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Increasing Confidence in the Liberian Judiciary: A Shift in the Dispensation of Justice

INTRODUCTION

The judicial branch of Liberia is experiencing tremendous reforms ranging from increments in salaries, allowances, technical training, and infrastructure development.[1] However, the

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question that haunts the public is: why is public perception about the judiciary still low amid these tremendous reforms?

A recent survey shows 73 out of 100 lawyers reported dissatisfaction with the performance of the judiciary amid the reforms process.[2] Many questions beg for answers from the survey. Why, despite those reforms, is the perception of the judiciary still low? What are the causes of lawyers' dissatisfaction in the judiciary? Where does the judiciary—even with those reforms—fall short and leave the public wanting?[3]

The answer to the above questions lies in the fact that there is a dire need to make a radical shift from existing laws and practices that are hindering, and undermining, judicial efficiency to a more robust mechanism that can deal with present-day realities. This Article is a study on strategies that can improve the image and confidence of the Liberian judiciary. It is my claim that existing laws regarding the appointment and removal of judges, the creation of circuit courts, the term of court, juries and jury trial, as well as the appeal process, are all undermining the judiciary. And, there is a dire need to amend these laws to enable the judiciary to meet the demands of today's social realities in Liberia.

It should be noted that while the Liberian judiciary is the focus of this Article, the causes of low public perception of the judiciary cannot be attributed only to the courts. In fact, it would be an error to view this problem only as a "judge-made problem" or a judicial byproduct. To the contrary, this problem can be traced to the executive, the legislature, and the Liberia National Bar Association (LNBA), all of whom interact with the judiciary.

In this Article, I argue that, through their actions or omissions, those other actors—the executive, the legislature, and the LNBA—have directly or indirectly contributed to the functioning of the judiciary. As such, these actors are also responsible for how the public sees the judiciary. A review of existing constitutional provisions, legislative

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1 Sie-A-Nyene Yuoh, Associate Justice, Remarks at the Opening of the 14th Judicial Circuit Court (2013).

2 Survey on the Performance of the Liberia Judiciary, conducted by U-Jay W.H.S. Bright (2019) (on file with author).

3 *See* U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Liberia 2017 Human Rights Report 11 (2017) (discussing where the Judiciary of Liberia falls short and is not relied on by the people).

statutes, and supreme court opinions shows how these actors have shaped the public view.

The recommendations presented in this Article are premised on the logic that financial and structural reforms in the Liberian judiciary are somewhat effective, but without more, those reforms will continue to yield minimum results. While those old laws remain untouched—or even just slightly amended, as is the case with the New Amended Jury Law of 2013—public trust in the judiciary will always be low.

Shifting away from old laws and practices is based on the idea that existing laws are insufficient to deal with the current challenges surrounding the Liberian judiciary. The changes I propose would be amendments to provisions of the constitution, the judiciary law, and all other related laws that have direct bearing on the establishment of the circuit courts, the appointment of judges, and the removal of judges. It is time that the Liberian government amend laws relating to the term length of the circuit courts, the hearing and disposition of cases, and the role of ethical disciplinary bodies. Additionally, alternative dispute resolution processes need to be introduced into the mainstream of the judicial process to enhance access to justice and expedite dispute resolution.

Although the analysis and recommendations in this Article are not a panacea to the age-old problems confronting the Liberian judiciary, I present a more practical approach with achievable benchmarks that are not only highly realistic but also financially feasible. The proposed ideas and recommendations that I examine herein require only the will of the people and their commitment to effectuate change. Ultimately, with the aid of necessary budgetary and expenditure adjustments, the judiciary, including Liberia's attorneys, can be repositioned to a stature of high respect and admiration in the eyes of the public.

Research has shown that access to justice and the rule of law are significant to peace and stability in Liberia. Because the judiciary branch is a key component in these areas, that branch needs to be constantly reviewed to ensure that it is fulfilling its mandate as the guardian of liberty and peace. The scope of this Article covers the laws establishing and controlling the courts within the judiciary branch of Liberia, specifically the circuit courts and the Supreme Court. I also examine a few Liberian Supreme Court opinions and other scholarly papers relevant to the subject under review.

In Part I of this Article, I briefly explore the historical background of the judiciary and the structure of the courts. Parts II and III deal with

the challenges facing the judiciary, the reforms already enacted, and shortfalls within the reforms process. Finally, I conclude with relevant proposals and the benefits that will result from said changes being proposed in this Article.

I
A BRIEF OVERVIEW OF THE LIBERIAN COURT SYSTEM

Understanding the constitutional structure of the Liberian government and the court system is paramount to understanding access to justice in the country. The Liberian Constitution creates a unitary state, a republican form of government with three separate coordinate branches: the legislature, the executive, and the judiciary.[4] The Liberian judicial power is vested in a unified judicial system headed by one supreme court, followed by other subordinate courts created by the legislature.[5]

STRUCTURE OF THE LIBERIAN JUDICIARY

SUPREME COURT
↑
CIRCUIT COURTS & SPECIALIZED COURTS
↑
MAGISTRATE COURTS & JUSTICE OF THE PEACE COURTS

Liberia is a common law country. It has a jury system and jury trials. The judges are impartial referees and exercise complete neutrality in the cases coming before them.[6] There is a progressive evolution of case law, judicial precedents, and stare decisis. The courts are unified in a hierarchical order.[7] At the bottom of the hierarchy are the magistrate and justice of the peace courts, or the small-claims courts. Next, and moving upward, are the circuit courts and specialized courts. These courts have appellate jurisdiction over the small-claims courts and original jurisdiction over major civil cases and felony offenses.[8] At the top of the hierarchy is the supreme court, which is the constitutional court and head of the judiciary branch. The supreme court is the court of last resort and the final arbiter of constitutional issues. The supreme

4 LIBER. CONST. art. 3.

5 *Id.* art. 65; The Judiciary Law, 17 LIBER. CODE L. REV. § 1.1 (1972).

6 *See* T. NEGBALEE WARNER, LEGAL METHODS RESEARCH AND WRITING 4–8 (2012).

7 *Id.*

8 The Judiciary Law, 17 LIBER. CODE L. REV. § 1.1 (1972).

court exercises final appellate jurisdiction in all cases except cases involving ambassadors, ministers, or cases in which a country is a party.[9] The constitution empowers the supreme court to regulate the practice of law and to formulate the rules of all courts in the Republic.

The Liberian laws and court system are direct replicas of the United States jurisprudence model, except for the fact that Liberia lacks a federal system. It is observed that just as the American settlers borrowed the British common law during the colonial period of the 1600s,[10] the free slaves who migrated from the United States to Liberia borrowed the laws of their former slave masters in establishing a system of governance.[11]

From the arrival of free slaves in 1820,[12] to the formation of the Commonwealth of Liberia in 1839, to the declaration of independence in 1847, the laws of the United States have been pivotal and remain influential in the Liberian legal system.[13] Hence, it is no surprise that cases like *Marbury v. Madison*, 5 U.S. 137 (1803), are cited repeatedly to define the constitutional power of the Liberian Supreme Court.[14] In fact, U.S. case law and legal commentaries are so pervasive in the Liberian jurisprudence that the Supreme Court has stated that courts are permitted to apply the relevant U.S. laws in answering issues that are novel before them.[15]

One striking quality of the Liberian jurisprudence that is significant to the topic under review is the fact that the Constitution empowers the Head of State to appoint judges with the advice and consent of the senate.[16] These judges usually hold their judicial office until retirement, provided that they continue to demonstrate good behavior worthy of their stature.[17]

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9 LIBER. CONST. art. 66.

10 *See* LAWRENCE FRIEDMAN, LAW IN AMERICA 24 (2004).

11 WARNER, *supra* note 6, at 5.

12 JOSEPH BRYAN, REMARKS ON THE COLONIZATION OF THE WESTERN COAST OF AFRICA, BY THE FREE NEGROES OF THE UNITED STATES, AND THE CONSEQUENT CIVILIZATION OF AFRICA AND SUPPRESSION OF THE SLAVE TRADE 6 (1850), https://cdn.loc.gov/service/rbc/lcrbmrp/t1407/t1407.pdf.

13 JOSEPH S. GUANNU, SHORT HISTORY OF THE FIRST LIBERIAN REPUBLIC (2000).

14 Wiles v. Simpson, 8 L.L.R. 365 (1944); Ghoussalny v. Nelson, 20 L.L.R. 591 (1972). *See also* Morlu, II v. House of the Senate, March term, A.D. 2008 (Liber.).

15 TRADEVCO v. Mathies et al., 39 L.L.R. 637 (1999); General Construction Law, 15 LIBER. CODE L. REV. § 40 (1956).

16 LIBER. CONST. art. 54(c).

17 *Id.* art. 71, 72.

In instances where a judge is found wanting due to gross breach of duty, bribery, or other infamous crimes, the law provides that he may be impeached and removed by the legislative branch of government. That is, the house of representatives must first raise the bill of impeachment and forward the bill to the senate where the judge would be tried and, if found culpable, removed from office.[18]

Although the intent and purpose of these laws are honorable, the supreme court opinions and other legal documents discussed in Part II of this Article show how these laws over time have gradually become a challenge to the efficiency of the judiciary and an adverse risk to the rule of law, peace, and stability.

II
CHALLENGES AND PADLOCKS HINDERING THE EFFICIENCY OF THE LIBERIAN JUDICIARY

The issues with the judiciary are caused by a multitude of factors. The challenges and padlocks hindering judicial efficiency are not only "judge-made problems." Rather, these problems are connected to the executive branch of government, the legislature, and the Liberia National Bar Association (LNBA), all of whom interact with the judiciary. This Part of the Article explores how the actions or omissions of these actors have reduced the efficiency of the judiciary.

A. The Constitutional Walls

Most of the challenges confronting Liberia's judiciary stem from the Liberian Constitution, which is the bedrock of Liberia's government. In 1961, Counsellor Christian Abayomi Cassell, the former Attorney General of Liberia, presented a paper at an international conference suggesting that the judiciary is the weakest link among the three constitutional branches because the judiciary depends upon the other two branches of government to properly function.[19] The supreme court disagreed with Counsellor Cassell's assertions and disbarred him from the practice of law.[20]

A few decades after the disbarment of Counsellor Cassell, the Truth and Reconciliation Commission (TRC), in listing the causes of the Liberian Civil War, reached a similar conclusion as Counsellor Cassell.

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18 *Id.* art. 43, 71.

19 *In re* Cassell, 14 L.L.R. 391, 398–405 (1961).

20 *Id.* (disbarring Counsellor Cassell because the supreme court found his statements to be outrageous and ridiculing).

The TRC stated that the Liberian judiciary is historically weak, unreliable, and has always yielded to political or financial pressures from the executive branch of government, the legislature, and other external actors.[21]

It is my claim that these challenges, which hindered the efficiency of the judiciary long before the civil war, are still present even amid the current reforms.[22] These challenges, or constitutional walls, can be divided into two categories: (1) the executive padlocks, and (2) the legislative constraints. As will be discussed subsequently, the constitutional powers of these two institutions have inadvertently slowed the growth and efficiency of the judiciary.

1. Executive Padlocks

In Liberia, the Office of the President is very powerful, dominating and influential across the three branches of government. The Constitution provides: "The Executive Power of the Republic shall be vested in the President who shall be Head of State, Head of Government and Commander in Chief of the Armed Forces of Liberia."[23]

The supreme court has acknowledged the President's influence and dominance when it stated that the President is a great and necessary part of the Liberian government. The President is the only constant and continuing factor in the division of governmental power under the Constitution which is necessary to its existence. Unlike the numerical composition of the legislature and the judiciary, the President alone constitutes all there is within the executive, and the Constitution has placed many great and important powers in that office.[24]

Two presidential powers that hinder judicial efficiency are (a) the President's power to appoint judges and officers of the court, and (b) his power to subtly interfere with the judgments of the courts.

a. The President's Appointing Power

One of the most influential powers of the President is his appointment powers. Excluding members of the legislature, the

21 TRUTH & RECONCILIATION COMM'N, VOLUME II: CONSOLIDATED FINAL REPORT 6, 239 (2009).

22 *See generally* U.S. Dep't of State, *supra* note 3; United Nations Mission in Liberia, *Liberia Facts* (Apr. 23, 2018), https://unmil.unmissions.org/liberia-facts.

23 LIBER. CONST. art. 50.

24 Wiles v. Simpson, 8 L.L.R. 365, 371–72 (1944).

President is authorized to appoint all officers of the remaining two branches of government.[25] The chief justice, associate justices, judges of subordinate courts, clerks, marshals, and sheriffs are no exceptions to that power.[26]

In view of this, it is my claim that the President's constitutional power to appoint judges of subordinate courts has inadvertently contributed to inefficiency in the judiciary because the President is not surrounded by qualified lawyers when compared to the supreme court. When it comes to the knowledge of astute lawyers, the supreme court, as the regulator of the practice of law and the head of the judiciary, is more knowledgeable than the President in the vetting and selecting of experienced lawyers to preside over the subordinate courts.

This critical view on the President's appointing power in the judiciary is not new. In 2010, Counsellor Philip A.Z. Banks III, former Chairman of the Liberia Law Reform Commission, in delivering a paper at a judicial conference articulated a similar position to the one advanced in this Article. Counsellor Banks stated that when an incompetent or dishonest lawyer is appointed by the President as a judge, the people invariably suffer and are denied access to justice. Therefore, "the selection process must . . . be vigorously supervised by the [e]xecutive and opened to scrutiny by the legal community and the public[.]"[27]

Counsellor Banks concluded that an independent committee composed of the Attorney General, judges, retired justices, lawyers, and respectable members from the civil society be constituted to vet qualified candidates and then submit a recommendation to the President for appointment.[28]

It should be noted that although I share the view of Counsellor Banks regarding the risk of the President's appointing powers, I believe that the proposed independent vetting committee also poses a challenge for the following reasons:

(i) it would be constituted by the President and, as a result, could be influenced by his office;

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25 *See* LIBER. CONST. art. 54.

26 *Id.* art. 54(c), (d).

27 PHILIP A.Z. BANKS III, ACCESS TO JUSTICE SIN QUI NON [SIC] TO PEACEFUL CO-EXISTENCE IN POST WAR LIBERIA 12 (2010).

28 *Id.*

(ii) the President is not bound by law to accept the recommendation of the vetting committee if he disagrees with its preferred candidate;
(iii) the prospective appointee will be exposed to a second vetting procedure within the senate; and
(iv) there is an additional financial cost that is required for the operation of the independent committee.

The challenges listed above can be avoided or cured if the supreme court is empowered to vet and appoint its judges from the pool of lawyers appearing before the Court. Thus, if the Court is allowed to appoint and remove its judges without any interference from the other two branches of government, this will boost the independence of the Court and enhance transparency in the selection process.

It should be noted that because the need of competent trial judges is *sine qua non* to the efficiency of the supreme court's administration of the judiciary, one can presume that the supreme court will not appoint incompetent lawyers who might pose a risk of being a judicial liability. I am optimistic that, because the court needs more astute and innovative lawyers, it will employ due diligence in selecting the best candidates to preside over its trial courts.

In contrast, there are reasons the power to appoint should remain with the President. It can be argued that the President's legal advisors and the senate could scrutinize the appointment process to ensure that the best candidate is selected by the President.[29] It can also be counter-argued that the elections of judges and justices in a democratic process may also effectively cure this judicial deficiency.

These counterarguments hold weight except that they ignore two critical concerns. First, in the case of judicial elections, judges will be more politically conscious than law conscious as they may focus on their political base to win votes. Furthermore, because Liberia is a low-income country, the country may face additional financial burdens if judicial elections were added to the national elections process.

Second, because the President's legal advisors, and the senate, are preoccupied with other urgent political matters, they may not fully apply their very best to the selection of judges. Given this scenario, I am of the view that this process is highly vulnerable because the legal

29 *See generally* LIBER. CONST. art. 54; Executive Law, 12 LIBER. CODE L. REV. § 2.5 (1972).

advisors and the senate could be easily influenced by political maneuvering, trade-off, or compromise.

b. Subtle Interference

In addition to the risk of appointing inexperienced judges, there are instances where the executive branch of government has subtly interfered and to some extent frustrated the judgments of the supreme court and the trial court. A classic example of executive interference is the case *Ghoussalny v. Nelson*.

The facts in *Ghoussalny* reveal that President William V.S. Tubman specifically ordered the sheriff not to enforce the judgment of the trial court at the risk of being penalized. Because the President appointed the sheriff, and the sheriff was serving at the will and pleasure of the President, the sheriff obeyed the President. A mandamus proceeding was instituted in the supreme court against the sheriff to compel him to perform his official duty.

After listening to arguments, the supreme court found that although the President's order infringed on the powers of the judicial branch of government, the court was unable to issue a writ compelling the sheriff. The reasons advanced by the court were: (1) the sheriff was an agent of the President acting at the behest of the President, and (2) the constitution forbids the filing of court precepts or proceedings against the President. The court reluctantly denied the writ by concluding that an agent of the executive acting directly under the President's orders enjoys the same immunity as the President and is insulated by the President's immunity granted under the Constitution.[30]

The *Ghoussalny* case was not an isolated event that occurred in the judicial history of Liberia. To the contrary, there are many instances where the President used his political influence, subjecting the judiciary to intimidation and unwanted political pressure ranging from the unconstitutional removal of justices to blocking the enforcement of courts judgments.[31]

Once the President's power to appoint is restricted within the workings of the judiciary, his influence and dominance will be significantly reduced.

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30 Ghoussalny v. Nelson, 20 L.L.R. 591, 609–10, 613–14, 616 (1972).

31 *See generally In re* Notice from the President of the Removal of Associate Justice McCants-Stewart, 2 L.L.R. 175 (1915); Amnesty Int'l, *Time to Take Human Rights Seriously*, at 12, AI Index AFR 34/05/97 (Oct. 1, 1997).

2. Legislative Constraints

The second constitutional wall impeding judicial efficiency is the role of the legislature in creating courts and removing judges.

a. The Creation of Courts

The constitutional authority of the legislature to create courts within the judiciary constrains access to justice because the trial courts are created based on the formation of new counties or political subdivisions, rather than a legal necessity such as population growth, commerce, or access to justice

The Liberian Constitution empowers the legislature "to constitute courts inferior to the supreme court, including circuit courts, small claims courts" and such other courts "necessary for the proper administration of justice throughout the Republic."[32] Given this mandate, the legislature has created sixteen circuit courts across Liberia's fifteen political subdivisions, or counties, to hear major criminal and civil cases.[33] Because the creation of these counties is often influenced by ethnic or social divide within a particular geographical area, the creation of a circuit court is always subject to political expediency rather than a judicial need.

Further, each of these courts is typically manned by a single judge assigned by the chief justice of Liberia.[34] The assigned judge presides over their respective courts and holds trial sessions for a period of forty-two working days.[35] During this period, each judge is expected to decide cases emanating from the entire county regardless of the population. Each trial judge is given twenty days of chamber sessions for the purpose of holding conferences, issuing preliminary orders, or enforcing judgments. The twenty-day chamber sessions are divided into two, with the first ten days being held before the official opening of a quarterly term of court, and the remaining ten days are held after the forty-two day trial session.[36]

It should be noted that Liberia has a population of 4.5 million.[37] Concentrated populated counties are: Montserrado (1.1 million), Nimba (462,026), Bong (333,481), Lofa (276,863), Grand Bassa

32 LIBER. CONST. art. 34(e).

33 Judiciary Law, 17 LIBER. CODE L. REV. § 3.1 (1972).

34 *Id.* § 3.9.

35 *Id.* § 3.8.2.

36 *Id.*

37 United Nations Mission in Liberia, *supra* note 22.

(221,693) and Margibi (209,923).[38] It is amid this huge population, within these listed counties, that a single circuit judge must dispense justice within a period of forty-two working days, in keeping with Section 3.8.2 of the Judiciary Law. That Section provides that circuit judges shall conduct a trial session for forty-two consecutive days, not including Sunday and legal holidays. After the forty-two-day trial session, the judges have an additional ten days to hold chambers sessions and close the court for that term.[39]

The creation of circuit courts by the legislature has not enhanced access to justice given the ratio of the circuit courts, sixteen, to that of the population, 4.5 million. Also, the period of forty-two days is insufficient for the circuit courts located in counties with very high populations to dispose enough cases as compared to those circuit courts located in areas of smaller populations.

Because the establishment of the circuit courts is tied to the creation of a new county, rather than population density, most of these courts are isolated from the local population. The rest are overwhelmed by a large number of cases coming before them. This, however, can be remedied if the administrative head of the judiciary—the supreme court—is authorized to evaluate the problem and create courts based on need.

The establishment of additional courts across highly populated counties like Nimba or Montserrado will reduce the number of cases on the trial courts' dockets and enhance access to justice. Also, the introduction of divisionary programs, mediations, arbitration, and restorative justice into the mainstream of the judicial process will help reduce the courts' dockets because litigants will have alternative means to resolve their disputes, rather than turning to the courts for redress.

b. The Removal of Judges

The judiciary is the only branch of government that is unable to remove its members from office, even if there are sufficient grounds for removal. Article 71 of the Constitution provides that judges can be removed only upon impeachment and conviction by the legislature for proved misconduct, bribery, gross breach of duty, inability to perform, or conviction of an infamous crime.[40] While suspension of a judge from

38 LIBER. INST. OF STATISTICS AND GEO-INFO. SERVS., 2008 POPULATION AND HOUSING CENSUS FINAL RESULTS 9 (2009).

39 Judiciary Law, 17 LIBER. CODE L. REV. § 3.8.2 (1972).

40 LIBER. CONST. art. 71.

his judicial office is an effective disciplinary measure, it cannot be equated to an impeachment proceeding that guarantees total removal and the creation of a new vacancy.

According to law commentators, impeachment proceedings are meant to be cumbersome and frustrating to protect judges against any form of political conspiracy.[41] First, the impeachment process begins in the house of representatives, which has the sole authority to prepare bills of impeachment. Second, the bill then travels up to the senate, which is authorized to try the accused.[42] It is believed that the senate is a secure and unbiased body responsible for impeachment trials because the numerical size of the senate guarantees that the impeachment trial will be tedious, while preserving judicial integrity.[43]

This constitutional framework, in the case of Liberia, is inefficient given the politics of the Liberian legislature and the dire need for the judiciary to be swift and robust in responding to ethical issues. Currently, there is no statute clearly defining the grounds for removal stated in Article 71, and there are no articulated procedural rules passed by the legislature governing impeachment proceedings. As a result, several circuit judges have been investigated and reprimanded repeatedly for unethical conduct,[44] yet these judges often are not removed from the judiciary. Because the supreme court is unable to remove these judges from their office, the court is left to deal with those judges internally.

Removing judges without resorting to a legislative body is not new. Currently, there are independent investigatory commissions or courts with removal power in nearly all fifty states in the United States and in the District of Columbia.[45] The state of California, a pioneer of this type of structure, has an independent constitutional agency known as the Commission of Judicial Performance (CJP). The CJP presides over

41 *See generally* Daniel Luchsinger, *Committee Impeachment Trials: The Best Solution?* 80 GEO. L.J. 163, 166–68 (1991).

42 LIBER. CONST. art. 43.

43 *See* Luchsinger, *supra* note 41.

44 Karngar v. The Heirs of Trifina Gould, October Term, A.D. 2012 (Liber.); *In re* the Report of the Judicial Inquiry Commission in the Matter of the Investigation of the Judicial and Ethical Conduct of Judge Paye, October Term A.D. 2012 (Liber.); Clarke-Tarr v. Wright, March Term A.D. 2015 (Liber.); LIMIMCO v. Paye et al., October Term A.D. 2016 (Liber.). *See also* Fadallah v. Gibson-Flomo et al., March Term A.D. 2015 (Liber.) (showing the repeated misconduct of the same judge and the penalty levied against him).

45 *See* Preble Stolz, *Disciplining Federal Judges: Is Impeachment Hopeless*? 57 CAL. L. REV. 659 (1969).

all California judges and is responsible for investigating judicial misconduct and taking disciplinary action.[46] The CJP's disciplinary actions range from issuing an advisory letter to removal, and its decisions are binding, subject to an appeal to the supreme court of California.[47]

I strongly believe that a model like the CJP should be adopted in Liberia and the Liberian supreme court should be allowed to independently handle the affairs of the judiciary without resorting to the other two branches of government. I believe that with the support of an independent and robust Judicial Inquiry Commission (JIC), modeled after the CJP, the court will be equipped to rid itself of nonperforming judges.

B. Archaic Laws Within the Circuit Courts – The Unpopular Jury System

In addition to the constitutional challenges facing the judiciary, there are procedural laws eroding the public's confidence in the judiciary and impeding the disposition of cases within the courts.

Since these laws are numerous and require great in-depth scholarship,[48] I highlight only the constitutional provisions relating to the jury system. I focus on the jury system because it is notorious for its inefficiency in the court systems in Liberia.

It is my argument that the judiciary should abandon the jury system and allow judges to conduct bench trials because judges are in a better position to decide cases than jurors. Although Liberia's jury system is a fundamental right guaranteed by the Liberian constitution,[49] the jury system is no longer relevant to the dispensation of justice in Liberia.

It is public knowledge that the jury system is widely criticized as inefficient and unreliable.[50] A recent survey on the credibility of the jury system showed that eighty-seven percent of lawyers discredit the jury system.[51] In March 2010, former Chief Justice of the Liberian

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46 CAL. CONST. art. VI, § 18.

47 *Overview of Commission Proceedings*, CAL. COMM'N JUDICIAL PERFORMANCE, https://cjp.ca.gov/complaint_process (last visited Oct. 22, 2019).

48 *See generally* Civil Procedure Law, 1 LIBER. CODE L. REV. § 51.8 (2012) (illustrating how requiring an appeal bond is an example of one of these archaic laws, which is causing the dismissal of most appeals in the supreme court).

49 LIBER. CONST. art. 20(a).

50 U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., 2017 Country Reports on Human Rights Practices: Liberia (2018); United Nations Mission in Liberia, *supra* note 22.

51 Survey, *supra* note 2.

Supreme Court, Counsellor Francis Johnson-Morris, referred to the jury system as evil because of the level of corruption in the system.[52] In December of the same year, this statement was buttressed by the former Liberian Minister of Justice, Counsellor Christiana Tah, who stated, "We are concerned about the jury system and some of the questions that the public has are not unfounded. We have heard a lot of instances where jurors received bribes and voted in favor of the person, usually the defendant."[53] In its current state, Liberia's jury system does more harm than good because the judiciary's image is constantly being smeared by the unethical conduct of jurors. Amid these strong criticisms from the public, the judiciary maintains the jury system despite the fact that most judges and lawyers continue to lament their frustration over the system.

A bench trial system should replace the jury trial system because the judges are in a better position to decide cases than jurors. First, jurors do not possess any technical skills required to decide a case. Because one must look no further than the law and evidence in making a decision in a case, a bench trial conducted by a trial judge is a more superior form of trial. Additionally, a trial judge may review the entirety of the evidence and order a new trial after the jury has returned its verdict.[54] This fact alone is a sufficient ground to abandon the jury system and allow judges to conduct bench trials.

While this may make overly powerful judges, and this does not completely eliminate the possibility of corruption, the process of judicial review via bench trial ensures that a judge's decision or ruling does not stray from the written law. Unlike a jury decision, which is short and simple, circuit judges must provide clear, detailed reasoning to support their decisions, or they risk being censured by the supreme court.[55]

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52 James Butty, *Former Liberian Chief Justice Calls for Tougher Measures Against Corrupt Judicial Officials*, VOA NEWS (Mar. 16, 2010), https://www.voanews.com/a/butty-liberia-judicial-corruption-16march10-87736222/153737.html.

53 James Butty, *Liberian Minister Vows Jury Reform Following Bropleh Corruption Trial*, VOA NEWS (Dec. 10, 2010), https://www.voanews.com/a/butty-liberia-acquittal-react-tah-10december10-111654209/157023.html.

54 Civil Procedure Law, 1 LIBER. CODE. L. REV. § 26.4 (2012); Criminal Procedure Law, 2 LIBER. CODE L. REV. § 22.1 (2012).

55 Karngar v. The Heirs of Trifina Gould, October Term, A.D. 2012 (Liber.). *See* Fadallah v. Gibson-Flomo, March Term A.D. 2015 (Liber.). *See generally In re* the Report of the Judicial Inquiry Commission in the Matter of the Investigation of the Judicial and Ethical Conduct of Judge Paye, October Term A.D. 2012 (Liber.); Clarke-Tarr v. Wright,

To conclude, I believe the insistence on a jury system is limiting the dispensation of justice in Liberia, and it should be abandoned in favor of bench trials because trial judges are under a greater obligation to conform their rulings to the written law. Abandoning the jury system will not only enhance judicial efficiency, it will also save money that would have been used to pay jurors.

C. The Bystanders: Liberian National Bar Association

Amid the daunting challenges facing the judiciary and other prevailing legal issues currently rising in the country, the association of lawyers known as the Liberia National Bar Associations (LNBA) has been very quiet as the judiciary has repeatedly come under smear campaigns and attacks on its integrity. By quietly acting as a silent bystander, rather than leading the process of change, the LNBA has provided less than what is required to support the judiciary. The LNBA's silence on most critical issues affecting the judiciary vindicates the judiciary's critics who have little knowledge on the science of jurisprudence. Through its silence, the LNBA has inadvertently left the impression that the criticisms about the judiciary are more likely to be true because the LNBA has failed to refute those claims. The functions of the LNBA are as follows:

(i) To promote the science of jurisprudence, advance the cause of legal education and help maintain the independence of the Judiciary;
(ii) To further secure the passage of legislation that will, from time to time improve the judicial system and the proper administration for justice in the Republic;
(iii) To promote fraternal feelings and good fellowship among the members of Association, and between them and members of Bar Association of foreign countries;
(iv) To ensure that the ethics of the legal profession are strictly observed and adhered to;
(v) To establish machineries through which legal aid shall be provided to indigent individuals; and
(vi) To assist in the selection of those to be appointed as judges.[56]

In addition to the functions above, I believe the LNBA should be more proactive, which includes ensuring that the courts are respected,

Supreme Court Opinion, March Term A.D. 2015 (Liber.); LIMIMCO v. Paye et al., October Term A.D. 2016 (Liber.); Fadallah v. Gibson-Flomo et al., March Term A.D. 2015 (Liber.) (showing the repeated misconduct of the same judge and the penalty levied against him).

56 Const. & By-Laws of the Liber. Nat'l Bar Ass'n, art. II (1983).

accessible, transparent, and expeditious. The LNBA should be conducting legal scholarship, managing continuing legal education (CLE) programs, and publishing commentaries to raise public confidence in the judiciary. The LNBA should be bold in addressing critical national issues, especially issues of law, that have direct bearing on the peace and stability of the country.

In 2001, the LNBA actively engaged the Liberian government when the LNBA's President and Officers were arbitrarily fined and imprisoned by the House of Representatives. The LNBA protested the actions of the House, by calling on its members to boycott all court proceedings and other legal activities across the country until its members were unconditionally released. The boycott brought enormous pressure on the government to the extent that the House was compelled to rescind its decision and immediately release the detained lawyers.[57]

In 2017, the LNBA led a public condemnation of the House of Representatives' decision to impeach three associate justices for their opinions in an elections case. This bold stance of the LNBA against the House changed the course of events, necessitating the dropping of the impeachment proceedings against the three associate justices.[58]

More recently, in 2019, the LNBA provided a leadership role on the establishment of a War Crimes Court by preparing a legislative bill to expedite the establishment of the court.[59] Also in the same year, the President of the LNBA, Counsellor Tiawon S. Gongloe, decided to be more vocal and critical on some national issues, ranging from the recent removal of Justice Kabineh Jan'eh, to the right of the press and freedom of speech, to other human rights issues affecting the country.[60]

These activities prove that although the LNBA tends to be a silent activist on national issues, when they do speak up the government has

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57 Republic of Liberia v. Leadership of the LNBA et al., 40 L.L.R. 635 (2001).

58 *In re* The Constitutionality of the Judiciary Committee of the House of Representatives, March Term, A.D. 2017 (Liber.). *See also Liberia National Bar Association Condemns Impeachment of Justices*, FRONTPAGEAFRICA (Aug. 10, 2017), https://frontpageafricaonline.com/news/2016news/liberia-national-bar-association-condemns-impeachment-of-justices/.

59 *Starting the Accountability Process: Liberian Lawyers Draft Bill for Establishing War Crimes Court*, FRONTPAGEAFRICA (May 23, 2019), https://frontpageafricaonline.com/news/starting-the-accountability-process-liberian-lawyers-draft-bill-for-establishing-war-crimes-court/.

60 Tiawon Gongloe, President of LNBA, Failure to Honor an Order of the Supreme Court Undermines the Rule of Law and Threatens the Peace, Security and Development of Liberia (Mar. 11, 2019), http://www.theperspective.org/2019/0311201903.php.

always heeded the LNBA by either repealing an unconstitutional act,[61] releasing a prisoner from detention, or obeying the rule of law. In instances where the LNBA is silent, the country has experienced the reverse, along with all its negatives derivatives.

It is my argument that the more the LNBA steps into the limelight, engages the government, and leads the reforms process, the more there will be a positive change in public perception of the judiciary. Given the past experiences of the LNBA, it can be posited that the LNBA is possibly the only potent organization that can ensure that the judiciary is fully independent, respected, and well supported by the government and the people.

III
JUDICIAL REFORMS

The thesis of this Article is premised on judicial reforms, reforms that are more robust and geared toward establishing greater independence of the judiciary. Therefore, I would be remiss if I failed to acknowledge the ongoing judicial reforms process and the collective efforts of the Liberian government and its international partners in improving the judiciary. It should be noted that although I share the view that there is still much to be done within the judiciary, the reforms undertaken by the government of Liberia are highly commendable and worthy of appreciation.

Since the cessation of the Civil War and the induction of a constitutionally elected government in Liberia eighteen years ago, the judiciary has experienced reforms in terms of increasing its budgetary allotments, salaries, infrastructures, social benefits, technical trainings and seminars, and more.

For example, between fiscal years 2016–17 and 2017–18, the judiciary's budgetary allotment from the national budget increased from $15.5 million to $16.9 million.[62] During this period under review, an estimated amount totaling $613,392 was allotted for training within the judiciary.[63] It is noteworthy that the Liberian government has given the judiciary leverage in controlling its financial expenditures without interference from the Treasury Department (Ministry of Finance,

61 *See generally In re* Constitutionality of the Legislative Act of 1914, 2 L.L.R. 157 (1914).

62 MINISTRY OF FIN. AND DEV. PLAN., NATIONAL BUDGET, FISCAL YEAR 2018/2019 xxxiv (2018), https://www.cabri-sbo.org/en/documents/national-budget-1.

63 *Id*. at 169.

Development and Planning) through passing the Judicial Financial Autonomy Act.[64]

Currently, the government of Liberia has constructed five massive court buildings, known as judicial complexes, across the country and is poised to construct one judicial complex in each county. The five newly constructed judicial complexes are in Grand Kru County, Lofa County, Montserrado County, Nimba County, and Bomi County. In addition to these judicial complexes, the government has also constructed or refurbished four small-claims courts across the country.[65]

Additionally, the government has taken steps to improve the jury system by passing the New Amended Jury Law of 2013, which creates a Jury Management Office to supervise jury selection from a pool of government employees. This new law abolishes the random selection of jurors from the neighboring towns and communities. Rather, they are selected from the databases of the Civil Service Agency, the National Elections Commission (NEC), and the Liberia Institute for Statistics and Geo-Information Services (LISGIS).[66]

A. Challenges Amid the Reform Process

Now, it should be noted that although these reforms are notable, the judiciary is still facing challenges amid the ongoing reform process. For example, the creation of the Jury Management Office in each of the counties has been difficult for the judiciary because some circuit courts in the rural counties do not have a Jury Management Office or a civil service pool within their counties. In most instances, for these courts to conduct jury trials, they are compelled to follow the old law rather than the New Amended Jury Law.

Another constraint facing the judiciary is the very low budgetary allotment from the national government, which hindered the work of the judiciary. For example, out of the entire 2018–19 fiscal budget of $570.1 million, the judiciary was allotted only $16.9 million. At the same time, agencies within the executive branch of government, like

64 Lina Wilfred Gorton, *Liberia: Senate Passes Financial Autonomy Bill*, ALLAFRICA (June 30, 2016), https://allafrica.com/stories/201607011140.html.

65 Francis S. Korkpor Sr., Chief Justice, Supreme Court of Liber., Opening Address of the March Term of the Supreme Court (Mar. 12, 2018) (transcript available on the Supreme Court of Liberia website).

66 An Act to Amend Title 1 of the Liberian Code of Law Revised, Civil Procedure Law, Chapter 22 Relating to Juries and Jurors ("New Amended Jury Law") § 22.3 (2013) (on file with author).

the Ministry of Justice and Ministry of Finance, were allotted $37.3 million and $44.3 million respectively.[67]

During the opening of the 2018 October Term of the supreme court, Chief Justice Francis S. Korkpor Sr. expressed dismay over this trend in low budgetary allotment to the judiciary by stating thus:

> Over the years, long before and after the civil war and until now, the budget of the Judiciary has remained extremely low compared to the other branches of the Government. As I have said time and again, this does not mean that the running cost of the Judiciary is any less than the running costs of the other branches of government.[68]

The budgetary allocation to the judiciary stands at three percent of the total budget and is grossly inadequate to meet its reform agenda.

It should be noted that because of budgetary constraints, the construction of judicial complexes in each county is moving at a slow pace.[69] There is an acute lack of coordination, and the reform process is gradually being stalled because of low funding. Recently, inadequate retirement compensation for judges has become an issue as trial judges are constantly appealing to the government for better compensation for retirement.[70] With an allotment of three percent of the national budget, the judiciary reforms across the country will continue to be hit by more financial hurdles as inflation rises.

CONCLUSION

Shifting away from old laws and practices is an idea that offers high value and is cost efficient for the smooth operation of the judiciary. I believe that if the government insulates the judiciary's appointment and removal of trial judges and its creation of circuit courts from the other two branches of governments, then the independence of the judiciary could be stronger than ever.

To achieve this, the government can either pursue a constitutional referendum or the legislature, in consultation with the President, can enact new legislation that delegates constitutional powers to the supreme court to fully administer the affairs of the judiciary, including appointing and removing judges and creating trial courts.

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67 MINISTRY OF FIN. AND DEV. PLAN, *supra* note 62, at xxviii, xxxiv.

68 Francis S. Korkpor Sr., Chief Justice, Supreme Court of Liber., Opening Address of the October Term of the Supreme Court (Oct. 8, 2018) (transcript available on the Supreme Court of Liberia website).

69 *Id.*

70 *See* Korkpor, *supra* note 65.

To ensure that there is a check and balance of judicial power, I suggest that the Liberia Judiciary Inquiry Commission (JIC) be given statutory authority like the Commission of Judicial Performance (CJP) in the State of California. The Liberian legislature needs to pass legislation making the JIC separate and independent from the supreme court, with more robust authority to formulate penalties, investigate judges, and report on the performance of judges. The Liberia National Bar Association needs to maintain its recent activism on national issues, perhaps formulate standing procedures governing the Judiciary Inquiry Commission, and fix penalties for ethical violations. This will enhance transparency when hearing of judicial complaints and will help the judiciary rid itself of bad actors and poorly performing judges.

It is highly possible that financial constraints will always be one of the biggest and most daunting challenges the judiciary will continue to face. Therefore, the supreme court needs to reevaluate its plans of constructing massive courts in every county. Rather, I propose that counties with very small populations do not need a judicial complex and that the judicial budget should be geared toward creating additional courts in counties with larger populations.

Also, the judiciary needs to introduce alternative dispute resolution programs into the mainstream. Alternative dispute resolution methods like mediation, arbitration, and restorative justice will provide a means for grievances to be heard and resolved expeditiously at a lower cost. The James A.A. Pierre Training Institute, responsible for the training of judges, can serve as a launching pad for alternative dispute resolution training programs. The Institute is operated by the judiciary to provide professional training for magistrates, judges, and judicial staff. The Institute offers continuing legal education for prosecutors and public defense lawyers. Hence, the James A.A. Pierre Training Institute will be ideal to launch and maintain alternative dispute resolution training for the judiciary.

Finally, if a case must go to trial, Liberian judges should be allowed to conduct a bench trial because they are more competent than jurors regarding interpreting issues of fact. Jurors possess no exceptional expertise and jury verdicts can be set aside by a judge on statutory grounds determined by the judge. The excerpts presented in this Article, from judges, past attorney generals, and human rights reports, show that jurors have brought no additional value to the judiciary, and that the public and legal community have low expectations of the jury

system. Therefore, the judiciary should not continue financing a system lacking public confidence.

As stated earlier, this Article's analysis and recommendations are not a panacea to the age-old problems confronting the Liberian judiciary; however, this Article presents a more practical approach, with achievable benchmarks that are not only realistic but also financially feasible. The proposed ideas and recommendations require only the will of the people and their commitment to effectuate change. And, with necessary budgetary and expenditure adjustments, the Liberian judiciary can achieve a position of great respect and admiration in the eyes of the public.