Review. S. 108 (8)
What kind of judgments may be rendered (instruction to the legislature / executive to take action (within a specific period of time); declaration that a law only insufficiently implements a constitutional obligation; court "implements" the obligation by rendering a specific right to the claimant; others)?	Certain clauses are entrenched only referenda can change the arid society, Parliament, the Executive, Law Reformation etc (see No.5)

8. Conflicts between State Bodies

Conflicts between State Bodies	
Available (does the court have jurisdiction to decide whether or not a certain task falls within the authority of a state body or to interpret the limits of authority also in relation to other bodies, be it horizontally (between different institutions at the national level) or vertically (between national institutions and institutions from the province / local institutions)?	The High Court and the Supreme Court Can
Who can trigger the procedure (who has standing)? What is required to take action (how)?	An aggrieved Person

9. Elections

Elections	
Is the Court involved in resolving electoral disputes?	Yes, mostly the high court <i>(Electoral amendment Act No. 15 of 2007 Section 92D (2)-(a),(b)&(c))</i>
Who can trigger the procedure (who has standing)? What is required to take action?	An aggrieved person. <i>(Electoral amendment Act No. 15 of 2007 Section 92C (2)-(a),(b)&(c))</i>
If the court is not empowered, is there another institution that settles electoral disputes?	Yes, the Political Party Registration Commission (PPRC)

10. Fundamental Rights

Fundamental Rights (see also individual complaint)	
Are (all?) human rights subject to review before a court?	Not necessarily.

Is there any other kind of institution where aggrieved individuals may turn to (human rights commission, Ombudsperson)? How is its institutional relation to the (highest) courts?	Yes, Human Rights Commission (<i>Human Rights Commission Act No. 9 of 2004 Sec 7(1)</i>) and Ombudsman exist (<i>The Ombudsman Act No. 2 of 2007 sec 7(1)</i>)
Who can trigger the procedure (who has standing: also NGOs / consumer protection organizations on behalf of individuals)? What is required to take action (how)?	An aggrieved or affected person or body can file a complaint
With regard to social rights, does the highest court in the country have jurisdiction to offer less than attributed by lower courts (<i>reformation in peius</i>) (example: right to water in the constitution, but how many litres/day as a minimum threshold: If lower court admits 30 l/d, but the complainant wants 40 l/d and appeals can the highest court also overturn the lower court to the negative, only offering 25 l)?	Economic and Social rights are non-justiciable (<i>Section 14 of the 1991 Constitution of Sierra Leone</i>)

11. Other Powers of Supreme Courts / Constitutional Courts

Other powers	
Conduct of referenda	No. (<i>section 37 (1)&(2)</i>)
constitutionality and dissolution of political parties	Yes.
impeachment procedures for the president	No, Parliament Does! (<i>section 51 (5)</i>)
(binding) interpretation of the constitution	Yes. Supreme Court (<i>sec 122 (2)</i>), Appeal Court (<i>sec 129 (1)</i>), High Court (<i>sec 132(1)</i>)
Others?	Criminal & Civil Jurisdictions (<i>sec 123 (a), (b) & (c) and sec 132 (1)</i>) Interpretation and enforcement of the constitution (<i>sec 124 (a)& (b) and sec 127 (1)</i>)

VIII. Standing

1. Who (see under VII.)

Table Structure

2. How (see under VII.)

Table Structure

IX. Effects of Judgments (Authority of the Judgments)

Authority of Judgments	
Do the judgments have <i>erga omnes</i> or <i>inter partes</i> effects (with regard to VIII. 2-4; 7-8)?	I DO NOT UNDERSTAND THIS SECTION. PLEASE RESTRUCTURE QUESTIONS.
Do the judgments have effects for the future only (<i>ex-nunc</i>), do they have even retroactive effects (<i>ex-tunc</i>) or is the effect deferred in order to give the legislation time to adjust the legislation to the court's decision.	
What legal authority does the judgment have to the relevant groups (below) considering that they	

have been part of the process?	
In general, who (see below) is affected how by the judgments of the Constitutional Court?	

1. On Citizens
2. On Administrations
3. On other Judicial Institutions
4. On Political Institutions
5. On Military

X. Control of the Constitutional Jurisdictions

Control of the Constitutional Jurisdiction	
Political control (see selection of judges; terms of office)	President, Parliament and the Judicial and Legal Service Commission (<i>sec 135 (1)</i>)
Removal / dismissal of highest judges(at all / only by judicial decision within the judiciary / by external institutions?)	Only the decision of the President, Parliament and the Judicial and Legal Service Commission (<i>sec 135 (1))</i>
What are the criteria for the removal of highest judges (e.g. proven legal misbehavior)	Infirmity, inability to perform the functions of the office and tried misconduct (<i>sec 137 (4))</i>
May decisions of the highest court be overruled by another institution (legislature)? What are the requirements?	No. Its final (<i>sec 122 (1))</i>
Amending the constitution in light of a decision of the highest court.	Yes.

1. Independence vs. Accountability
2. Political Control
3. Constitutional Amendment
4. Removal / Impeachment of Judges
5. Overruling of Decisions

XI. Conclusion