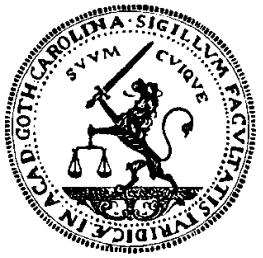

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ACCESS TO JUSTICE IN LIBERIA: A CRITICAL ANALYSIS OF CORRUPTION IN THE LIBERIAN JUDICIARY AND ITS NEXUS TO PRETRIAL DETENTION FROM 2004-2019

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SUMMARY

In this research, I investigate access to justice in Liberia; specifically delving into corruption in the Liberian Judiciary and its nexus to pretrial detention. I argue, that despite the huge investments by the post-conflict nation and its partners in the Judiciary; in order to sustain peace and political stability, the desired outcome of a strong, transparent, and independent Judiciary has not been attained. The Judiciary has denied citizens effective access to justice, it is entangled in rampant corruption, which has caused a boom in pretrial detention across the post-conflict nation. I also argue that corruption in the Liberian Judiciary has undermined citizens' trust and confidence in the Judiciary and this has led to violation of fundamental human rights and poses a direct threat to the political stability and security of the nation.

I argue that effective access to justice is a fundamental human right and it needs to be enjoyed by all individuals within the Liberian jurisdiciton. I also argue that unhindered enjoyment of the right to effective access to justice is absolutely essential in building trust in the Judiciary, restoring law and order in the post-conflict nation after decades of anarchy, and entrenching the basic tenets of democratic governance.

I further argue in this research that in a post-conflict country like Liberia, where there are limited capacity of judicial officers and a challenged economic environment, judicial corruption cannot be eliminated from the judicial landscape of the nation, but can be minimized through increased salaries for judges and court officers and the institution of harsher punishment for them in the event they breached ethical standards. I also argue that the Judiciary is stifling the rule of law as a result of corruption by violating the basic rights of alleged criminal defendants and denying them their statutory right to a bail. I then argue, that the Liberian Judiciary is not independent and it is colonized by a patrimonial Presidency.

Finally, in drawing a nexus of corruption in the Liberian Judiciary to prolonged and increased pretrial detention, I argue that corrupt practices in the Justice of the Peace Courts, Magistrates' Court, and Circuit Courts have immensely contributed to massive, widespread, and sporadic pretrial detention across the post-conflict nation. I further argue that the failure of these different courts to utilize the constitutional provisions on bail and the criminal procedure statute have contributed to the floodgate of pretrial detainees across the West African nation. I then conclude my argumentation that the subjection to prolonged pretrial detention is contrary to the Constitution of Liberia, international human rights treaties the post-conflict nation has ratified or acceded to, and it has undermined the rule of law by crushing on an alleged criminal defendant's right to due process, equality before the law, and subject pretrial detainees to harsh punishment for crimes which they have not been convicted of before a court of competent jurisdiction.

PREFACE

Firstly, I would like to commend the Swedish Institute (SI) for affording me the opportunity to study at Lund University through the SI Scholarship for Global Professionals. I am ever so grateful to SI and indebted to the incredible people of Sweden for this academic journey.

Secondly, I would like to say a very big thank you to Dr. Karol Nowak; my supervisor, who helped me with all the comments and feedbacks from the development of the research topic to the finalization of this scholarly work. Thanks Karol!

Finally, to my incredible father, hero, and champion:

Dear Papa,

Today, you are resting in the bosom of Abraham; but your memory lives on forever. You did all within your powers to give me a decent education during the turbulent civil conflict in Liberia by selling all of your chattels and real properties when you could not raise me and my siblings school fees. You made my dream a reality!

You live a selfless life for me to acquire an education! You coached me, mentored me, and showed me the brightest way in life! You taught me that I must never settle for little things, patronage, and the easy paths in life; but I must work hard, study hard, and find the right paths in life which will unlock doors. I am forever grateful to you, Samuel Weagar Yelloway!

Sincerely Yours,
Alvin Weagar Yelloway
Your Son

ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACS	American Colonization Society
Atty	Attorney /Attorney-at-Law
AU	African Union
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
Cllr	Counselor/Counselor-at-Law
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECOWAS	Economic Community of West African States
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
GEC	Grievance and Ethics Committee
INCHR	Independent National Commission of Human Rights
JIC	Judicial Inquiry Commission
LCLR	Liberia Code of Law Revised
LLR	Liberian Law Report
LNP	Liberian National Police
LSCR	Liberia Supreme Court Report
MOJ	Ministry of Justice of Liberia
OAU	Organization of African Unity
RL	Republic of Liberia
TRC	Truth and Reconciliation Commission of Liberia
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNSC	United Nations Security Council
UNGA	United Nations General Assembly
UNMIL	United Nations Mission in Liberia
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
USA	United States of America
UDHR	Universal Declaration of Human Rights

CHAPTER 1

In this chapter, I will sketch out the introduction to the research and its background. The essence of this chapter is to provide readers with a comprehensive background of the research and how the research is structured.

INTRODUCTION

'No justice for the poor: No money, No justice' - A Trite Liberian Adage and Title of Human Rights Watch 2013 Report on Liberia

1.1 Introduction to the Subject

Access to Justice is an indispensable tool that has the unfettered power to rebuild broken institutions, inspire confidence in local communities, attract investors, and entrench governance in post-conflict countries. Post-conflict societies struggle to ensure full realization of such a basic human right, simply because State organs such as the Judiciary is frail, incapacitated, underfunded, and corrupt in its modus operandi.

These negative vices have the proclivity to push post-conflict countries back into civil conflicts and dictatorial rules, if tremendous efforts are not exerted to ensure that they fully build their frail and corrupt institutions in order to drive change and consolidate democratic gains. So is the situation with Liberia, a country situated on the West Coast of Africa, bordered by Guinea, Côte d'Ivoire, Sierra Leone, and on the Southern part by the Atlantic Ocean. Endowed in wealth and natural resources, this small West African nation has been through the worst horrors of the last three decades, but managed to survive in the midst of the uncertainties that almost led to the collapse of the Liberian State.

From its founding in the early 1820s by freed slaves from the United States of America (USA), as a result of the abolition of Slavery in the early 1800s in the USA; a colonial organization 'under the auspices of the American Colonization Society (ACS) aided freed slaves to establish themselves on the western coast of Africa as a place for their future home, to enjoy the rights and privileges, and exercise and improve those faculties common with the rest of mankind'.[1] The ACS aided and abetted the freed slaves from the USA to establish the Liberian State, legitimate their rule over the natives or aborigines through the adoption of laws without the voluntary consent of the natives and entrenched despotic governance for more than thirteen decades. These wanton suppressions from the freed slaves (Americo-Liberians) against the aborigines were met with stiff resistance, but continuous clampdown became the order of the day until the natives were subjected to one party rule for more than one hundred thirty (130) years, confiscations of their ancestral land, and subjugation of their persons. These and many more led to a political revolution in the late 1970s and young people became to rise up against the dominant Americo-Liberian rule. They called for reform in the governance

[1] Preamble, Constitution of Liberia, 1847, Accessed at: http://www.liberlii.org/lr/legis/const/col1847235/ , Last Accessed: 29 January 2020

system and the entrenchment of basic human rights. These tensions led to political instability in the country and a military coup was hatched in the early 1980s with an indigenous seizing power. The indigenous only ignited ethnic divisions that led to fourteen (14) years bloodbath that took away the lives of nearly two hundred fifty thousand (250,000) people from 1989-2003. The civil conflict was amongst ethnic groups, warring factions, splinter groups of the national army, and different interim governments until a comprehensive cease fire agreement was signed in 2003.

The United Nations Security Council (UNSC) 'concerned over the conflict in Liberia and its effects on the humanitarian situation, including the tragic loss of countless innocent lives, its destabilizing effect on the region and its threat to international peace and security, authorized member States to establish a multinational force in Liberia to support the implementation of the 17 June 2003 ceasefire agreement, including establishing conditions for initial stages of disarmament, demobilization, and reintegration activities'.[2] The Council also mandated member states 'to help establish and maintain security, to secure the environment for the delivery of humanitarian assistance, and to prepare for the introduction of a longer-term United Nations stabilization force to relieve the Multinational Force'.[3] The resolution by the security council and the adoption of the peace agreement by warring factions to the Liberian civil conflict paved the way for peace in Liberia and trigger a new beginning in the history of the West African State for the consolidation of democracy and to ensure lasting peace. The Comprehensive Peace Agreement amongst other things called for 'ceased fire amongst the warring factions and the government, international stabilization force, security sector reform, and establishment of a transitional government'.[4] These series of events inevitably triggered peace and the reason why Liberia is a post-conflict country.

Since the nation's return to constitutional democracy, the Judiciary of the post conflict nation has been imbrued in massive corruption and ethical calamity. Despite huge investments by the United Nations and friendly governments in the Liberian Judiciary, judicial corruption has been ingrained in the Judiciary. These acts of corruption in the Judiciary ranges from acts of bribery, jury tampering, unethical conduct, conversion, commingling, and misappropriation of party litigants' funds.

Finally, in this thesis, I will delve into the nitty-gritty of access to justice in Liberia, specifically analyzing corruption in the Liberian Judiciary and its nexus to pretrial detention. Using the legal principles of due process of law and equality before the law, I will link corruption in the Liberian Judiciary to the floodgate of pretrial detention in the post-conflict nation.

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[2] UNSC Resolution 1497 (2003), Preamble & Para 1, Accessed at: https://undocs.org/S/RES/1497(2003) , Last Accessed: 29 January 2020

[3] Ibid. at Para 1

[4] Articles II, IV, VI, and XXI, Comprehensive Peace Agreement of Liberia, 2003, Accessed at: https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/liberia_08182003.pdf , Last Accessed: 29 January 2020.

1.2 Purpose and Research Questions

The primary purpose of this research is to provide a critical analysis of access to justice in Liberia, divulge the ingrained elements of corruption in the Liberian Judiciary and link such corrupt practices to subjection to prolonged pretrial detention, which is not only a wanton abuse of universal human rights, but also a reckless violation of the laws of Liberia.

The research delves into a brief historical analysis of the legal system in Liberia and how the legal system is wrapped in corrupt practices which have immensely contributed to subjection of alleged criminal defendants to prolonged pretrial detention. The research then probes into the conflict that engulfed the small West African State, tremendous strides made by the international community to end the conflict, the transition of the country to democratic rule and how these democratic gains are undermined as a result of corruption in the Judiciary and arbitrary violation of the rights of citizens.

In consolidating democracy by the post-conflict nation, the research points out flaws in the Judiciary and how it has crushed basic human rights in dispensing justice; thus missing out on the opportunity to inspire change and confidence in the Judiciary on one hand, and contributing to lack of respect for the rule of law on the other hand, which are undermining lasting peace.

Finally, in order to analyze access to justice in Liberia, the research comes up with a critical assessment of corruption in the Judiciary, and its nexus to pretrial detention, and the research seeks to answer the below questions:

- Is access to justice in Liberia a fundamental human right?
- Can judicial corruption and abuse of power be alleviated in the Liberian Judiciary?
- Is subjection to prolonged pretrial detention against the rule of law in Liberia?
- Is the Liberian Judiciary stifling the rule of law as a result of corruption?

1.3 Methodology and Material

The primary legal research method employ in this research is the legal dogmatics method. This method will be used to critically dissect access to justice in Liberia, specifically delving into corruption in the post-conflict nation and its nexus to pretrial detention. It will sketch out the relevant national and international laws, analyze relevant court cases and other related materials. Furthermore, this method will be used to argue for the effective transformation and systematization of the nation's legal system on one hand and further argue for behavior change within the nation's legal system on the other hand. It will then argue for adherence to the sacred legal principles of equality before the law and due process of law.

The concept of legal dogmatics has been explored to a greater extent in Legal Science and Philosophy. Legal dogmatics is 'defined as the study of the content of the legal rules (norms) and of the systematic order of those and the common terms referring to these tasks are interpretation and systematization'.[5]

In their scholarly work, Manrique, Navarro and Peralta have argued that 'legal dogmatics in general has played a much more complex role and dogmatics has always insisted on rationalising legislative decisions; in its capacity to offer greater predictability for judicial decisions based on the systematisation of law. Thus, dogmatics attempts to consolidate the ideal of certainty which characterises the rule of law. They also exert that however, dogmatics claims to be the necessary intermediary between the legislator's decisions and the justification of judicial decisions. As a result, the central practical function of legislation (i.e., the imposition of legal solutions) is affected'.[6]

In Eugenio Bulygin's work, he argues that 'legal dogmatics is a complex activity in which at least three different stages can and should be distinguished: the identification of legal norms, the systematization of legal norms, and the modification or transformation of legal systems'.[7] Firstly, on identification of legal norms, Bulgygin points out that 'if by statutes we understand certain legal norms, then a shift in interpretation entails a change

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[5] Álvaro Núñez Vaquero, Five Models of Legal Science, , Revus Journal for Constitutional Theory and Philosophy of Law (2013), Page 7, Accessed at: https://journals.openedition.org/revus/2449, Last Accessed: 3 February 2020

[6] Criminal law and legal dogmatics, María Laura Manrique, Pablo E. Navarro and José M. Peralta, Revus Journal for Constitutional Theory and Philosophy of Law (2017), Page 1, Accessed at: https://journals-openedition-org.ludwig.lub.lu.se/revus/3806, Last Accessed: 3 February 2020

[7] Legal Dogmatics and the Systematization of the Law, Eugenio Bulygin's Essays in Legal Philosophy (2015), Accessed at: http://resolver.ebscohost.com.ludwig.lub.lu.se/openurl?sid=EBSCO%3aedsoso&genre=chapter&issn=&isbn=9780191796272&volume=&issue=&date=20150701&spage=&pages=&title=Essays+in+Legal+Philosophy&atitle=Legal+Dogmatics+and+the+Systematization+of+the+Law+(1986)*&btitle=Essays+in+Legal+Philosophy&jtitle=Essays+in+Legal+Philosophy&series=&aulast=Bulygin%2c+Eugenio%2c+author&id=DOI%3a10.1093%2facprof%3aoso%2f9780198729365.003.0015&site=ftf-live , Last Accessed: 3 February 2020

of such correlations and so a change of statutes of legal norms. The activity that consists in the identification of legal norms is not entirely cognitive - it is not, to the extent that jurists aim not solely at discovering the meaning of norm-formulations but also, at least in certain cases, at assigning new meanings'.[8]

Secondly, on systematization of legal norms, he outlines that 'systematization includes two different activities: the solution of generic cases by means of the derivation of the consequences of the set of legal norms, and the reformulation of the legal system'.[9] Solution of generic cases he outlines that 'in order to determine the content of a legal system, the practitioner of legal dogmatics must be able to determine which legal consequences (solutions) it correlates with different kinds of situations (generic cases). Thus, he must first determine the range of legal problems that the norms in question are supposed to solve, which involves the identification of all relevant cases and of the actions regulated by the norms, which in its turn gives rise to the solutions'.[10] On the other hand, 'reformulation of the legal system which consists in finding a new but equivalent axiomatic basis, that is, a new basis without changing the system itself. This new basis must be—according to the principle of economy—smaller and simpler, that is, more general and independent, but it must at the same time be normatively equivalent to the original basis, that is, its logical consequences must be the same'.[11]

Thirdly, on the modification or transformation of legal systems, Bulygin argues 'it is well known that legal systems are dynamic in character, meaning that they are subject to change over the course of time'.[12] He further outlines that 'there are three ways in which a normative system can change: by the addition of a set of norms (expansion), by the subtraction of a set of norms (contraction), and by a combination of expansion and contraction, that is, by successive expansions and contractions'.[13] He further narrates that 'expansion normally takes place when a new norm or set of norms is generated by the sources of law, contraction is a consequence of derogation, and replacement of a norm by another, different norm can be described as contraction and expansion'[14].

[8] Ibid. at 221-223
[9] Ibid.
[10] Ibid. at 224
[11] Ibid.
[12] Ibid. at 227
[13] Ibid.
[14] Ibid. at 228

In their work, Petrov and Zyryanov argued that 'formal dogmatic approach describes, classifies, generalizes the definitions of various legal facts on the basis of the system of law, in order to create the rules necessary to guide judicial practice'.[15] They further outlined that 'the formal dogmatic approach is used because the state legal phenomena are characterized by a two-sided structure. On the one hand, each of them has its own internal structure. On the other hand, each object acts as a part of united structure in which the state is an element of the political system of society; law is an element of norms and regulation; and the industry is an element of the legal system'.[16] They conclude by highlighting that 'the formal dogmatic approach is aimed at identifying legal principles that characterize the system of law, its institutions, and branches'.[17]

Finally, the materials from this research will be drawn from an array of legal materials and sources to include the Constitution of Liberia, Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the African Charter, the Revised Economic Community of West African States (ECOWAS) Treaty and other international and regional treaties Liberia is a state party to. I will also use conceptual frameworks developed by different scholars on access to justice and corruption. I will then use reports and findings of international organizations on Liberia and legal principles and doctrines.

[15] Alexander V. Petrov and Alexey V. Zyryanov, Formal-Dogmatic Approach in Legal Science in Present Conditions , Journal of Siberian Federal University, Humanities & Social Sciences 6 (2018 11), 968-973, Accessed at: http://elib.sfu-kras.ru/bitstream/handle/2311/71664/Petrov.pdf;jsessionid=F1BBF1411937B8813E878645222CF3A9?sequence=1 , Last Acessed: 3 February 2020
[16] Ibid.
[17] Ibid.

1.4 Theory and Perspective

This research on access to justice in Liberia which will critically access corruption in the Liberian Judiciary and its relevant nexus to prolonged pretrial detention will be analyzed using the perspectives of equality before the law and due process of law. These legal principles and perspectives are not only germane to the growth and development of a post-conflict country judicial system, but are absolutely indespensable in consolidating peace and averting recurrence of violence and conflict. When utilized judiciously, within the ambits and dictates of international conventions; it has the unlimited power to unlock and build stronger judicial institutions, the rule of law and consoldiation of democratic gains and governance in any post-conflict country. Equality before the law and the courts and due process of law are cardinal legal principles enshrined in international law, adopted in the national laws of almost all the States in the world, and they are used to protect the rights of all citizens irrespective of their economic status, race, or age.

The Constitution of Liberia enounes in pertinent part that 'all persons are equal before the law and are therefore entitled to the equal protection of the law'.[18] Equality before the law is a fundamental right and the Supreme Court of Liberia has interpreted it as 'no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty, property, and in their pursuit of happiness'.[19] The high Court went on to state that 'equal protection of the law means that no person shall be subjected to any restriction in the acquisition of property, the enjoyment of personal liberty, and the pursuit of happiness which do not generally affect others; that no person shall be liable to others or greater burdens and charges than such as are laid upon others; that no greater or different punishment is enforced against a person for a violation of the law'.[20]

The Universal Declaration of Human Rights (UDHR) enunciates that 'all are equal before the law and are entitled without any discrimination to equal protection of the law'.[21] The declaration further states that 'everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him'.[22] Furthermore, the International Covenant on Civil and Political Rights (ICCPR) explicates that 'all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination

[18] Article 11 (c), Constitution on Liberia, 1986, Accessed at: http://www.liberlii.org/lr/legis/const/col1986235/ , Last Accessed: 3 February 2020
[19] RL v Leadership of LNBA et al (2001), 40 LLR 635, Syllabus 37, Accessed at http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/2001/26.html?stem=0&synonyms=0&query=title(RL%20near%20Leadership%20of%20LNBA%20et%20al%20(2001),%20) , Last Accessed: 3 February 2020
[20] Ibid. at Syllabus 38
[21] Article 7, UDHR, 1948
[22] Ibid. at Article 10

and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.[23] The ICCPR further outlines that 'all persons shall be equal before the courts and tribunals and everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law'.[24] The treaty body of the ICCPR in providing guidance on equality before the law and court elucidated that 'the right to equality before courts and tribunals guarantee those of equal access and equality of arms, and ensure that the parties to the proceedings in question are treated without any discrimination'.[25]

In their scholarly work on the notion of equality before the law, Daron Acemoglu and Alexander Wolitzky emphasised that 'the notion of equality before the law maintains that laws should apply equally to all citizens: simply put, no one is above the law'.[26] They went further by drawing inspiration from the work of Friedrich Hayek, an Austrian-British Economist and Philosopher outlining that 'it is akin to the rule of law which is a mainstay of many current constitutions and is widely viewed as a central tenet of a fair and just legal system, the most critical element of liberal society, and the great aim of the struggle for liberty has been equality before the law'.[27]

On the other hand, the legal principle of due process of law is another indispensable and foundational tool in most legal systems that places the quintessential elements of governance at the forefront of democracy. The Constitution of Liberia outlines in apposite part that 'no person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law'.[28]

In interpreting due process of law, the Liberian Supreme Court held that 'the term due process of law is synonymous with the term the law of the land and it is a law which hears before it condemns ; which proceeds upon inquiry, and renders judgment only after trial'.[29] The high Court went on to state that 'due process means in brief that there must be a tribunal competent to pass on the subject matter, notice actual or constructive, an opportunity to appear and produce evidence, to be heard in person or by counsel, or both, having been

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[23] Article 26 , ICCPR, 1966
[24] Ibid. at Article 14 (1)
[25] General Comment No. 32 (2007) , UN Human Rights Committee, on Article 14: Right to equality before courts and tribunals and to a fair trial, Para. 8
[26] Daron Acemoglu and Alexander Wolitzky, A Theory of Equality Before the Law, Nber Working Paper Series (June 2018), p 1, Accessed at: https://www.nber.org/papers/w24681 , Last Accessed: 4 February 2020
[27] Ibid.
[28] Article 20 (a), Constitution of Liberia, 1986
[29] Wolo v Wolo (1937), 5 LLR 423, Syllabi 1 & 2, Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/1937/12.html?stem=0&synonyms=0&query=title(Wolo%20near%20Wolo%20(1937),) , Last Accessed: 4 February 2020

duly served with process or having otherwise submitted to the jurisdiction'[30] of the court.

Furthermore, the UDHR elucidates that 'everyone has the right to recognition everywhere as a person before the law'[31] and the ICCPR outlines that 'everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law'.[32] These two cardinal international human rights law provisions draw on the concept of due process of law, which encompasses: recognition before the law, fair trial, and right to an independent court or tribunal. The ICCPR treaty body has expounded that 'the notion of fair trial includes the guarantee of a fair and public hearing and fairness of proceedings entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive'[33] and cautioned that 'an important aspect of the fairness of a hearing is its expeditiousness'.[34]

In his scholarly work on due process of law, Allan Ides 'traced due process of law directly to the Magna Carta's law of the land principle'.[35] He indicated that 'it evolved over several centuries into the phrase due process of law'.[36] He further outlined that the 'law of the land principle is a principle that objects to the arbitrary application of the law and due process was meant as a bulwark against arbitrary exercises of power. As such, it provides both procedural and substantive protections'.[37]

Finally, the concepts of equality before the law and the courts and due process of law are important perspectives, which will be used to critically analyze the subject on access to justice in Liberia. It will also aid in effectively understanding corruption in the Liberian Judiciary and its relevant nexus to subjection to prolonged and increased pretrial detention.

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[30] Wolo v Wolo (1937), 5 LLR 423, Syllabus 5
[31] Article 6, UDHR, 1948
[32] Article 14 (1), ICCPR, 1966
[33] General Comment No. 32 (2007), UN Human Rights Committee, on Article 14: Right to equality before courts and tribunals and to a fair trial, Para. 25
[34] Ibid. at Para. 27
[35] Allan Ides, The Constitutional Bedrock of Due Process, Harvard Journal of Law & Public Policy (2020), Vol. 43, p. 72, Accessed at: Last Accessed: https://eds-b-ebscohost-com.ludwig.lub.lu.se/eds/pdfviewer/pdfviewer?vid=3&sid=177eb114-0e97-4fb7-b145-68654cc9ad53%40pdc-v-sessmgr01, Last Accessed: 4 February 2020
[36] Ibid.
[37] Ibid.

1.5 Limitations of the Research

It is an undisputable fact that access to justice is a broad legal concept, while corruption in the judiciary and prolonged pretrial detention are as well broad legal concepts. These concepts are very relevant in contemporary legal discourse when discussing the consolidation of governance and democracy in post-conflict countries. It is important to note that a concerted, extensive, and organized research has not been conducted on access to justice in Liberia, with specific emphasis on corrpution in the Liberian Judiciary and its nexus to pretrial detention. However, research in these diverse areas of the post-conflict nation has been conducted cursively.

The concept of access to justice will basically be limited to how justice is dispensed in Liberia by analyzing the legal systems, its judgments and how these systems provide equitable, just, and transparent remedy for parties before them. Corruption in the Liberian Judiciary will be limited to bribery, ethical transgression by judicial officers, jury tampering, abuse of judicial power and judicial discretion in the formal or statutory legal system of the post-conflict nation. Corruption in the Judiciary will be linked to the concept of subjection to prolonged pretrial detention. In drawing this nexus, this research will limit its analyses to the relevant laws governing pretrial detention and how such laws have been abused. It will then examine the situation of prolonged pretrial detention and overcrowding of prisons by analyzing reports of the United Nations and non-governmental organizations and subsequently link prolonged pretrial detention to corruption in the Judiciary.

This research will focus primarily on access to justice, corrpution in the Liberian Judiciary and its nexus to prolonged pretrial detention in Liberia within a specify period of time in order track and dissect the gains made by the post-conflict nation since its transition to constitutional democracy. The research is confined to the period 2004 to 2019, which will layout a firmed basis for my analyses. The primary reason for using 2004 as the baseline year of this study is because, this year was the period that ushered in the CPA which was signed by all parties to the 14-years civil conflict in Liberia. The CPA suspended the 1986 Constitution of Liberia, ushered in a cease fire agreement, propelled into power an interim government, directed disarmament of all warring factions and reintegration of former rebel soliders, and set the stage for the hosting of the first genuine post-conflict democratic election, as well as full resotration of the Constitution of Liberia.

On the other hand, the year 2019 is the end year that will be used in this research because it will serve as a basis to analyze the strive made by the post-conflict nation in consolidating governance and the rule of law. This year is cardinal because it shows fifteen (15) years of relative peace and political stablity. The 15-years period is a considerable period that a post-conflict country can revamp the organs of the State, build failed State institutions, guarantee basic human rights and the rule of law, and set the path for lasting peace and prosperity.

The analyses generated from this research during this period, will be based upon an extensive desk review and literature review of the subject matter on access to justice, corruption in the judiciary, and subjection to prolonged pretrial detention; and how these concepts have impacted basic human rights in Liberia on one hand or how these concepts have adversely affected human rights generally. Furthermore, the research will dissect the laws of Liberia, treaties ratified by the post-conflict nation, case laws, guiding principles developed by supranational institutions, and reports of international organizations, which will help to inform this research.

Finally, since the West African nation laws are modeled to that of the federal laws of the United States of America (USA), because of its long historical ties with the USA, this research will take a peep into the relationship between the USA legal system and the Liberian legal system. On the basis of this, the research will divulge the level of influence from the USA legal system and how the West African nation can leverage the said influence in building a more transparent, accountable, democratic, and strong legal system, if only the major actors in the rule of law sector can exert their utmost effort and indomitable legal will to transform Liberia's Judiciary.

1.6 Definition of Terms

In order for readers to grasp a clearer understanding of the different concepts used in this research, this section will outline concise definition of the key concepts that will be used through out this work, which will aid the readers as they read this thesis.

Access to Justice – 'access to justice is defined as the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards'.[38]

Attorney-at-Law - is an individual who is 'a Liberian citizen, has attained the age of twenty-one years, examined, and licensed to practice law before all the courts in Liberia, except the Supreme Court'.[39]

Common Law - the 'Common law comprises of those principles and rules of action relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England. It is all the statutory and case law background of England and the American colonies before the American revolution'.[40]

Constitution – is defined as 'the organic and fundamental law of a nation or State, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers'.[41]

Counselor-at-Law – is an 'Attorney-at-Law who has been actively engaged in the practice of law for five years, passed the Supreme Court Bar Examination, and admitted to practice law before the Supreme Court of Liberia and all other inferior courts'.[42]

Corruption – 'an act done with an intent to give some advantage inconsistent with official duty and the rights of others. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure

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[38] Necessary Condition: Access to Justice, United States Institute of Peace, Accessed at: https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice , Last Accessed: 5 February 2020

[39] Chapter 17, Section 17.1-17.5, New Judiciary Law of Liberia, 1972, Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/legis/codes/jlt17lcolr415/jlt17lcolr415.html?stem=0&synonyms=0&query=Judiciary%20Law , Last Accessed: 5 February 2020

[40] Black, Henry Campbell, Black's Law Dictionary, Fifth Edition, 1979, p. 250-251

[41] Ibid. at 282

[42] Chapter 17, Section 17.6, New Judiciary Law of Liberia, 1972

some benefit for himself or for another person, contrary to duty and the rights of others'.[43]

Criminal Justice System – the 'Criminal justice system include several major subsystems, composed of one or more public institutions and their staffs: police and other law enforcement agencies, trial and appellate courts, prosecution and public defender offices, probation and parole agencies, custodial institutions and departments of corrections'.[44]

Due Process of Law – 'a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution – that is , by the law of its creation – to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdicition by service of process within the State, or his voluntary appearance'.[45]

Informal Justice System - 'encompasses the range of systems and mechanisms that play a role in delivering rule of law and access to justice and systems that might have formal state recognition, such as alternative dispute resolution that operate at the community level, either facilitated by traditional mechanisms or facilitated by non-governmental organizations'.[46]

Judicial Corruption – 'encompasses political interference in the judicial process by the legislative or executive branch and bribery'.[47] It also includes 'any inappropriate influence on the impartiality of judicial proceedings and judgements and can extend to the bribing of judges for favourable decisions, or no decision at all'.[48]

Lawyer – as used through out this thesis refers to an Attorney-at-Law or Counselor-at-Law in Liberia.

Legal System - 'a legal system is a procedure or process for interpreting and enforcing the law'.[49]

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[43] Black, Henry Campbell, Black's Law Dictionary, Fifth Edition, 1979, p 311
[44] Criminal Justice System, University Libraries, Temple University, Accessed at: https://guides.temple.edu/criminaljustice , Last Accessed: 5 February 2020
[45] Black, Henry Campbell, Black's Law Dictionary, Fifth Edition, 1979, p. 449
[46] A Study of Informal Justice Systems: Charting a course for human rights-based engagement (2012), UN Women, UNICEF and UNDP, p. 8, Accessed at: https://www.un.org/ruleoflaw/files/INFORMAL_JUSTICE_SYSTEMS.pdf, Last Accessed: 5 February 2020
[47] Judicial Corruption Fuels Impunity, Corrodes Rule Of Law, Transparency International, 23 May 2007, Accessed at: https://www.transparency.org/news/pressrelease/20070523_judicial_corruption_fuels_impunity_corrodes_rule_of_law_says_repor Last Accessed: 5 February 2020
[48] Ibid.
[49] Legal System, Cornell University Legal Information Institute, Accessed at: https://www.law.cornell.edu/wex/legal_systems , Last Accessed: 12 March 2020

Post-conflict country – can be defined as a country where 'open warfare has come to an end, there is an absence of war, but not essentially real peace. The end of fighting does propose an opportunity to work towards lasting peace, but that requires the establishment of sustainable institutions, capable of ensuring long-term security'.[50]

Pretrial detention – 'refers to detaining of an accused person in a criminal case before the trial has taken place, either because of a failure to post bail or due to denial of release under a pretrial detention statute'.[51]

Rule of Law - 'is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated and are consistent with international human rights norms and standards'.[52]

[50] Defining Conflict/Post Conflicts, Women Win , Accessed at: https://guides.womenwin.org/gbv/conflict/context/defining-conflict-post-conflict , Last Accessed: 5 February 2020
[51] Pretrial Detention Law and Legal Defintion, US Legal, Accessed at: https://definitions.uslegal.com/p/pre-trial-detention/ , Last Accessed: 5 February 2020
[52] What is Rule of Law: United Nations and the Rule of Law, Accessed at: https://www.un.org/ruleoflaw/what-is-the-rule-of-law/ , Last Accessed: 5 February 2020

1.7 Review of Current Research Status

As indicated earlier, a concerted, extensive, and organized research has not been conducted on access to justice in Liberia, with specific emphasis on corrpution in the Liberian Judiciary and its nexus to pretrial detention. However, research in these diverse areas of the post-conflict nation has been conducted cursively.

In expounding on access to justice through a historical lens, Mauro Cappelleti and Bryant Garth argue that 'the concept of access to justice has been undergoing an important transformation, corresponding to a comparable change in civil procedural scholarship and teaching. In the liberal, bourgeois States of the late eighteenth and nineteenth centuries, the procedures for civil litigation reflected the essentially individualistic philosophy of rights then prevailing. A right of access to judicial protection meant essentially the aggrieved individual's formal right to litigate or defend a claim. The theory was that, while access to justice may be a natural right, natural rights did not require affirmative State action for their protection'.[53] They Further argued that 'effective access to justice can thus be seen as the most basic requirement- the most basic human right of a modern, egalitarian legal system which purports to guarantee, and not merely proclaim, the legal rights of all'.[54]

In Liberia, the concept of access to justice is as old as the formation of the Liberian State. The freed slaves who returned from the United States of America and settled in the country were canny in ensuring that the concept of access to justice was articulated in the 1847 Constitution. The preamble of the constitution outlines that 'our courts of justice are open equally to the stranger and the citizen for the redress of grievances, for the remedy of injuries, and the punishment of crime'.[55]

In making an assessment of the legal system, its ramification on post-conflict governance, and the protection of human rights; the International Crisis Group argues that 'the Liberian justice system is an amalgam of internal and imported statutory law, U.S. common law, state-sponsored African customary law, in which chiefs and local administrators exercise judicial powers; and African customary law that operates beyond state oversight, within Poro and Sande power associations, councils of elders, and other forms of dispute resolution'.[56] The group further argues that 'governments and donors pay scant attention to the interface between statutory and customary

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[53] Garth, Bryant G. and Cappelletti, Mauro, Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective, Buffalo Law Review, Vol 27, p. 183, Maurer School of Law: Indiana University Digital Repository (1978), Accessed at: https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2140&context=facpub; The , Last Accessed: 6 February 2020

[54] Ibid. at p.185 - 197

[55] Preamble, Constitution of Liberia, 1847

[56] International Crisis Group Working to Prevent Conflict Worldwide, LIBERIA: Resurrecting The Justice System, Africa Report (N°107 – 6 April 2006), p. I , Accessed at: https://d2071andvip0wj.cloudfront.net/107-liberia-resurrecting-the-justice-system.pdf , Last Accessed: 6 February 2020

law but in Liberia, customary law is the primary arena in which citizens look for justice'.[57]

In her research on Policy Proposals for Justice Reform in Liberia, Amanda C. Rawls argues that 'the existence of Liberia's dual legal system has its basis in the Liberian Constitution and statutory law and there are internal inconsistencies, including statutes and regulations that conflict with each other and with the constitution and the the entire justice system is in need of clarification and revision'.[58] She further argues that 'the formal justice system is widely believed to be corrupt and plagued by extensive delays, and is not the forum of choice for most Liberians, while the customary system is found to raise predictable concerns about gender equality, protection of human rights, due process, and the separation of powers, particularly with respect to the adjudication of more serious crimes'.[59]

Jonathan Compton argues that Liberia's 'formal legal system does not function effectively enough to strengthen the rule of law. All members of society are not held accountable to the law because the system is corrupt. Courts are not transparent as to why litigants are charged fees, and parties use their wealth and power to influence judges and Laws are not equally enforced because the system lacks the resources to function in many parts of the country'.[60] He further argues that 'a system in which ninety-six percent of detainees are in pretrial confinement is not consistent with international human rights standards'.[61]

In an article published in the Harvard International Review on reconstructing the rule of law in post-conflict Liberia, The Carter Center indicated that 'the ravages of the war and Liberia's history of internal colonialism have undermined public confidence in the political and justice systems at every level'.[62] Though, the civil conflict ravaged every facet of the Liberian society, 'the traditional justice system was not exempt and the courts were used by powerful individuals as political tools, which caused Liberians to lose faith in their efficacy'.[63]

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[57] Ibid.
[58] Rawls , Amanda C. , Policy Proposals for Justice Reform in Liberia: Opportunities Under the Current Legal Framework to Expand Access to Justice (Paper No. 2: 2011), p 2-3, Accessed at: https://namati.org/wp-content/uploads/2014/02/Paper-No.2-Liberia.pdf , Last Accessed: 6 February 2020
[59] Ibid. at p 3
[60] Compton, Jonathan, The Peril of Imposing the Rule of Law: Lessons From Liberia (2014), University of Minnesota Law School Scholarship Repository, p. 73, Accessed at: https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1348&context=mjil , Last Accessed: 6 February 2020
[61] Ibid. at p 73
[62] Reconstructing the Rule of Law: Post-conflict Liberia, Harvard International Review (Fall 2008), p. 15, Accessed at: https://www.cartercenter.org/resources/pdfs/news/peace_publications/conflict_resolution/carter_harvard_intl_review_fall08.pdf , Last Accessed: 6 February 2020
[63] Access to Justice in Liberia: How the NGO Community is Rethinking Justice Systems in Africa, (January 9, 2014), Accessed at: http://georgiapoliticalreview.com/access-to-justice-

Herbert Igbanugo argues that 'corruption in the judiciary has become widespread across Sub-Saharan Africa and they are acts or omissions that constitute the use of public authority for the private benefit of judges, court personnel, and other justice sector personnel that result in the improper and unfair delivery of judicial decisions'.[64] He further indicated that 'a corrupt judiciary may negatively impact all sectors of government by stunting trade, economic growth, and human development, as well as by depriving citizens of justice'.[65]

Finally, Human Rights Watch, a renowed international non-governmental human rights organization in its report indicated that 'police corruption severely impedes proper administration of justice, denies Liberians their basic rights to personal security and redress, including equal protection under the Liberian Constitution and international law and as well lead to Police inconsistently monitoring the length of pretrial detention or scruntinized the quality of their investigations'.[66]

in-liberia-how-the-ngo-community-is-rethinking-justice-systems-in-africa/, Last Accessed: 6 February 2020

[64] Igbanugo, Herbert A., The Rule of Law, Judicial Corruption, and the Need for Drastic Judicial Reform in Sub-Saharan Africa's Nation States., International Law News, 00470813, (Summer2013), Vol. 42, Issue 3, Accessed at: https://eds-b-ebscohost-com.ludwig.lub.lu.se/eds/detail/detail?vid=14&sid=a5377ee8-9fdd-4017-af96-70e92a173e63%40sessionmgr4006&bdata=JnNpdGU9ZWRzLWxpdmUmc2NvcGU9c2l0ZQ%3d%3d#AN=90264038&db=a9h , Last Accessed: 6 February 2020

[65] Ibid.

[66] No Money, No Justice: Police Corruption and Abuse in Liberia, Human Rights Watch, 2013, p. 14 & 20, Accessed at: https://www.hrw.org/report/2013/08/22/no-money-no-justice/police-corruption-and-abuse-liberia , Last Accessed: 6 February 2020

1.8 Outline

This thesis is outlined in a way that will give readers the opportunity to digest the literature and follow the lines of argumentation in order to grasp the key findings on accessing justice in Liberia on one hand, dissecting corruption in the Liberian Judiciary on the other hand, and its nexus to prolonged pretrial detention.

Chapter one (1) of this research will primarily focus on the entire background of the research delving into the introduction to the subject, outlining the research questions, highlighting the limitations of the research and definitions of key terms. The methodology and materials used in conducting the research will also be highlighted in chapter one of this research and the perspective and theory employed in my line of argumentations for the research will be included in this chapter. The chapter will conclude with the outline of the research. The essence of chapter one is to provide readers with a comprehensive background of the entire research and how it is structured.

In chapter two (2), I will provide an extensive and expansive analyses of access to justice in Liberia, looking at the history of access to justice, current trends, and delve into the linkage between the United States legal system and the Liberian legal system, based upon the historical ties of the two nations.
I will also discuss the legal basis of access to justice in Liberia, outlining how citizens access justice in both customary or traditional legal system and the statutory or formal legal system in the post-conflict nation and dig into the Liberian court system. I will then expound on the constitutional powers of the Liberian Supreme Court as the final arbiter of justice and how this constitutional authority has been utilized by the Supreme Court of Liberia. This chapter will aid readers in understanding the court system, its direct linkage to the Judiciary, and it will further help readers in understanding the forthcoming chapter on corruption in the Liberian Judiciary.

In chapter three (3), I will divulge corruption in the Liberian Judiciary; exposing bribery, ethical transgression, abuse of judicial power, and jury tampering. I will critically assess the independence of the Liberian Judiciary and make a more critical analysis on political influence and maneuvering in the Liberian Judiciary. I will then outline the mechanisms for fighting corruption in the Liberian Judiciary and make a fair assessment of the efficacy of these mechanisms. This chapter's analyses of corruption will be used as a basis to establish how the Judiciary is stifling the rule of law and it will directly link corruption in the Judiciary to prolonged pretrial detention in chapter four.

In chapter four (4), I will provide a nexus between corruption in the Liberian Judiciary with that of subjection to prolonged pretrial detention. I will start by pointing to the relevant statutes on pretrial detention and how the said statutes have been violated by the entire criminal justice system that is responsible to protect life, property, and liberty of all citizens. I will also delineate how prolonged pretrial detention is a violation of fundamental

human rights. The chapter's primary goal is to investigate the wave of widespread and systemic pretrial detention in Liberia and directly link it to acts of corruption in the Judiciary. The analyses of prolonged pretrial detention in this chapter will establish the violation of the fundamental rights of alleged criminal defendants by the Judiciary. This chapter will be the final chapter on the substantive component of this thesis and will aid in answering the research questions in chapter five of the research.

Finally, in chapter five (5), I will provide answers to the research questions earlier articulated; develop my concluding comments, and remarks. The thesis will be concluded in this chapter by providing succinct answers to the research questions in chapter one based upon the findings from the research. The answers to the research questions will be based upon the laws researched, cases analyzed, and argumentation proffered in the different chapters of this research.

CHAPTER 2

In this chapter, I will delve into how citizens access justice in Liberia through its dual legal system. I will further dig into the court system as an embodiement of the Liberian Judiciary. This chapter will aid readers in understanding the court system, its direct linkage to the Judiciary, and it will further aid readers in understanding the forthcoming chapter on corruption in the Liberian Judiciary.

ACCESS TO JUSTICE IN LIBERIA

2.1 History of Access to Justice in Liberia

Access to justice in Liberia is as old as the Liberian State, dating far back to 'December 1821, when the first batch of settlers (freed slaves or Americo-Liberians) arrived in Liberia from the United States of America through the initiative of the American Colonization Soceity (the ACS). The leaders of the ACS at the time acquired land (by purchase and by force) from the indigenous people and native chiefs in order to rehabiliate the freed slaves from the United States of America'.[67] In a short period of time, these settlers expanded and took over the entire nation with the aid of the ACS. The settlers indicated that 'the Western Coast of Africa was a place selected by American benevolence and philanthropy for their future home and under the auspices of the ACS they established themselves in Liberia on land acquired by purchase from the lords of the soil'.[68]

The Settlers quickly formed colonies, expanded their territorities (illegally and legally) and began to administer those colonies with the aid of the ACS, while isolating the natives and owners of the land from all the decision making processes. They finally formed a Liberian State by declaring independence on July 26, 1847 and went on to conclude a constitution at a constitutional convention the same year. The formation of the Liberian State, declaration of independence, and the subsequent adoption of the constitution during the 1847 consitutional convention laid down the legal framework and the historical basis for access to justice in Liberia. The settlers were canny to adopt a constitution which they indicated was 'to establish justice, insure domestic peace, and promote the general welfare'[69] of Liberia.

The settlers saw access to justice as a foundational and germane component of the new Liberia they established. They had envisioned a new nation to be governed by the rule of law and not the rule of men. On this basis, the settlers outlined during the constitutional convention that 'their courts of justice are open equally to the stranger and the citizen for the redress of grievances, for the remedy of injuries, and for the punishment of crime'.[70] The redress of

[67] Chalmers, Shane, Liberia and the Dialetic of Law: Critical Theory, Pluralism, and the Rule of Law (Routledge 2019), p 93 - 95
[68] Preamble, Constitution of Liberia, 1847
[69] Article 1, Constitution of Liberia, 1847
[70] Preamble, Constitution of Liberia, 1847

grievances, remedy for injuries, and punishment of crimes are cardinal elements of access to justice. To ensure that these elements were provided the requisite institutional framework and to further solidify their quest for access to justice in an organized system based on the rule of law, they established 'the Judicial Department as one of the three distinct departments of the government with power vested in the Supreme Court and other subordinate courts'.[71]

The Supreme Court's jurisdiction as enunciated in the 1847 Constitution of Liberia was 'to have original jurisdiction in all cases affecting ambassadors, or other public ministers and consuls, and those to which a county shall be a party and it shall have appellate jurisdiction both as to law and fact'.[72] The constitution further indicated that there shall be 'one Chief Justice and four Associate Justices'.[73]

Finally, the 1847 Constitution of Liberia guaranteed 'due process of law, equality before the law, and effective remedy'.[74] It further states that an individual 'criminally charged shall have a speedy, public and impartial trial, and no person shall be deprived of life, liberty , property or privilege , but by judgment of his peers, or the law of the land'.[75] These cardinal elements of access to justice enshrined in the 1847 Constitution of Liberia served as a histroical basis for access to justice in Liberia.

2.2 Linkage between the United States of America Legal Sytem and the Liberian Legal System

As indicated earlier, the historical ties between the United States of America (USA) and the Republic of Liberia date far back from the early 1800s when the ACS was founded to repatriate freed slaves from the United States of America to a place where they could call a home, live at ease, and determine their own destiny. They sailed the freed slaves to the West Coast of Africa and luckily found a place that was often referred to as the Grain Coast (Liberia today). The freed slaves arrived on December 11, 1821. Their leaders from the ACS hastily concluded a one-sided, biased, and unconscionable contract with the indigenous chiefs for purchase of a piece of land. The chiefs were forced and coerced to sell the land to the ACS. The freed slaves wielded onto themselves power, expanded their territories illegally, and founded the country called Liberia.

Since the formation of the Liberia State, its entire model of governance has been akin to that of the Federal Government of the USA. The nation's legal system is of no exception. The USA's Constitution was written in 1787 and agreed upon at a constitutional convention on one hand, the Liberian Constitution was written and adopted in 1847 at a constitutional convention

[71] Article I, Section 14th and Article IV, Section 1st, Constitution of Liberia, 1847
[72] Article IV, Section 2nd, Constitution of Liberia, 1847
[73] Ibid. at Section 3rd
[74] Ibid. at Article I, Section 6th
[75] Ibid. at Sections 7th & 8th

as well. While the USA's Constitution has about twenty seven (27) amendments, the Liberian Constitution has been amended twice with the first amendment taking place in 1986 where all Liberians participated in a popular referendum that ushered in a new and democratic constitution with key tenets of democracy as compared to the archaic and discriminatory constitution of 1847. The second amendment of the Liberian Constitution took place in 2011 through a referendum, but it was just a provision on elections which was amended by the electorate. Today, the 1986 Constituion along with its single amendment is the supreme law of Liberia.

The American legal system and its laws are 'derived largely from the English common law which dates back from the eleventh century, where the King's judges settled disputes based on the customs of the Anglo-saxon people and the well established principles of feudal society; these royal courts grew increasingly popular due to their reliance on trial by jury which became a bedrock principle of Anglo-American Justice. The judges of these courts began to look to the decisions of their colleagues in similar cases to guide their judgments and out of the decisions of these courts grew a law common to the entire kingdom, hence the term common law'.[76] On the other hand, the Liberian legal system 'comprises Anglo American common law, while the other part comprises customary laws based on unwritten customary African practices'.[77]

The USA and Liberia both have an adverserial system of justice. The adverserial system 'refers to a system of administering justice in which opposing parties contend with one another to achieve a favorable outcome and the role of the judge is one of neutral referee'.[78] The two nations legal systems also follow the common law doctrine of stare decisis, which are 'precedents to guide judges who addressed similar cases and the doctrine holds that a court should follow the principle of law enunciated in previous decisions by the highest court within its jurisdiction, assuming that the principle is relevant to the decision at hand and that it makes sense in the context of contemporary circumstances'.[79]

2.2.1 Governance Structure of the two Nations

The USA is a Federal nation with more than 50 States and territories and it has a Republican form of government. Its governance structure is divided into three equal, but coordinate branches of government to include: the Legislative Branch (Congress), the Executive Branch, and the Judiciary Branch. On the other hand, Liberia is a Unitary State with a Republican form of government, divided into counties, also known as political sub-divisions and it has three

[76] John M. Scheb, II and Hemant Sharma, An Introduction to the American Legal System (Third Edition), 2013, p 11
[77] Warner, T. Negbalee, Legal Methods: Introduction to the Liberian Legal System, Legal Research & Writing (2012), p 7
[78] John M. Scheb, II and Hemant Sharma, An Introduction to the American Legal System (Third Edition), 2013, p 14-15
[79] Ibid. at p 12

equal and separate branches of government which are: the Legislative, Executive, and Judiciary Branches of Government.

In the United States, the 'legislative powers are vested in Congress, which consists of a Senate and House of Representatives which has the power to make laws, levy and collect taxes, borrow money, regulate commerce, coin money, establish uniform rules of naturalization, amongst others'.[80] The Executive powers are 'vested in a President, who is the Commander in Chief of the Army and Navy and with the consent of the Senate to make treaties, appoint ambassadors , public ministers, and judges of the Supreme Court'.[81] The Judiciary Branch powers are 'vested in one Supreme Court and in such inferior courts as Congress may from time to time established'.[82]

In Liberia, the Legislative power is vested in the 'Senate and a House of Representatives and the Legislature has the power to create new counties, levy taxes, constitute inferior courts to the Supreme Court, regulate trade and commerce'[83], amongst others. The Executive Branch powers are 'vested in the President who shall be Head of State, Head of Government and Commander in Chief of the Armed Forces of Liberia and appoint cabinet ministers, ambassadors, consuls, the Chief Justice and Associate Justices of the Supreme Court and judges of subordinate courts, and superintendents of counties'.[84] The powers of the Judiciary are 'vested in a Supreme Court and such subordinate courts as the Legislature may from time to time establish, the courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature and judgments of the Supreme Court shall be final and binding and shall not be subject to appeal or review by any other branch of Government'.[85]

The governance structure in the United States on one hand and Liberia on the other hand, illustrates a system where there is separation of power amongst three branches of government, with each branch having specific duties and functions and no branch can exercise power in another branch of government. The essence is for proper balance of power amongst the three branches of government and check and balance within the governance structure.

2.2.2 The Legal Systems and Legal Principles of the two Nations

The Legal Systems of the two Nations

The United States as a formal or statutory legal system, while Liberia has both formal and traditional or customary legal systems. The United States' Constitution vests powers in one Supreme Court and other inferior courts which may be established by Congress. In light of this constitutional

[80] Article I, Sections 1 & 8, Constitution of the United States, 1787
[81] Ibid. at Article II, Sections 1 & 2
[82] Ibid. at Article III, Section 1
[83] Article 34 (a)(d)(g), Constitution of Liberia, 1986
[84] Ibid. at Articles 53 & 54 (a)(b)(c)(d)
[85] Ibid. at Article 65

provision, 'in the Federal System, the trial courts are the lowest courts with limited jurisdiction and are primarily called district courts.They handle a wide range of both civil and criminal actions and the judges determine the rules of law which apply to the cases before them. There are two kinds of judges who serve in the district's courts, they are the District Court Judge and the Magistrate Judges and there are more than 100 trial courts in the United States'.[86] Specialized Courts are also created by 'Congress to hear special kinds of cases; such courts include: tax court, bankruptcy courts, court of international trade and foreign intelligence wire tape court, all know as trial courts'.[87]

Congress also created Appellate Courts, known as 'Judicial Circuits or Courts of Appeals with the primary goal to provide intermediate appellate review of the district courts, in the event a party loses at the trial court and wishes to challenge the outcome'[88] of the decision. There are 'thirteen Judicial Circuits and Congress has also created three appellate courts to hear special kinds of cases to include: the Court of Military Appeals which reviews court-martial convictions of members of the armed forces, the Court of Veterans Appeals reviews decisions of the veteran administration denying benefits to claimants and the Temporary Emergency Court of Appeals hears appeals from district courts involving certain provisions of federal energy regulations'.[89]

The United States Constitution created one Supreme Court with 'original jurisdiction in cases affecting ambassadors, consuls and other public officials and the Supreme Court also has appellate jurisdiction , both as to law and fact'.[90] The United States Supreme Court 'has the power to review all federal courts and State courts decisions, decisions from federal appellate courts, and the power to review the decision of the highest State courts when questions of federal law are involved'.[91] At the State levels, each State has trial courts, appeals or appellate court and a State supreme court.

In Liberia, the lowest of the courts are Magistrates' court and Justice of the Peace Court, follow by Circuit Courts and Specialized Courts and the Supreme Court, which is the final arbiter of justice.

Legal Principles of the two Nations

The United States of America and Liberia subscribe to similar legal principles and doctrines to include: the Supremacy of their respective constitutions, the principle of judicial review, due process of law, equality before the law, and fundamental rights. The Constitution of the United States eloquently outlined that the 'Constitution shall be the supreme Law of the land; judges in every

[86] Margaret Z. Johns and Rex R. Perschbacher, The United States Legal System: An Introduction (Second Edition), 2007, p 85-86
[87] Ibid. at p 86-87
[88] Ibid. at p 87-88
[89] Ibid. at p 88
[90] Article III, Section 2, Constitution of the United States of America, 1788
[91] Margaret Z. Johns and Rex R. Perschbacher, The United States Legal System: An Introduction (Second Edition), 2007, p 90

State shall be bound thereby and any thing in the constitution or laws of any State to the contrary notwithstanding'.[92] 'Under the supremacy clause of the United States Constitution, Congress may preempt States from adopting laws that conflict with federal laws so long as the federal law is within its constitutional authority'.[93] The Liberian Constitution delineates that the 'Constitution is the supreme and fundamental law of Liberia and its provisions shall have binding force and effect on all authorities and persons throughout the Republic. Any laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect'.[94]

On judicial review and due process of law, while the provision on judicial review is not carved out in the United States Constitution, but in the famous case of Marbury v. Madison, the United States Supreme Court held that 'it has the power to review the acts of Congress and declare them null and void, if they were inconsistent with the provisions of the Constitution of the United States of America'.[95] On due process of law, the Fifth Amendment to the United States Constitution outlines that no person shall be held to answer for a capital or infamous crime without due process of law. Today, 'statutes and courts in the United States are using the term due process of law as synonymous with the law of the land and the American Bill of Rights uses the term due process of law in protecting a citizen's rights to life, liberty, and property'.[96]

The Liberian Constituion outlines that 'the Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional'.[97] In an ancient case of the Liberian Supreme Court, when the Legislature tried to enact a law to have other branches of Government participate in judicial work , the Court Struck the illegal statute and held 'if the Legislature passes an Act infringing the Constitution, the Act is void ab initio. No department of the Government can exercise judicial functions but the court itself. Legislation, therefore, is unconstitutional which seeks to have other branches of Government participate in judicial work, and the Act at bar must be declared null and void, because it is in conflict with the Constitution'.[98]

On due process of law, the constitution of Liberia explicates that 'no person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due

[92] Article VI, Constitution of the United States of America, 1788
[93] Margaret Z. Johns and Rex R. Perschbacher, The United States Legal System: An Introduction (Second Edition), 2007, p 80
[94] Article 2, Constitution of Liberia, 1986
[95] Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803)
[96] John M. Scheb, II and Hemant Sharma, An Introduction to the American Legal System (Third Edition), 2013, p 12
[97] Article 2, Constitution of Liberia, 1986
[98] In re Constitutionality of Legislative Act (1914), 2 LLR 157

process of law'.[99] In a landmark opinion known as the Wolo Principle in the Liberian jurisprudence, the Supreme Court providing a vivid description of due process of law said that 'due process of law is synonymous with the term the law of the land, it is a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial and due process of law means in brief that there must be a tribunal competent to pass on the subject matter, notice actual or constructive, an opportunity to appear and produce evidence, to be heard in person or by counsel, or both, having been duly served with process or having otherwise submitted to the jurisdiction'[100] of the Court.

On the germane principles of equality before the law and fundamental rights, the first ten amendments to the United States Constitution are referred to in legal scholarship as the bill of rights, because these amendments nailed down individual rights to 'freedom of speech, religion, assembly, right to bear arms, equality before the law, prohibition of illegal search and seizure, right to speedy trial, right to trial by jury in civil cases, and prohibition against cruel and inhumane treatment or punishment'.[101] In Liberia, chapter three of the Constitution enumerates the fundamental rights of every Liberian. These rights include: 'right to life, liberty, freedom of speech, religion, assembly, association, right to counsel, prohibition against forced labor and slavery, equality before the law, right to access bail, prohibition against torture and inhumane treatment, right to own property'[102], amongst others.

The United States and Liberia have also worked towards the development of legislation and statutes, which are similar in most aspects in areas such as criminal law and criminal procedure, civil law, torts, jury, evidence, writ system, administrative laws, and the development of commerical codes. These two countries' Supreme Court do not issue advisory opinions, they do not answer questions of a political nature (the political question doctrine), and their citizens must have standing before filing a case in court.

Finally, while the United States Legal System is much more advanced and developed in every aspects with huge resources and Liberia's post-conflict legal system is lagging behind in terms of resources, capacity of staff; Liberia's legal system remains to be in a state of opaqueness with customary or traditional system running alongside a statutory or formal legal system throughout the nation.

[99] Article 20 (a), Constitution of Liberia, 1986
[100] Wolo v Wolo (1937), 5 LLR 423
[101] See First Ten Amendments to the United States of America's Constitution
[102] See Chapter 3, Articles 11-26, Constitution of Liberia, 1986

2.3 Legal Basis of Access to Justice and Analysis of Liberia's Legal System

2.3.1 Legal Basis of Access to Justice

As indicated earlier, the legal basis of access to justice in Liberia grew out of the adoption of the 1847 Constitution of Liberia, which served as the ultimate and supreme law of the nation at the time. The 1847 Constitution guaranteed the right to 'access the court system, right to effective remedy, due process of law, equality before the law, and the prohibition on the denial of life, liberty and property; except a judgment that is consistent with the law of the land'.[103]

Though, the Liberian State declared its independence since 1847, but for more than a century, there were virulent suppression by the settlers and their descendants through the establishment of a near one party State rule, denial of the natives from all political and economic decisions, gross inequality, and systemic discrimination. These levels of barbarity led to a wave of political instability in the late 1970s that led to the toppling of President William R. Tolbert and eventually ended the one party State. An indigeneous son of the land, Samuel Kanyon Doe seized power through a military coup. As a military leader, Samuel Doe ruled but was later pressurred to restore constitutional democracy. On this basis, 'the July 26, 1847 constitution was abrogated'[104] and a new constitution was adopted through a popular referendum in 1986.

In the landmark constitutional reform process, the new constitution of 1986 eloquently articulated almost all the standards set in the Universal Declaration of Human Rights (UDHR). This was due to the fact that Liberia was a founding member of the United Nations in 1945 and was mustering the courage to subscribe to the basic tenets of human rights after years of oppression and a bloody coup in 1980. Chapter three (on fundmental rights) articulated the standards in the UDHR to include: the right to life, liberty, freedom, prohibition of slavery and forced labor, prohibition of torture, cruel, inhumane and degrading treatment, equality before the law, effective remedy, fair hearing and trial, amongst others. In order to ensure that the existing laws and rules prior to the coming into force of the 1986 constitution were not automatically abrogated, the new constituion outlined that 'any enactment or rule of law in existence immediately before the coming into force of this constitution, whether derived from the abrogated constitution or from any source shall, in so far as it is not inconsistent with any provision of this constitution, continue in force as if enacted, issued or made under the authority of this Constitution'.[105]

The 1986 Constitution of Liberia which is being used today organizes the court system, articulates the cardinal elements of access to justice, and guarantees fundamental human rights of all citizens. The Constitution

[103] Article I, Constitution of Liberia, 1847
[104] Article 95 (a), Constitution of Liberia, 1986
[105] Ibid. at Article 95 (a)

elucidates that 'all persons are equal before the law and are therefore entitled to the equal protection of the law'.[106] It went further to state that 'no person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law and justice shall be done without sale, denial or delay'.[107]

Today, people access justice in Liberia by utilizing the dual legal system in the country, which are the formal or statutory legal system and the traditional or customary legal system. Though, these two systems operate separtely, but the constitution provides that the Supreme Court of Liberia must interpret both statutory and customary laws of the republic. The formal or statutory legal system, the traditional or customary legal system, the sub-regional community court of ECOWAS, under the revised ECOWAS Treaty, and the mechanism established under the African Charter on Human and People's Rights are the primary mechanisms that are utilized by Liberians to access justice.

2.3.2 Analysis of Liberia's Legal System

Liberia's legal system can be traced to the establishment of the Liberian State by the freed slaves who immigrated to the country from the United States of America, formed a State, that is today called Liberia and copied almost everything from the United States to include its political, economic and legal systems.

The nation's legal system 'is a mixture of received Anglo-American laws and indigenous African customary practices. The Anglo-American or common law system, by practice and structure, trumps the African customary system and the dominance of the common law over African customary law mirrors the broad inequality that has existed for a long time in the Liberian society'.[108] Furthermore, 'one part of the system comprises Anglo American common law, while the other part comprises customary laws based on unwritten customary African practices'.[109] This means that the common law system and customary system are the legal systems of Liberia, which is more of a dual legal system.

The Common Law system 'is the legal system in much of the English-speaking world. It originated in England and was exported to the United States and much of English-speaking Africa and Asia by the British'.[110] To formalize and make the common law system more official, the Legislature in 1956 enacted the General Construction law which indicates that 'except as modified by laws now in force and those which may hereafter be enacted and

[106] Ibid. at Article 11 (c)
[107] Ibid. at Article 20 (a)
[108] Warner, T. Negbalee, Legal Methods: Introduction to the Liberian Legal System, Legal Research & Writing (2012), p 4
[109] Ibid. at p 7
[110] Ibid. at p 4

by the Liberian common law, the following shall be, when applicable, considered Liberian law: the rules adopted for chancery proceedings in England, and the common law and usages of the courts of England and of the United States of America, as set forth in case law and in Blackstone's and Kent's Commentaries and in other authoritative treatises and digests'.[111]

Interestingly, customary law 'initial recognition as laws was contained in the Hinterland Regulations of Liberia enacted by the Liberian Senate and House of Representatives in 1949 as the basis then for the administrative organization and governance of rural Liberia'.[112] Furthermore, the 1986 Constitution of Liberia mandates the Judiciary of Liberia to apply customary laws. The Constitution states that 'the courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature'.[113]

Finally, Liberia has a dual legal system with the statutory or formal legal system on one hand which was imported by the settlers and they incorporated almost all the American laws into the nation's law and on the other hand, the traditional or customary legal system, which is made up of Liberian customs and traditions that were practiced by the natives and indigenous people, long before the settlers arrived. The duality of the Liberian legal system is based primarily on the nation's history and the establishment of the West African State. Thus, justice is accessed in Liberia in the formal system and the informal system.

2.3.3 The Statutory or Formal Legal System

The Statutory or Formal Legal System is comprised of statutes, treaties, acts and regulations enacted by the Legislature of Liberia and it is interpreted by courts in Liberia. Legally, Access to justice in Liberia cannot be disussed in isolation without taking a cursor glance at the court system which lays the foundtion for the formal legal system in the country.

The formal legal system and the courts provide the forum for which an individual can access justice, ensure that the individual's rights and liberty are protected, and that the individual is not deprived of his/her property without an outcome of a judicial process. Bearing these in mind, the courts as an embodiment of the Judiciary have to ensure that in its modus operandi, 'humanity, truth, and justice are enduring supreme goals'.[114] Article 3 of Liberia's 1986 Constitution recognizes the Judiciary as one of the three separate but coordinate branches of Government with the primary goal of interpreting the laws of Liberia.

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[111] Section 40, General Construction Law of Liberia, 1956, Accessed at: http://www.liberlii.org/lr/legis/codes/gclt15lcolr538/ , Last Accessed: 10 February 2020

[112] Warner, T. Negbalee, Legal Methods: Introduction to the Liberian Legal System, Legal Research & Writing (2012), p 7

[113] Article 65, Constitution of Liberia, 1986

[114] Graver , Hans Petter, Judges Against Justice: On Judges When the Rule of Law is Under Attack, (Springer 2014), p 91

The Structure of the Court System

The court system in Liberia comprises of the Justice of the Peace Court, Magistrates' Court, the Circuit Courts, Specialized Courts, and the Supreme Court of Liberia, as the final arbiter of justice. All of these parastatals make up the Judiciary Branch of the Liberian Government. The Constitution succintly states that 'the judicial power of the republic shall be vested in a Supreme Court and such subordinate courts as the Legislature may from time to time establish'.[115] In 1972, the Legislature enacted the Judiciary Law of Liberia which laid down the foundation for the organization of the court system in Liberia; with the object and purpose of the law being 'a unified judicial system with the judicial power being vested in one Supreme Court and subordinate courts'.[116]

Subordinate Courts

The subordinate courts in Liberia gravitates from the Court of the Justice of the Peace and the Magisterial Court, to the Circuit Courts, and the Specialized Courts.

Justice of the Peace Court and Magisterial Court

Justice of the Peace Court and Magisterial Court are courts of first instance and courts not of record. The head of Justice of the Peace Court is famously known as a Justice of the Peace. As the need denotes, the individual is to ensure that civility and peace are entrenched in communities where these first instance courts operate. The Magisterial Court is headed by a Stipendiary Magistrate who is assisted by an Assocaite Magistrate.

Jurisdiction of Justice of the Peace Court and Magisterial Court

Justice of the Peace Courts have territorial jurisdiciton in 'geographic areas designated by the President such as city, township, settlement or other similar area, over which each justice shall have territorial jurisdiction'.[117] Justice of the Peace Court has subject matter jurisdicition in petty 'civil cases, criminal proceedings, filiation proceedings, petite larceny and other misdemeanors and violations of the Vehicle and Traffic Law with limited jurisdiction; where matters are tried without a jury'.[118] The Magistrates' Courts have territorial jurisdicition and 'limited power to act in civil and criminal matters in accordance with the civil procedure and criminal procedure laws within their respective magisterial areas'.[119] Magistrate Courts have 'subject matter over civil cases, criminal proceedings, juveniles court proceedings, filiation proceedings of limited jurisdiction and violations of the Vehicle and Traffic

[115] Article 65, Constitution of Liberia, 1986
[116] Chapter 1, Section 1.1, New Judiciary Law of Liberia
[117] Ibid. at Section 8.2
[118] Ibid. at Section 8.3
[119] Ibid. at Section 7.7 (1 & 2)

Law wherein applicable matters shall be tried without a jury'.[120] Magistrates' Courts can 'issue warrants for the seizure and arrest of any person violating the law at any place within their respective magisterial areas and within any contiguous areas in the same county in which no magisterial or justice of the peace court is established, and to commit him to jail, release him on bond or discharge him from custody if it appears that no offense has been committed by him'.[121]

Appeals from Decisions of Justice of the Peace and Magisterial Courts

The Judiciary Law mandates that 'appeals from decisions of the courts of the Justices of the Peace and Magisterial Court shall be to the Circuit Court in the county in which the Justice of the Peace Court and Magisterial Court sit, provided that the Circuit Court of the first judicial circuit shall hear such appeals only in criminal cases arising in Montserrado County and that the circuit court of the sixth judicial circuit shall hear such appeals only in cases other than criminal cases arising in Montserrado County, and appeals in actions to obtain the payment of a debt shall be to the Debt Court in the county in which the justice of the peace court and Magisterial Court sit'.[122] The Judiciary Law also outlines that decisions of Justice of the Peace Court and Magistrates' Court when appealed, start at trial de novo.

Term and Appointment of Justice of the Peace and Magistrates

Justices of the Peace are 'appointed and commissioned by the President of Liberia, with the consent of the Senate and shall hold office for a term of two years, but may be removed by the President for cause, and they shall be eligible for reappointment'.[123] The Judiciary Law enunciates that 'the President shall appoint for each Magisterial Court a Stipendiary Magistrate, who shall act as Chief Magistrate of the court, and such Associate Stipendiary Magistrates for each court as he shall deem it necessary and expedient to dispose of the judicial business within the magisterial area covered by each court. A Stipendiary Magistrate shall hold office for a period of four years and shall be eligible for reappointment, but he may be removed from office prior to the expiration of his term of office for cause or at the pleasure of the President'.[124] The Justice of the Peace Court and Magisterial Courts 'have monthly term of Court or they sit on every business day of the month'.[125]

Circuit Courts

The Judiciary Law provides that 'the Republic of Liberia is hereby divided into fourteen judicial circuits, each of which shall extend throughout the county for which it is designated, with a Circuit Court to be established in

[120] Ibid. at Section 7.3 (a, b, c, & d)
[121] Ibid. at Sections 7.3 & 7.7 (1 & 2)
[122] Ibid. at Sections 7.4 - 8.4
[123] Article 55, Constitution of Liberia, 1986
[124] Section 7.5, New Judiciary Law of Liberia, 1972
[125] Ibid. at Chapters 7 & 8

each circuit and these circuits are numbered in the order of the historical and political establishment of the counties'.[126] Today, the nation has 15 counties with 'one circuit court sitting in each county, except for Montserrado County which has two Circuit Courts, because of increased population and socio-economic activities in Montserrado County'.[127] The total Circuit Courts in the country are 16 Circuit Courts that are aiding in the dispensation of justice.

Jurisdiction of Circuit Courts

The Circuit Courts have original jurisdiction and appellate jurisdiction in controversies emanating from breach of contract cases, actions of ejectment, negligence cases, amongst others.

Original Jurisdiction of Circuit Courts

The Judiciary Law outlines that 'the Circuit Court shall exercise original general jurisdiction over all cases as to which another court is not expressly given exclusive original jurisdiction by constitutional or statutory provision'.[128] Circuit Courts also have 'the power, authority and jurisdiction, exclusively, to issue or order the issuance of writs of injunction, and writs for summary proceedings in the nature of prohibition addressed to inferior courts and their officers in exercise or aid of their appellate jurisdiction over them'[129].

As indicated earlier that Montserrado County has two Circuits (known as the first and Sixth Judicial Circuit Court) due to expansion of economic activities and increased population; one of its Circuits 'the First Judicial Circuit has jurisdiction to try only criminal cases and it is composed of five criminal assizes to include: Criminal Court A, B, C, D, and E and the Sixth Judicial Circuit Court has jurisdiction to try only cases other than criminal cases'[130], which are civil cases and today it has Civil Law Court A and B due to the increased in the number of cases. The Circuit Courts in other counties have the statutory mandate to adjudicate criminal and civil matters, respectively.

The criminal assizes in the First Judicial Circuit Courts have jurisdiction in different matters. 'Criminal Court A exercises original jurisdiction over theft, armed robbery, murder, criminal attempt to commit murder, sedition, extradition, arson, kidnapping, manslaughter, Negligent Homicide, and reckless driving resulting to death and Criminal Court B has jurisdiction in immigration and nationality matters'.[131] 'Criminal Court C has jurisdiction of offenses against property, narcotic and hallucinogenic drugs'[132], 'Criminal

[126] Ibid. at Section 3.1
[127] Warner, T. Negbalee, Legal Methods: Introduction to the Liberian Legal System, Legal Research & Writing (2012), p 20
[128] Section 3.2, Judiciary Law, 1972
[129] Ibid. at 3.3
[130] Ibid. at 3.2
[131] Assizes of Circuit Courts, Accessed at http://judiciary.gov.lr/1st-montserrado-county/ , Last Accessed: 12 February 2020
[132] Section 3.2, New Judiciary Law, 1972

Court D has jurisdiction in matters relating to Arm robbery'[133], and Criminal Court E, 'has exclusive original jurisdiction over all cases of Sexual Offences'.[134]

Appellate jurisdiction of Circuit Courts

Generally, 'the Circuit Courts in each judicial circuit shall hear appeals from final administrative determinations of government agencies and officials in accordance with statutes providing for appeals therefrom and from decisions of courts not of record made within the county in which it sits, provided that the Circuit Court of the First Judicial Circuit shall hear such appeals only in criminal cases arising in Montserrado County and the Circuit Court of the Sixth Judicial Circuit shall hear such appeals only in cases other than criminal cases arising in Montserrado County'.[135] The only exception here is that Circuit Courts cannot heard appeals 'from decisions in actions to obtain the payment of a debt, which shall be heard in the appropriate Debt Court'[136] and as well other specialized court when they operate in the same county or geographic area.

Terms of Circuit Courts and Appointment of Circuit Judges

All the Circuit Courts in Liberia besides the Sixth Judicial Circuit Court, 'meet four (4) times a year, each time being a term of the Circuit Court. The four terms of all Circuit Courts are called the February, May, August and November Terms, while those of the Sixth Judicial Circuit are the March, June, September and December Terms. The Terms of the Sixth Judicial Circuit opens on the third Monday of each of the four months, while the Term of each of the other circuit is on the second Monday of the month after each of the Term is named'.[137]

Article 54 (c) of the Constitution of Liberia provides that the President shall nominate and with the consent of the Senate, appoint, and commission judges of subordinate courts. The Judiciary Law further provides that the President shall exercised said constitutional provision in appointing 'Circuit Judges whom shall be resident Judges, one for each circuit and they shall hold office during good behaviour'.[138] The Circuit Courts provide access to justice for people in Liberia who are aggrieved or think that their rights are trampled upon. These Circuit Courts proceedings are expected to be 'conducted with

[133] Assizes of Circuit Courts, Accessed at: Accessed at http://judiciary.gov.lr/brief-overview/ , Last Accessed: 12 February 2020
[134] Chapter 25, Section 25.2, New Judiciary Law, 1972)
[135] Ibid. at Section 3.4
[136] Ibid.
[137] Warner, T. Negbalee, Legal Methods: Introduction to the Liberian Legal System, Legal Research & Writing (2012), p 19-20
[138] Section 3.6, New Judiciary Law, 1972

fitting dignity and perfect decorum'[139] at all times consistent with the rules applicable to all courts in Liberia.

Specialized Courts

Specialized Courts are created by the legislature to aid the effective administration of justice in specialized fields of the law. These Specialized Courts include: the Commercial Court, the Debt Court, Environmental Court of Appeals, the Juvenile Court, the Labor Court, the Monthly and Probate Court, the Tax Court and the Traffic Court**.** These courts are neither above the Circuit Courts nor below the Circuit Courts and their decisions are only appealable before the Supreme Court of Liberia.

Jurisdiction of Specialized Courts

The Commercial Court has exclusive original jurisdicition 'in all civil actions arising out of or in relation to commercial transaction in which the claim is at least fifteen thousand United States Dollars (US$15,000), all cases of admiralty, disputes arising out of sale or lease of any property whatsoever, except realty, disputes in connneciton with the creation, negotiation, and enforcement of any negotiable instrument, including the liabilities and rights associated therewith, action to enforce security agreement or foreclose a mortgage, action arising out of the creation, performance, interpretation, assignment or modification of an agreement creating an agency, partnership, corporation or similar business relationship, to hear and decide appeals from, and applications to enforce final decisions of an arbitral panel'[140]; amongst others.

The Debt Court is a court of record and has exclusive original jurisdiction in 'civil actions to obtain payment of a debt in which the amount is two thousand dollars one cent ($2,000.01) or more. It shall not exercise original jurisdiction where the amount is less than two thousand dollars one cent ($2,000.01)'.[141] It also 'exercises concurrent jurisdiction with Circuit Courts in the issuance of the Writ of Ne Exeat Republica in matters arising out of debt cases'.[142] The Debt Court 'in each county shall have exclusive jurisdiction to hear appeals from decisions in actions to obtain the payment of a debt made by courts not of record within the county in which it sits'.[143]

The Environmental Court has 'jurisdiction of all appeals from the Environmental Administrative Court established under the Environmental

[139] Rule 11, General Rules Applicable to All Courts in Liberia, Accessed at: http://judiciary.gov.lr/general-rules-applicable-in-all-courts-of-liberia/ , Last Accessed: 12 February 2020
[140] Article II (1) (a-f), An Act to Amend the Judiciary Law, Title 17, Liberian Code of Law Revised, To Provide for the Establishment of a Commercial Court, 2010
[141] Section 4.2, New Judiciary Law, 1972
[142] Ibid.
[143] Ibid. at 4.3

Protection Agency Act'.[144] Juvenile Courts have more of a dual nature. Though, it appears as a specialized court, but it is as well a court not of record. These courts 'have exclusive original jurisdiction in special proceedings concerning any juvenile, living or found within the geographic area over which such court has territorial jurisdiction'.[145]

The Labor Courts are courts of record that are 'established in each of the counties and they are courts of limited jurisdiction and shall have exclusive appellate jurisdiction over all labour cases as appealed to it from the decisions of the Hearing Officers or Labour Commissioners in the county where it is established'.[146] The Monthly and Probate Courts are delicate and perculiar courts that legitimize legal instuments and 'are established in each of the fifteen (15) political sub-divisions of Liberia and specific territories of the country'.[147] These courts have wider jurisdictional powers ranging from 'probating wills, granting letters testamentary and of administration, mentally disabled persons, persons judicially declared as incompetents, all affairs of minors, hearing and determining applications for the adoption and legitimization of children, and probating deeds, mortgages and other legal documents'.[148]

The 'tax courts in each of the political sub-divisons have exclusive jurisdiction to review final administrative determinations of assessments of taxes, license fees and other imports, valuations made for tax purposes and denials of claims for refund with respect to taxes, license fees and other imports assessed by the republic or any of its political subdivisions or agencies in accordance with the Revenue and Finance Law, together with exclusive original jurisdiction over civil penalties and such other original civil jurisdiction as is expressly conferred on the Tax Court by the Revenue and Finance Law or is otherwise contained therein, including such admiralty jurisdiction as is necessary to carry out the functions herein set forth'.[149]

The Traffic Court goes with this duality of appearance. It is a specialized court on one hand and it is a court not of record on the other hand. The Statute 'establishes Traffic Courts in the fifteen (15) political subdivisions of the country and further outlines that where these courts are yet to be established, the Magisterial and Justice of the Peace Courts in those areas in addition to their other functions, shall assume jurisdiction as Traffic Courts'.[150] In terms of subject matter jurisdiciton, 'the Traffic Courts, including the Magisterial and Justices of the Peace Courts assuming Traffic Court jurisdiction, have original jurisdiction within their areas to try without a jury any violation of the Vehicle and Traffic Law constituting an infraction'.[151]

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[144] Section 33 (1), Environmental Protect Act, 2003, Accessed at: http://www.liberlii.org/lr/legis/acts/epaa320/, Last Accessed: 12 February 2020
[145] Section 10.2, New Judiciary Law of Liberia, 1972
[146] Ibid. at Chapter 23, Section 23.1 and 23.2
[147] Ibid. at Section 5.1
[148] Ibid. at Section 5.2 (A-L)
[149] Ibid. at Section 6.2
[150] Ibid. at Section 9.1
[151] Ibid. at Section 9.2

Term of Specialized Court and Appointment of Judges

The Commercial Court has a 'monthly term, it sits on every business day of the month, and there are no jury trial in the Commercial Court'.[152] The 'Debt Court shall sit in each County on the Second Tuesday of each and every month and continue in Session until the completion of its business'.[153] The Environmental Court 'convenes twice a year in June and again in November'[154] of each year.

The Juvenile Court 'sits regularly each month of the year to hear and determine all matters which come within its jurisdiction and shall remain in session from the opening of each monthly term until all business before the court is disposed of'.[155] All Labor Courts 'sit monthly on the first Monday of each month for review of all cases docketed for the term, for disposition of motions, complaints, petitions and other matters pending before them, and shall remain in session from the opening of each Monthly Term until all business before them are disposed of'.[156] The Monthly and Probate Courts as their name indicate 'have a monthly term of Court'.[157] The 'Traffic Court as well sits in monthly term of court, like Magisterial Courts and Justice of the Peace Courts'.[158]

Finally, all Judges of Specialized Courts are appointed by the President in line with the constitutional mandate that 'the President shall nominate and, with the consent of the Senate, appoint, and commission the Chief Justice and Associate Justices of the Supreme Court and judges of subordinate courts'.[159] These judges are expected to hold office during good behavior.

The Supreme Court as the Final Arbiter of Justice

Judgments from all administrative agency, Circuit Courts, and Specialized Courts within the Republic of Liberia are appealable before the Supreme Court of Liberia and its decisions are final. The Constitution delineates that 'judgments of the Supreme Court shall be final and binding and shall not be subject to appeal or review by any other branch of Government'.[160] The constitution further states that 'the Supreme Court shall be the final arbiter of constitutional issues'.[161] These provisions in the Constitution validate the claim that the Supreme Court of Liberia is the ultimate arbiter of justice and court of last resort in all judicial matters in Liberia. The Judiciary Law further

[152] Article XII (1) & Article VII (2), An Act to Amend the Judiciary Law, Title 17, Liberian Code of Law Revised, To Provide for the Establishment of a Commercial Court, 2010
[153] Ibid. at 4.5 & 4.8
[154] Ibid. at (2) & (5)
[155] Ibid. at 10.6
[156] Section 23.8, New Judiciary Law, 1972
[157] Ibid. at Sections 5.6, 5.7, and 5.8
[158] Ibid. at Section 9.3
[159] Article 54 (c), Constitution of Liberia, 1986 – Also see New Judiciary Law and Statute of each Specialized Court as mentioned herein
[160] Article 65, Constitution of Liberia, 1986
[161] Ibid. at Article 66

explicates this mandate and outlines that 'the judicial power of the republic shall be embodied in a unified judicial system and shall be vested in one Supreme Court and in subordinate courts'.[162]

These are gigantic tasks for the the Supreme Court, because their opinions or judgments have the proclivity to restore an individual's liberty, deny an individual his or her property or further subject an individual to life time imprisonment. So, the Supreme Court has the monolithic onus to dispense justice equitably and fairly in order for citizens to effectively access justice and trust the judicial system. Constitutionally, the Supreme Court has two jurisdictions. It has original jurisdiction and appellate jurisdicition along with its power of judicial review.

Original Jurisdiciton

The Constituion of Liberia confers on the Supreme Court original jurisdiciton in all 'cases involving ambassadors, ministers, or cases in which a county is a party'.[163] The original jurisdiction of the Supreme Court 'means that it is only the Supreme Court that can hear the case and thus no court or administrative force can hear it'.[164] That is why 'in a case between two counties, neither county can enforce its judgment in the other, because the judgment of the hearing county is not so effective outside of its terroritorial limits. The Supreme Court there has original jurisdiction in a case between two counties because it alone can enforce its judgment in both counties and it is only the Supreme Court that serves the whole country and so it will not be biased'.[165]

The logic and 'the apparent rationale for giving the Supreme Court original jurisdiction over certain cases are that those cases are politically sensitive and might cause disruption and therefore, the court has original jurisdiction so as to settle the matter quickly, finally, and with the highest degree of professionalism'.[166] In expounding on original jurisdiction, the Supreme Court held that 'original jurisdiction is jurisdiction conferred on a court to proceed in the first instance and the Constitution of Liberia specifically enumerates the classes of cases over which the Supreme Court has original jurisdiction, and they include only cases affecting Liberian ambassadors assigned to a foreign capital, other public ministers and consuls, and matters to which a county is a party'.[167]

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[162] Chapter 1, Section 1.1, New Judiciary Law, 1972
[163] Article 66, Constitution of Liberia, 1986
[164] Barbu, Jallah A., Liberian Constitutional Law, (2012), p 119
[165] Ibid.
[166] Ibid.
[167] Bauchau v USA et al (2000) LRSC 7, 40 LLR 58, Syllabi 1 & 3; Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/2000/7.html?stem=0&synonyms=0&query=original%20jurisdiction , Last Accessed: 13 February 2020

Appellate jurisdiction

The appellate jurisdiction of the Supreme Court as provided for in the Consitution outlines that the 'Supreme Court shall exercise final appellate jurisdiction in all cases whether emanating from courts of record, courts not of record, administrative agencies, autonomous agencies or any other authority, both as to law and fact'.[168] The Judiciary Law further expanded on this constitutional provision and outlines that 'the Supreme Court shall have jurisdiction of appeals from rulings of Justices of the Supreme Court presiding in Chambers on applications for remedial and extraordinary writs, including refusal to issue such writs, and shall be the court of final resort in all such cases'.[169] These provisions indicate that 'the Supreme Court generally sits in an appellate position and does not take cognizance of matters not of an appellate nature'.[170]

In delineating its appellate jurisdiction, the Supreme Court clarified that 'all actions are commenced in the trial court and not in the appellate court. The Supreme Court is appellate in nature, and its original jurisdiction is limited. The Supreme Court, as an appellate court, cannot for the first time hear and determine the veracity and genuineness of newly discovered evidence and fraud'.[171]

Finally, in a legal bellicose between the Supreme Court of Liberia and the Ecowas Community Court, where the Supreme Court flexed its muscles when a matter was pending before the Supreme Court and the party filed same before the ECOWAS Court that his human rights had been violated by the Liberian Government, a unanimous Supreme Court of Liberia held 'that no foreign court, whether operating under a treaty arrangement, a protocol or otherwise, is vested with the authority to deprive or divest the Liberian Supreme Court of any of the powers granted to it by the Liberian constitution and by virtue thereof, the ECOWAS Community Court of Justice is without the authority, even under a ratified international protocol, to divest the constitutional authority of the Liberian Supreme Court to be seized of a matter emanating from a subordinate court'.[172] The Court reaffirmed this principle of law in another case when 'Counsellors Sayma Syrenius Cephus and Roland F. Dahn pleaded lack of jurisdiction by the Supreme Court to hear the petition for a writ of prohibition on grounds that the matter of the 15.9 million United States Dollars was pending before the ECOWAS Court of Justice and the Supreme Court should be seized of a case that emanated from a final ruling of a trial court in Liberia'.[173]

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[168] Article 66, Constitution of Liberia, 1986
[169] Section 2.2, New Judiciary Law, 1972
[170] Barbu, Jallah A., Liberian Constitutional Law, (2012), p 119
[171] Kafumba Konneh et al v Marshall (2001), 40 LLR 429, Syllabi 12, 13 & 14
[172] R.L v Ayika (2013), Accessed at: http://www.liberlii.org/lr/cases/LRSC/2013/34.html, Last Accessed: 11 March 2020
[173] Liminco vs His Honor Emery Paye et al (2017), Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/2017/1.html?stem=0&synonyms=0&query=Liminco Last Accessed: 11 March 2020

Power of Judicial Review

The Supremacy Clause of the Constitution of Liberia empowers 'the Supreme Court, pursuant to its power of judicial review to declare any inconsistent laws unconstitutional'.[174] The mention of inconsistent laws cover statutes, treaties, regulations, ordinances and even customary laws; as long as they are inconsistent with any provisions of the constitution and when they are challenged before the Supreme Court, the Court will have no option but to definitely strike down the inconsistent law. The constitutional mandate of judicial review engenders check and balance in a democratic society amongst the three branches of government and it means 'a court's power to review the actions of other branches or levels of government; especially the courts' power to invalidate legislative and executive actions as being unconstitutional'.[175]

The Supreme Court using its power of judicial review, in a revolutionary case, the Court smashed a statute that it believed usurped the functions of the Judiciary and it held 'if the Legislature passes an Act infringing the Constitution, the Act is void ab initio and no department of the Government can exercise judicial functions but the court itself. Legislation, therefore, is unconstitutional which seeks to have other branches of Government participate in judicial work'.[176] 'Today, this authority of judicial reveiw extends to review of the Judiciary itself. The Supreme Court may examine a past decision it made (precedent) and determine whether that decision was proper in light of the law, therefore, it is said to have the authority to exercise judicial review of the entire government'.[177]

Appointment of Justices of the Supreme Court and Term of Court

The Constitution enounces that the 'Chief Justice and Associate Justices of the Supreme Court shall, with the consent of the Senate, be appointed and commissioned by the President'.[178] The Constitution further states that 'the Supreme Court shall comprise of one Chief Justice and four Associate Justices, a majority of whom shall be deemed competent to transact the business of the Court'.[179] The Chief Justice is the head of Judiciary and work with other justices to ensure the dispensation of justice.

Finally, the Supreme Court has two Terms of Court. The Judiciary Law outlines that 'the Supreme Court shall hold two terms annually, commencing on the Second Monday of October and on the Second Monday of March and continuing as long as the business before the Court may require. They shall be known as the October and March Term, respectively'.[180]

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[174] Article 2, Constitution of Liberia, 1986
[175] Gardner, Byran A., Black's Law Dictionary, (2009), p 924
[176] In re Constitutionality of Legislative Act (1914), 2 LLR 157, Syllabi 1 & 2
[177] Barbu, Jallah A., Liberian Constitutional Law, (2012), p 95-96
[178] Article 68, Constitution of Liberia, 1986
[179] Ibid. at Article 67
[180] Section 2.5, New Judiciary Law, 1972

2.3.4 The Traditional or Customary Legal System

The Traditional or Customary Legal System in Liberia is comprised of customs, traditions, and values of the indigenous people of Liberia. These traditions were practiced long before the arrival of the settlers and these customs are interpreted by tribal chiefs in their respective counties. The formal or statutory legal system in Liberia which was imported by the settlers and had largely influenced the legal landscape in Liberia, is not only alien to Liberians (the indigenous or aborigines), but it shattered the values, customs, and traditions of indigenous Liberians. Long before the arrival of the settlers in what is today Liberia, it is an undisputed fact that indigenous Liberians and 'Africans throughout the continent generally use customary law to address up to 80 per cent of all disputes'.[181]

In Liberia, 'the customary justice system is based on the norms and values of traditional Liberian culture'[182] and 'majority of justice that is being provided in practice to Liberians is through one or another form of customary institution, and they are far more accessible and overwhelmingly the preferred forum of first instance for most rural Liberians'.[183] It is the first forum for many rural Liberians because, the customary legal system has been entrenched in the way of life of indigenous Liberians and handed down from one generation to another generation. Above all, it serves their best interest in every facet of their lives. Arguably, 'the historically deep division between the capital and rural areas has led to ignorance of the way the customary law system operates and little knowledge among Liberian elites and foreign observers of how ordinary citizens deal with justice needs in light of a statutory system in disrepair and non-existent in poor and rural communities. People preferred traditional means of resolving disputes and it is not considered good community spirit to go to the formal courts'.[184]

In the eyes of indigenous Liberians who live miles away from a formal legal system, 'the customary justice system is faster, cheaper, and provides a resolution with guilt admitted, restitution paid, and reconciliation of the parties that leaves both parties satisfied'[185]; as compared to the formal legal system that sits in gross corruption, abject knowledge deficit and backlog of cases that stifle justice in all spheres of the Liberian society.

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[181] International Crisis Group Working to Prevent Conflict Worldwide, LIBERIA: Resurrecting The Justice System, Africa Report (N°107 – 6 April 2006), p 6

[182] Compton, Jonathan, The Peril of Imposing the Rule of Law: Lessons From Liberia (2014), University of Minnesota Law School Scholarship Repository, p 59

[183] Deborah H. Isser, Stephen C. Lubkemann, and Saah N'Tow, Looking for Justice: Liberian Experiences with and Perceptions of Local Justice Options (2009), p 25, Accessed at: https://www.usip.org/publications/2009/11/looking-justice-liberian-experiences-and-perceptions-local-justice-options , Last Accessed 17 February 2020

[184] International Crisis Group Working to Prevent Conflict Worldwide, LIBERIA: Resurrecting The Justice System, Africa Report (N°107 – 6 April 2006), p 6 & 7

[185] Rawls , Amanda C. , Policy Proposals for Justice Reform in Liberia: Opportunities Under the Current Legal Framework to Expand Access to Justice (Paper No. 2: 2011), p 13 & 16

Hierarchy and Layer in the Customary Legal System

Whilst the formal legal system uses the court system, the informal system uses methods that are antiquity but based on customs that were practiced before the Americo-Liberians immigrated to Liberia in 1821. The customary legal system serves the best interest of nearly all rural Liberians who make up majority of the nation's population, but it is structured predominatly under the Executive Branch of government, instead of it being under the Judiciary. These complexities are grounded in the history of the nation, where there was a division between the settlers and the natives. When the settlers exerted more power and expanded their territories, they thought to bring the natives or the indigenous under their command. So a more imperial and powerful presidency was successful in bringing the customary system under the Executive, which violates the principle of separation of powers under the Constitution.

Though, the customary legal system has been in existence for centuries in Liberia; it can be traced to the discriminatory Hinterland Regulations enacted in the early 1900s and today the legal basis of a customary legal system grew out of a constitutional provision that 'the courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature'.[186] The Customary Legal System operates tribal courts that include: the Court of Town Chief, Court of Clan Chief, Court of Paramount Chief, District Commissioner Court, the Superintendent and the Minister of Internal Affairs. Other very germane access to justice mechanism under the customary legal system that play a quintessential role in resolving conflicts and disputes in rural Liberia are the Poro and Sande Societies and other ethnic and religious Court in semi-urban and some urban areas.

The Native or Tribal Court

Town Chief, Clan Chief, and Paramount Chief Courts

The Native or Tribal Courts in Liberia comprise of the Courts of Town Chief, Clan Chief, and Paramount Chief. These are first instance, they possess limited subject matter jurisdiction, but operate within their respective localities, mainly in rural Liberia where there are no formal court system, due to the failure of the national government to establish formal courts in those rural areas. The Chief Courts 'make up the state-recognized customary courts and these chiefs have a dual basis of authority. One of these sources of authority and legitimacy is the local community itself. Chiefs are cognizant that they must remain highly responsive to the concerns of local communities and their demands for justice in order to maintain a local basis of legitimacy'.[187]

[186] Article 65, Constitution of Liberia, 1986

[187] Deborah H. Isser, Stephen C. Lubkemann, and Saah N'Tow, Looking for Justice: Liberian Experiences with and Perceptions of Local Justice Options (2009), p 31

Interestingly, these courts fall under the Executive Branch, because the Town, Clan, and Paramount Chiefs work directly with the Ministry of Internal Affairs. The Act creating the Ministry of Internal Affairs clearly confers power on the Minister to 'administer the system of tribal courts, draft rules and regulations, and state the schedules of fees to be allowed in tribal courts, exercise administrative supervision over the Poro, Sande and other tribal societies, publication of the laws and customs of the Liberian tribes, and oversee the orderly functioning of tribal government'[188].

Whenever 'dispute arises within a town, the town chief and village elders will intervene, call witnesses, assess fines, and issue a judgment. Clan chiefs adjudicate disputes between towns. Final judgments in town chief and clan chief courts are appealed to paramount chief courts. Town chiefs and clan chiefs also transfer complex cases they cannot resolve to paramount chiefs through a referral procedure. Final judgments in paramount chief courts are appealed to district commissioners and superintendents, and finally to the ministry of Internal Affair's Office of Tribal Affairs in Monrovia'.[189] The disputes that are typically settled by the Chief Courts include: issues that borders on public insult within a group, and between young people and old people. Failure to participate in communal work, issues about extra-marital affairs, deflowering, farm or communal land dispute, and critical issues within traditional secret socities.

Other Dispute Mechanisms in the Customary Legal System

Poro and Sande Societies

Besides the tribal courts, other mechanisms that best serve indigenous Liberians' interest and play a more critical role in resolution of disputes, controversies, and confusion in rural Liberia are more of secret societies known as the Poro and Sande Societies on one hand and the ethnic and religious mechanism on the other hand.

The Poro and Sande societies are ancient societies that have flourished in Liberia for centuries and they play a critical role in the education of young men (for the Poro) and women (for the Sande) and contribute to the holistic development of the customs of the indigenous population through protecting its values and norms at the same time ensuring that the communities are safe, conflicts are resolved amicably, and peace is solidified. These societies have jurisdiction in the 'resolution of community disputes and condemn members who have defied established social norms'[190].

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[188] Executive Law of Liberia, Title 12, LCLR, Chapter 25.2 (I) (L) (M) (N), 9 June 1972, Accessed at: Last Accessed: http://www.liberlii.org/cgi-bin/disp.pl/lr/legis/codes/elt12lcolr429/elt12lcolr429.html?stem=0&synonyms=0&query=Executive%20Law , 17 February 2020

[189] International Crisis Group Working to Prevent Conflict Worldwide, LIBERIA: Resurrecting The Justice System, Africa Report (N°107 – 6 April 2006), p 7

[190] International Crisis Group Working to Prevent Conflict Worldwide, LIBERIA: Resurrecting The Justice System, Africa Report (N°107 – 6 April 2006), p 6 & 7

The Poro and Sande societies also serve as 'institutions to enculturate young males and female to formally carry them through the rite of passage from child to adult, the elders of the Poro and Sande societies serve as the intermediaries between the ancestors and the living, and thus act as the ultimate arbiters of asocial actions which affect the society'[191] or rural community. These societies 'continue to play a prominent role in the local administration of justice throughout rural Liberia and their influence in the process is growing'.[192]

Finally, 'while the ritual officers in these societies are often the first and even ultimate line of recourse for all manner of disputes that occur among their own members, cases are also often referred to them from all levels within the aforementioned state-recognized customary system that extends from chiefs through the county superintendant'.[193] The heads of the Poro and Sande societies who are involved in the administration of justice, dispute resolution, initiation, and tutoring of their members are known as Ritual Officers, Masters, Zoes, Grand Zoes, and other traditional names.

Ethnic/Religious mechanism

Ethnic and religious mechanisms are offspring institutions in most periurban and rural areas that only claimed jurisdiction based upon either the specific ethnic group in a specific area or religious group in an area and they cater to the specific needs of religious group, tribal group, and even marketeers or market women.

The leaders of these mechanisms include 'imams, pentecostal pastors, and ethnic chiefs who are sometimes called upon as the first line of recourse in the resolution of disputes among their congregants or coethnics on one hand, and on the other hand, the authority to resolve certain types of disputes with delimited spheres of professional activity, such as by head marketwomen within the marketplace, is also recognized by many rural Liberians'.[194] These ethnic and religious mechanisms play a vital role in resolving conflicts through peaceful resolution of disputes in both petty civil and criminal matters within their respective localities. Community leaders in urban and periurban areas are very influential and play a vital role in peaceful resolution of conflicts in their respective communities.

Methods of Dispensation of Justice in the Customary Legal System

The traditional or customary legal system has two fundamental methods in the dispensation of justice for indigenous Liberians in their respective

[190] Rawls , Amanda C. , Policy Proposals for Justice Reform in Liberia: Opportunities Under the Current Legal Framework to Expand Access to Justice (Paper No. 2: 2011), p 8
[191] Deborah H. Isser, Stephen C. Lubkemann, and Saah N'Tow, Looking for Justice: Liberian Experiences with and Perceptions of Local Justice Options (2009), p 23
[192] Ibid.
[193] Ibid.
[194] Ibid. at p 24

localities. These methods include: trial by ordeal, which encompasses: trial by the sassywood, Kafu and Kola Nuts on one hand and on the other hand it uses alternative dispute resolution in the form of mediation known as the Palava hut process of justice. These methods or 'practices of justice have clearly survived Liberia's devastating civil war and remain active in virtually all of Liberia's rural communities'.[195]

Trial by Ordeal – Sassywood, Kafu, and Kola Nuts

It is a fact that trial by ordeal is not unique to indigenous Liberians, but it has fluorished in ancient times and in the western world for centuries, and has been used to convict or acquit a defendant in a proceeding. Using trial by ordeal, 'it is being supposed that supernatural intervention would rescue an innocent person from the danger of physical harm to which he was exposed in this species of trial. It is of two sorts, either fire ordeal or water ordeal'.[196]

In Liberia, 'trial by ordeal in the mildest versions, suspects might be asked to do an everyday act, such as picking up a light object from the ground. If they are guilty of the charge against them, it is believed that they will find this task impossible. In another similarly harmless although more invasive form, suspects might be asked to eat or drink food or water that is objectively harmless — often that they have prepared themselves. If they are guilty, or dishonest, it is believed that the substance will make them ill within a specified period of time. In more serious and dangerous forms of trial by ordeal, suspects are made to perform a dangerous act such as to place their hands in hot oil, place a hot metal object against their skin or drink tea made from a poisonous tree bark (the eponymous sassywood). It is believed that, if innocent, they will be protected from the ill effects of the act; if guilty, they will suffer the expected harm'.[197]

Conversely, 'the kola nut is a justice method focused on forgiveness. To resolve a dispute, the guilty party provides kola nuts to the wronged party as atonement. Cash, animals, and other commodities may be used in place of kola nuts. The exact payment is determined by local elders'.[198] On the other hand, 'Kafu is a trial by ordeal process where the parties to a dispute share a common meal or drink of water. It is believed that if a person later lies during the proceeding, the food or water will sicken him. Liberians often refer to trial by ordeal as sassywood after the tree they have historically used for poison'.[199]

In a famous murder case emanating from the Third Judicial Circuit Court in Sinoe County, on appeal to the the Supreme Court of Liberia, the Supreme

[195] Ibid. at p 25
[196] Black, Henry Campbell, Black's Law Dictionary, Sixth Edition (1990), p 1095-1096
[197] Rawls , Amanda C. , Policy Proposals for Justice Reform in Liberia: Opportunities Under the Current Legal Framework to Expand Access to Justice (Paper No. 2: 2011), p 18
[198] Compton, Jonathan, The Peril of Imposing the Rule of Law: Lessons From Liberia (2014), University of Minnesota Law School Scholarship Repository, p 60
[199] Ibid. at 60-61

Court of Liberia struck down the practice of trial by ordeal in all its form and practices and held that 'while it is provided that the native and district courts shall administer the native customary law, a proceeding calling for trial by ordeal, intended to extort a confession from the accused, is in conflict with the organic law of the State declaring that no one shall be compelled to give evidence against himself and trial by ordeal is therefore unconstitutional and illegal'.[200]

While the old judgment of the Supreme Court is the law today, the reality is completely different. The 'Ministry of Internal Affairs in violation of the constitution and a judicial mandate, licenses ordeal doctors to perform these rituals and in late 2005, the ministry licensed a trial by ordeal for the residents of a small town in Grand Cape Mount County, who believed that witches were responsible for its lack of schools and healthcare facilities. Residents conducted the licensed trial on the alleged witches' possessions inside the County's Circuit Court'.[201]

Alternative Dispute Resolution – Mediation and Palava Hut

The alternative dispute resolution method, specifically the mediation method of conflict and dispute resolution by indigenous Liberians within the ambits of the customary legal system 'is like arbitration in that the decision makers investigate the facts, pronounce a judgment to establish the truth, and the sanction for the party at fault. The Chiefs compromise the case by finding a resolution that satisfies both parties and allows them to leave with smiles on their faces. This means that much of the work of dispute resolution is sitting down with both parties and their family members and other people of influence to bring them to agreement and acceptance of the resolution'.[202] Interestingly, 'the mediative nature of case resolution does not diminish the emphasis on the establishment of the truth. In particular, the chiefs strive to ascertain who is at fault and who is innocent by getting at a form of truth that attends not only to the narrow issue at hand, but also identifies and deals with the more fundamental root issues and social factors that inform the dispute'.[203]

Finally, the palava hut method is the process of gathering under a traditional palava hut in the town or village and 'is used to settle conflicts ranging from land disputes to murders'.[204] This method is also 'rooted in mediation and dialogue. The individual parties to a dispute, often with and sometimes

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[200] Tenteah et al v RL (1940), 7 LLR 63 (1940), Syllabi 1 & 2, Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/1940/2.html?stem=0&synonyms=0&query=ordeal, Last Accessed: 17 February 2020

[201] International Crisis Group Working to Prevent Conflict Worldwide, LIBERIA: Resurrecting The Justice System, Africa Report (N°107 – 6 April 2006), p 9

[202] Deborah H. Isser, Stephen C. Lubkemann, and Saah N'Tow, Looking for Justice: Liberian Experiences with and Perceptions of Local Justice Options (2009), p 26

[203] Ibid.

[204] Compton, Jonathan, The Peril of Imposing the Rule of Law: Lessons From Liberia (2014), University of Minnesota Law School Scholarship Repository, p 61

represented by their families, meet under the supervision of community elders, depending upon the accusation and the result of the mediation, the elders may require restitution, payment of medical expenses, or even banishment from the community'.[205]

Decisions of Native or Tribal Courts

The overrriding goals of the decisions of the Tribal Courts and their respective mechanisms have always been to 'make peace between the people, for the accused to tell the truth, and apologize'.[206] These tribal courts and mechanisms make 'non-binding arbitration decision with elements of mediation, search for the truth, opt for redress aimed at social reconciliation, and enforcement through social pressure, but failure to accept the resolution will lead to ostracism'.[207] One of the most fundamental 'feature of customary law is that it aims for a solution agreed upon by both parties and a party that does not accept the resolution is free to reject it and appeal to the next level. Decisions of customary courts thus are not coercively enforced'.[208]

As indicated earlier, the judgments from the customary legal system where decisions have been handed down by the Courts of Town Chief and Clan Chief may be appealed to the Court of Paramount Chief. If the party is not satisfied, he or she may take his or her appeal to the District Commissioner Court, who will look into the matter and hand down a decision and if there is an aggrieved party, the mattter will go onward to the County Superintendent and finally to the Minister of Internal Affairs' tribal office.

Appeal Mechanism of the Customary Legal System

The appeal mechanism in the customary legal system is not only complex but it circumvents the Constitution of Liberia specifically the doctrine of separation of power, when the District Commissioner's Office, the Superitendent's Office, and Minister of Internal Affairs Tribal Office usurp the Judiciary's power of judicial review; since these different offices are core parastatals of the Executive Branch of Government.

The Constitution of Liberia outlines 'that the form of government is Republican with three separate coordinate branches: the Legislative, the Executive and the Judiciary and consistent with the principles of separation of powers and checks and balances, no person holding office in one of these branches shall hold office in or exercise any of the powers assigned to either of the other two branches'.[209] The Constitution further states that 'the Supreme Court, pursuant to its power of judicial review, is empowered to

[205] Ibid. at 60
[206] Deborah H. Isser, Stephen C. Lubkemann, and Saah N'Tow, Looking for Justice: Liberian Experiences with and Perceptions of Local Justice Options (2009), p 30
[207] Ibid. at p 26-32
[208] Ibid. at p 30
[209] Article 3, Constitution of Liberia, 1986

declare any inconsistent laws unconstitutional'.[210] This means that only the Judiciary shall exercise the power of judicial review in matters emanating from administrative agency or other institutions of the government. For the District Commission's office, an administrative office along with the Superintendent and Minister of Internal Affairs offices to review decisions of tribal court it is not only troublesome and worrisome, but it is a violation of the Constitution.

In a famous case that arose out of woman palaver (infedility, adultery or fornication) and was appealed from the clan chief to the Superintendent of Sinoe County, the Supreme Court of Liberia established a fundamental principle of law and further enumerated its powers that 'all executive officers who attempt to exercise judicial functions are thereby committing usurpations on the constitutional powers of the courts and all legislations are unconstitutional which seek to have other branches of government participate in judicial work'.[211]

Finally, while the Constitution of Liberia enumerates the doctrine of separation of power, invest judicial review powers only in the Judiciary and with the Supreme Court developing a jurisprudence that the Executive cannot usurp the functions of the Judiciary; the the current trends of appeal process in the customary legal system has not been settled in Liberia and it remains troubling and an embarrassment on one hand and as well a source of silent tensions between the Executive and Judiciary Branches of Government.

2.4 Access to Justice before Regional Mechanism and Sub-Regional Court

The history of the West African nation is not replete without chronicling the disdainful events of the past. The settlers or Americo-Liberians unleased a wave of thirteen (13) decades of systemic oppression against the indigenous population and this led to more than three decades of political instability, before a final peace agreement was signed in 2003 between all warring factions to the conflict. These events should have inspired the country to accede to numerous international human rights instruments in order to aid in the prevention of atrocities, safeguard human rights, and entrenched the rule of law.

Interestingly, the nation has acceded to few international instruments to include: the ICCPR, ICESCR, CRC, CRPD, but has refused to accede or ratify their optional protocols in order for citizens to take a complaint before those bodies and access effective justice. On the other hand, on the African continent, it has ratified the African Charter on Human and People's Rights, the Maputol Protocol, and the Ecowas Revised Treaty.

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[210] Ibid. at Article 2

[211] Posum v Pardee (1935), LRSC 11; 4 LLR 299, Syllabi 2 & 3, Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/1935/11.html?stem=0&synonyms=0&query=title(Posum%20near%20Pardee), Last Accessed: 18 February 2020

The most unpleasant development is that Liberia has refused to accede to the optional protocols of almost all of these human rights instruments, which will allow citizens of Liberia to take human rights violations to treaty bodies and regional mechanisms or courts. Liberia has also virulently refused to accede to the protocol creating the African Court of Human and People's Rights . The only regional and sub-regional mechansim that provide effective access to justice for Liberians are the African Commission on Human and People's Rights (ACHPR) and the ECOWAS Community Court.

The only reasons why the nation is a part of the ACHPR is that the commission was established within the African Charter on Human and People's Rights and its recommendations to States are not binding. On the other hand, Liberia was forced to sign and quickly ratify the ECOWAS Revised Treaty because at the time the revised treaty was being negotiated the nation was at a near collapse and gutted by brutal civil conflict.

The interim government was in daring need of help, but had no option but to sign and ratify the ECOWAS Revised Treaty, which creates the ECOWAS Community Court of Justice. The West African nation has always taken a colonial approach, that their judicial institutions are supreme and when the Supreme Court rules in a matter it becomes final and not appealable. These are twists of the facts, because what goes before these bodies are not appeal, rather they are complaints of systemic human rights violations.

2.4.1 Access to Justice at the African Commission on Human and People's Rights

In 1982, African leaders consummated the African Charter on Human and People's Rights with the objectives of 'recognizing the rights, duties and freedoms of every individual and as well ensure the enjoyment of the rights and freedoms enshrined in the African Charter'[212] for all Africans.

Liberia signed the treaty in '1981 and it entered into force in 1986'.[213] The Charter establishes 'an African Commission on Human and Peoples Rights (the Commission) to promote human and peoples rights and ensure their protection in Africa'.[214] The primary mandate of the Commission is 'to promote human and peoples rights, ensure the protection of human and peoples' rights under conditions laid down by the Charter, and interpret all the provisions of the Charter'.[215]

In receiving complaints, 'the Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have

[212] Articles 1 & 2, African Charter on Human and People's Rights, 1982
[213] African Union, Treaties, Conventions and Protocols, Accessed at: https://au.int/en/treaties, Last Accessed: 13 February 2020
[214] Article 30, African Charter on Human and People's Rights, 1982
[215] Ibid. at Article 45 (1)(2) & (3)

been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged'.[216]

In a complaint filed against the Republic of Liberia before the African Commission , the complainants 'alleged that state security officers in Liberia arrested three journalists working for an independent newspaper, detained them without a charge and they continued to languish in detention, which was in contravention of the African Charter, the Constitution of Liberia, and the Universal Declaration of Human Rights. The African Commission requested the parties to submit their arguments on admissibility on several occassions, which went unheeded'.[217]

The commission 'declared the communication inadmissible due to non-exhaustion of local remedies, the complainants have, despite repeated requests, however, not furnished their submissions on admissibility, especially on the question of exhaustion of domestic remedies and a communication be introduced subsequent to exhaustion of local remedies, if they exist, unless it is obvious to the Commission that the procedure for such recourse is abnormally prolonged'.[218] It is important for those who seek to take advantage of these human rights mechanism, to follow the procedures of the human rights mechanism in order to champion the rights of the victims.

2.4.2 Access to Justice before the ECOWAS Community Court of Justice

The Economic Community of West African States (ECOWAS), a sub-regional intergovernmental organization dedicated to free trade, sub-regional peace and security, and democratic governance within members states revised treaty of 1991 established the ECOWAS Community Court. The 'member States of ECOWAS are ipso facto parties to the Court's Statute. The Court has a a mandate to carry out the functions assigned to it independently of the member states and the institutions of the Community, and judgments of the Court of Justice shall be binding on member states, the institutions of the Community, and on individuals and corporate bodies'.[219]

In a cententious matter brought before the Community Court, 'the former Vice Chairman of the Council of State of Liberia alleged that his right to life, right to health, right to dignity and equality before the law, and right to property enshrined in the African Charter of Human and People's Rights, the Universal Declaration of Human Rights, and the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights were been violated as a result of the Government of

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[216] Ibid. at Article 50
[217] Samuel Kofi Woods, II and Kabineh M. Ja'neh v. Liberia (56/02), Paras 1-4, 30 November 2003, Accessed at: https://www.achpr.org/sessions/descions?id=152 , Last Accessed 13 February 2020
[218] Ibid. at Paras 13-16
[219] Article 15 (1-4), Revised Treaty of ECOWAS, 1991, Accessed at: http://prod.courtecowas.org/wp-content/uploads/2018/11/Revised_Treaty_1993_ENG.pdf, Last Accessed: 13 February 2020 ; Also see: http://prod.courtecowas.org/basic-texts/

Liberia refusal to pay his retirement benefits as stipulated in the Retirement Benefit Act of Liberia'.[220]

The Community Court 'declared that the applicant right to life, right to health, right to dignity and equality before the law, and right to property have not been violated, but ordered the respondent, the Liberian Government to calculate and pay to the applicant his entitlement from 1997-2017 in accordance with the provision of the Retirement Benefits Act, calculate and pay to the applicant as refund due to him for security and transport allowance based on the amount budgeted for same for other former members, to immediately restore the pension and other retirement benefits due to the applicant as former Vice Chairman from the date of this judgment in accordance with the Retirement Benefit Act and the Court dismissed the applicant's claim for the sum of twenty million United States Dollars (US$20,000,000) for violation of right to family life and break up of family'.[221]

Finally, accessing justice before the sub-regional court by the former Vice Chairman of the Council of State aided him in the process of obtaining his retirement benefits. Without the ECOWAS Community Court, it would have been difficult, if not impossible for him to have access to an effective remedy. Though his rights were not violated, but his benefits were restored.

2.5 Current Trends of Access to Justice in Liberia

The current trends of access to justice in Liberia is in a state of complete apathy, polarization, and confusion. These are significantly contributing to stifling the rule of law, undermining the peace and political stability achieved over the years and scaring away potential investors, because there can be no genuine peace without a sincere, competent, and strong justice sector. The apathy, polarization and confusion of the nation's legal system emanate from 'the existence of a dual legal system, with a basis in the Liberian constitution and statutory law, where there are internal inconsistencies, including statutes and regulations that conflict with each other and with the constitution and the entire justice system is in need of clarification and revision'.[222] These are troubling realities for a post-conflict country which is bracing against time to fully consolidate its governance and rule of law sectors in order to attract potential investors to lift its people out of the ashes of dirt poverty.

Furthermore, in this opaque dual legal system of the post-conflict nation, the formal or statutory legal system where donors have invested millions of dollars and other resources 'is widely believed to be corrupt and plagued by

[220] Dr. George S. Boley v. Republic of Liberia, (2019), Judgment No: ECW/CCJ/JUD/24/19 , Paras 1-10, Accessed at: http://prod.courtecowas.org/wp-content/uploads/2019/07/JUD_ECW_CCJ_JUD_24_19.pdf, Last Accessed: 13 February 2020

[221] Ibid. at Para 73 (1-6)

[222] Rawls, Amanda C. , Policy Proposals for Justice Reform in Liberia: Opportunities Under the Current Legal Framework to Expand Access to Justice (Paper No. 2: 2011), p 2-3

extensive delays, and is not the forum of choice for most Liberians'[223]; while the traditional or customary legal system that have received little or no support and political will 'is found to raise predictable concerns about gender equality, protection of human rights, due process, and the separation of powers, particularly with respect to the adjudication of more serious crimes'.[224] There are also allegations that 'the chiefs in applying customary laws levy high fines, adjudicate criminal cases outside their jurisdiction and are complicit in forced labour practices'.[225]

As far back as 2008, the Government of Liberia developed its Poverty Reduction Strategy (PRS), which had four cardinal pillars with governance and the rule of law as one of the central pillars. In that strategy paper, the government enumerated that it 'aims to improve the administration of justice by strengthening and enhancing the integrity of legal and judicial institutions, as well as expanding access to justice by enhancing the protection and promotion of human rights and by developing a national framework for the exercise of informal and customary justice to ensure that it conforms to human rights standards including gender equality, upholds the rule of law, and complements the formal justice sector'.[226]

Today, those very strong and germane promises outlined in the strategy paper are an illusion evident by the fact that the most recent development strategy paper adopted by the government in 2018 (after 10 years) indicates that it intends to improve the Judiciary by 'ensuring that both the formal and the traditional justice systems work to the benefit of all, including the poor and most marginalized and there are limited public confidence in the ability of the courts to uphold the rule of law'.[227]

Despite the lack of confidence in the ability of the statutory and customary legal systems in the post-conflict nation to inspire change in the legal sector, tremendous strides have been made in ensuring that people access justice. The Supreme Court of Liberia has continued to regulate the practice of law, ensure that lawyers conform to the code of ethics, while judges conform to the judicial canons. Lawyers and judges have been penalized for breaching their respective code of ethics. Courts are hearing cases and dispensing justice but with a challenge of backlog of cases. Donors have also funded 'a prosecution unit and court devoted to sexual and gender-based violent crimes; a training program to train new magistrate judges for national deployment; a national public defender program to establish a probation system and to supplement

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[223] Ibid. at p 3
[224] Ibid. at p 3
[225] International Crisis Group Working to Prevent Conflict Worldwide, LIBERIA: Resurrecting The Justice System, Africa Report (N°107 – 6 April 2006), p 12
[226] Poverty Reduction Strategy of Liberia (2008), Chapter 8, Pillar 3, p 84-92, Accessed at: https://www.imf.org/en/Publications/CR/Issues/2016/12/31/Liberia-Poverty-Reduction-Strategy-Paper-22145 , Last Accessed: 18 February 2020
[227] Pro-poor Agenda for Prosperity and Development (2018), Chapter 4, Pillar 3, p. 73-74 Accessed at: https://www.emansion.gov.lr/doc/Pro-Poor%20Agenda%20For%20Prosperity%20And%20Development%20book%20for%20Email%20sending%20(1).pdf%20-%20Compressed.pdf, Last Accessed: 18 February 2020

salaries of prosecutors; and countless other interventions designed to strengthen the formal legal system'.[228]

Finally, within the ambits of Liberian laws, people are accessing justice in both criminal matters and civil matters as indicated earlier and the courts are at the forefront of ensuring the dispensation of justice in the event there are controversies or confusion in communities and among individuals. An innovative and ambitious initiative known as the justice and security hubs has been launched to ensure all citizens in both rural and urban Liberia access justice, fully and expeditiously.

2.5.1 Accessing Justice via Innovative Hubs

Citizens today in Liberia access justice both in criminal and civil matters before different courts across the nation, but the challenge of accessing justice by most rural Liberians is still prevalent. Most rural Liberians as indicated earlier, access justice through the traditional or customary legal system, where some of the practices are contrary to human rights standards.

To curb these contrarian practices and ensure that rural Liberians access justice, 'the Government of Liberia and the United Nations Peacebuilding office committed themselves to establishing and maintaining five regional justice and security hubs in Liberia',[229] which will ensure greater access to justice for rural Liberians in the fifteen political subdivisions of Liberia. Interestingly, 'the vision is for these hubs to enhance access to justice in the process of strengthening security in the interior and they are designed to extend security and justice services to all Liberians throughout the country'.[230]

In the post-conflict nation's report to the second cycle of the Universal Periodic Review (UPR) of the Human Rights Council, the report outlined that the 'first justice and security hub was completed in Gbarnga in 2013 and is currently operational; hubs two and three are in the process of being established'.[231] The report further states that the 'hubs will work closely with civil society in the areas of justice and security and all subsequent hubs will be comprised of a contingent of Police Support Unit (PSU) officers, Border Patrol Unit (BPU) officers, courts (both circuit and magisterial), a prison, and

[228] Rawls , Amanda C. , Policy Proposals for Justice Reform in Liberia: Opportunities Under the Current Legal Framework to Expand Access to Justice (Paper No. 2: 2011), p 3
[228] Ibid. at p 8
[229] United Nations Peacebuilding Commission, Statement of mutual commitments on Peacebuilding in Liberia, Para 30 (b), 29 October 2010, Accessed at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N10/641/31/PDF/N1064131.pdf?OpenElement , Last Accessed: 25 March 2020
[230] Chalmers, Shane, Liberia and the Dialetic of Law: Critical Theory, Pluralism, and the Rule of Law, (Routledge 2018), p 91-92
[231] Liberia National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, para 36, May 2015, Accessed at: https://digitallibrary.un.org/record/788734?ln=en#record-files-collapse-header , Last Accessed: 25 March 2020

a Sexual and Gender-Based Violence (SGBV) Unit, and will be staffed by public service officers, public defenders, county attorneys, and human rights monitors from the nation's human rights commission'.[232]

Finally, a Magistrate Sitting Program (MSP) at the Monrovia Central Prison (MCP) was another innovative means by which pretrial detainees sought access to justice. The 'program brought about a notable decrease in the rate of pretrial detention at the Monrovia Central Prison, where approximately half of Liberian inmates are held and the MSP is currently functional in eight magistrates courts in Montserrado County. Between 2012 and 2014, nearly 2,000 cases were heard, of which approximately 500 were dismissed, 700 were transferred, and 800 were remanded'.[233] Civil society organizations normally provide legal aid for these pretrial detainees at the MSP and these organizations have played a pivotal role in Liberia's rebuilding and transitional justice processes.

2.6 The Transitional Justice Process and Access to Justice

The signing of the Comprehensive Peace Accord (CPA) by the Government of Liberia, warring factions, political parties, and civil society organizations in Accra, Ghana on June 17th, 2003 officially ended the nearly 14-years of civil conflict in Liberia. The CPA called for an immediate 'ceased fire amongst the warring factions and the government, international stabilization force, security sector reform, and establishment of a transitional government'[234]. The CPA suspended the Constitution of Liberia in order to pave a way for a peaceful transition and further empowered the National Transitional Government of Liberia (NTGL) to 'ensure the scrupulous implementation of the Peace Agreement with a mandate to oversee the implementation of rehabilitation programs, promotion of reconciliation, peace and stability in the country, contribute to the conduct of the October 2005 elections',[235] and transition the country to a democratic rule.

The suspension of the constitution and laws of Liberia was to provide an avenue for 'extra-constitutional arrangement that will facilitate the proper functioning of the transitional government'[236] in order to transition the nation to a democratic rule after two years of interim arrangement, afterwhich 'all provisions of the 1986 Constitution will be fully restored with the inauguration of the elected Government in January 2006'.[237]

The election of Ellen Johnson Sirleaf and her subsequent induction on January 22, 2006 as the first post-conflict democratically elected leader, Liberians set a new milestone in the history of their country, by transitioning to a democratic rule, which set the stage for the nation to initiate the process

[232] Ibid. at para 36
[233] Ibid. at para 38
[234] Articles II, IV, VI, and XXI, Comprehensive Peace Agreement of Liberia, 2003
[235] Ibid. at Article XXII (1) & (2) (b, c &d)
[236] Ibid. at Article XXXV (a)
[237] Ibid. at Article XXXV (e)

of implementing substantial reforms and ensure that the key tenets of transitional justice are implemented.

2.6.1 The Transitional Justice Process

From a critical perspective, the concept of transitional justice 'concerns how a society overcomes a legacy of large-scale past abuses towards the end of authoritarian rule or conflict and it is a legal concept that is regulated by international criminal, humanitarian, human rights and refugee laws'.[238] It is also 'a set of approaches that communities can use to move towards lasting peace by ensuring accountability for crimes and atrocities, establishing truth, and fostering reconciliation'.[239] The transitional justice process in Liberia has been an uphill battle especially looking at the atrocities committed during the civil conflict and comparing it with the modicum steps the government has taken to reconcile Liberians, ensure the end of impunity , ensure political stability and create an atmosphere where all Liberians will live at peace with each other.

Amidst these challenges and in order to ensure that the transitional justice process became a reality, the agreement signed by all parties to the civil conflict in Liberia outlined that the government should establish a Truth and Reconciliation Commission (TRC), an Independent Human Rights Commission and Governance Reform Commission. In a bid to transform the nation and consolidate its democractic governance, these institutions were established to drive key reform initiatives in the post-conflict nation.

The Truth and Reconciliation Commission of Liberia

The CPA mandated that the Government establish a 'TRC in order to provide a forum that will address issues of impunity, as well as an opportunity for both the victims and perpetrators of human rights violations to share their experiences'.[240] In June 2005, the Legislature approved the TRC Act which established the TRC and paved the way for the proper functioning of the Commission.

The primary mandates of the commission was 'to investigate gross human rights violations and violations of international humanitarian law, provide a forum that will address issues of impunity, as well as an opportunity for both victims and perpetrators of human rights violations to share their experiences in order to, create a clear picture of the past to facilitate genuine healing and reconciliation. Investigate the antecedents of the crises which gave rise to and impacted on the violent conflict in Liberia, conduct a critical review of

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[238] Grover, Leena, Transitional Justice, International Law and the United Nations, Nordic Journal of International Law 88 (2019) 359-397, p 360, Accessed at: https://brill-com.ludwig.lub.lu.se/view/journals/nord/88/3/article-p359_359.xml , Last Accessed: 20 February 2020

[239] Transitional Justice in South Africa, Holocaust and Human Behavior, (Chapter 11), Accessed at: https://www.facinghistory.org/holocaust-and-human-behavior/chapter-11/transitional-justice-south-africa, Last Accessed: 20 February 2020

[240] Article XIII (1), Comprehesive Peace Agreement, 2003

Liberia's historical past, adopt specific mechanisms and procedures to address the experiences of women, children and vulnerable groups, and compile a report that includes a comprehensive account of the activities of the Commission and its findings'.[241]

Consistent with the mandate of the TRC and its obligation to 'submit a final report containing findings and recommendations at the end of its tenure to the National Legislature',[242] the Commission submitted its report and 'recommended the establishment of an extraordinary criminal tribunal, prosecution of war criminals, public sanctions for some officials, reparations to victims, amnesty, and a palava hut peace building mechanism to foster peace, dialogue, and national reconciliation'.[243]

Aggrieved by the institution of a ban, a victim of the TRC report challenged the ban placed on he and forty eight other persons from holding public office, (elective or appointed) for a period of thirty years. He challenged the ban that his constitutional rights have been violated. The Supreme Court of Liberia held that 'the implementation of section 14.3 (list of persons recommended for public sanctions) of the TRC Final Report is unconstitutional and the provision of Section 48 of the TRC Act which compels the President to implement all recommendations of the TRC, in so far as it relates to section 14.3 decision and ruling of the TRC is unconstitutional for any implementation'.[244] The Supreme Court further held that 'section 14.3 decision would not only deprive the petitioner of the constitutional guaranteed right to an appeal, but would infringe on the constitutional prerogatives of the Supreme Court and Section 48 of the TRC Act directing mandatorily that the President implements all of the recommendations of the TRC is unconstitutional, of no legal effect, and therefore unenforceable'.[245]

Recommendation for an Extraordinary Criminal Tribunal

One of the most daunting challenges facing the post-conflict nation and hampering the entire transitional justice process in Liberia is the lack of a political will to set up an extraordinary criminal tribunal to prosecute those responsible for heinous crimes in the post-conflict nation. Nearly eleven 'years since the TRC submitted its report, successive governments have taken little or no action to prosecute war criminals'.[246] Interestingly, the TRC Act

[241] Article IV, Section 4, Truth and Reconciliation Commission Act, 2005, Accessed at: http://www.liberlii.org/lr/legis/acts/tarca371/, Last Accessed: 20 February 2020
[242] Ibid. at Article X, Sections 43 & 44
[243] Consolidated Final Report of the TRC Report (Volume II), Sections 12-17, p 348-381 2009, Accessed at: http://www.trcofliberia.org/resources/reports/final/volume-two_layout-1.pdf , Last Accessed: 20 February 2020
[244] Williams v Tah et al (2011), Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/2011/12.html?stem=0&synonyms=0&query=Archie%20williams , Last Accessed 20 February 2020
[245] Ibid.
[246] Yelloway, Alvin Weagar, Liberia at a Crossroads: Establishment of a Specialized Criminal Tribunal or a Reverse to Anarchy, 2018, Accessed at: http://alvinweagaryelloway.blogspot.com/2020/01/liberia-at-crossroads-establishment-of.html, Last Accessed: 20 February 2020

mandates the President of the nation to implement all the recommendations of the Commission. The Act succintly states that 'the Head of State shall report to the National Legislature within three months of receipt of the report of the TRC, and on a quarterly basis thereafter, as to the implementation of the Commission's recommendations. All recommendations shall be implemented. Where the implementation of any recommendation has not been complied with, the Legislature shall require the Head of State to show cause for such non-compliance'.[247]

While it is a fact that a section of the TRC recommendations were inconsistent with constitutional provision and was struck down by the Supreme Court, it is essentiual for the government to implement the findings of the TRC, specifically the establishment of a specialized criminal court in order to prosecute those responsible for the gravest crimes against Liberians during the conflict. Failure by the government to do so, it would jeopardize the relative peace the nation is enjoying.

In its first concluding observation on Liberia, the UN Human Rights Committee outlined that 'the State party should, as a matter of priority, establish a process of accountability for past gross human rights violations and war crimes that conforms to international standards and ensure that all alleged perpetrators of gross human rights violations and war crimes are impartially prosecuted and, if found guilty, convicted, and punished in accordance with the gravity of the acts committed, regardless of their status or any domestic legislation on immunities, and remove any persons who are proven to have been involved in gross human rights violations and war crimes from official positions'.[248]

Finally, the failure of the Government of Liberia to establish a specialized criminal tribunal is affecting access to justice for victims of the civil conflict and it will 'only reveal that the government is craving for the nation's reverse to anarchy'.[249] Failure to prosecute warlords is contrary as well to the United Nations principles to combat impunity.

The Independent National Commission of Human Rights

The CPA enunciates that 'the parties to the agreement agreed on the need for the establishment of an Independent National Commission on Human Rights to monitor compliance with the basic rights guaranteed in international human rights instruments and to promote human rights in the entire Liberian

[247] Article X, Section 48, Truth and Reconciliation Commission Act, 2005
[248] Human Rights Committee Concluding observations on the initial report of Liberia, para 11 and 11 (a), 27 August 2018, Access at: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhst0EqMtyqQ%2BAVhHZipQtX7Zd0elKD3TcHOyCKr%2FuE%2FXRUZ42mBW5%2BUFrh0rN7fb35BYTR2IQuv2EO7SYD5rHU5asuxzEA%2FSM3wC62Bo0ATRg, Last Access: 20 February 2020
[249] Yelloway, Alvin Weagar, Liberia at a Crossroads: Establishment of a Specialized Criminal Tribunal or a Reverse to Anarchy, 2018

society'.[250] Based upon this, the transitional government created a new and independent human rights commission in 2005 with 'powers to have general competence to protect and promote human rights in the Republic of Liberia'.[251] The commission's Act was amended in order to 'be in harmony with the provisions of existing laws of Liberia'.[252]

In its concluding observation on Liberia, the Human Rights Committee explicated that 'the State party should strengthen the human and financial resources allocated to the Independent National Commission on Human Rights, thereby enabling it to discharge its functions efficiently and it should also ensure that the process for appointing commissioners and the Chair is timely, inclusive, and transparent'.[253]

The Governance Commission

Under the Accra Peace Agreement, the parties agreed to establish a 'Governance Reform Commission to serve as a vehicle for the promotion of the principles of good governance, develop public sector management reforms through assessment, ensure transparency, and accountability in the governance process and ensure an enabling environment which will attract private sector direct investment'.[254] At the end of the transitional government, the new government through the Head of State issued an Executive Order for the Governance Reform Commission to 'implement studies to determine the human resources and possible expenditures for the new government, revise the mandates and structures of autonomous agencies and public corporation, finalize and implement a blue-print providing options for political, social and economic decentralization'.[255]

The Commission was formally enacted as the Governance Commission in 2007 by an Act of the Legislature to ensure participatory and democratic governance in Liberia and as well develop policies and procedures for consolidation of the nation's democracy. Since the establishment of the Governance Commission, it has been instrumental in working to ensure that governance and anti-graft institutions were established. These institutions include: the Liberia Anti-Corruption Commission, the Liberia Extractive Industry Transparency Initiative, the Public Procurement and Concession Commission, the Law Reform Commission, and the restructuring of the

[250] Article XII, Sections 1a & 2a & b, Comprehensive Peace Agreement, 2003
[251] Article III (1), Independent National Commission on Human Rights Commission Act, 2005
[252] Preamble, Amendment of Independent National Commission on Human Rights (INCHR) Act, 2009, Accessed at: http://www.liberlii.org/lr/legis/acts/incohraao617/ , Last Accessed 20 February 2020
[253] Human Rights Committee Concluding observations on the initial report of Liberia, para 9, 27 August 2018
[254] Article XVI, Section 1 (b, c & f), Comprehensive Peace Agreement, 2003
[255] Repositioning of the Governance Reform Commission (No.2), Executive Order N° 2, Para 1, 2, & 5, 2006, Accessed at: Last Accessed: http://www.liberlii.org/cgi-bin/disp.pl/lr/legis/exec_orders/rotgrc2515/rotgrc2515.html?stem=0&synonyms=0&query=governance, 20 February 2020

General Auditing Commission and Civil Service Agency. These integrity institutions are contributing to the development of the nation.

Finally, on the policy front, the Governance Commission has ensured the drafting and subsequent passage of the Land Rights Act, the Local Government Act, drafted the Decentralization Act, ensure the setting up of the Public Accounts Commission, but the Governance Commission is challenged with 'funding, staff shortages, logistical problems, capacity, and skilled staff'.[256] These good governance laws and institutions are on the frontlines to curb corruption in the post war nation, but daunting challenges have led to widespread and sporadic corruption in every facet of the Liberian Government, with corruption in the Judiciary, as no exception.

[256] Governance Commission of Liberia, Annual Report (2013), Section 3, Accessed at: http://www.governancecommissionlr.org/doc_download/GC%202013%20Annual%20Report%20-%20Final.pdf?a4705305cd27e04fb1f66830e7e0ef9d=NjI%3D, Last Accessed: 20 February 2020

CHAPTER 3

In this chapter, I will analyze corruption in the Liberian Judiciary, specifically delving into bribery, fraud, commingling, conversion, misappropriation, gross breach of ethical conduct, and abuse of power. These acts of corruption will be critically analyzed to establish how the Judiciary is stifling the rule of law and it will serve as a basis to directly link corruption in the Judiciary to prolonged pretrial detention in chapter four.

CORRUPTION IN THE LIBERIAN JUDICIARY

Since the end of the civil conflict in 2004 and the nation's return to political stability, corruption in the Liberian Judiciary has been one of the biggest menace that has not only undermined public confidence in the Judiciary, but has crushed the fabric of the nation's statutory legal system and weakened the rule of law.

In its 2019 report, the World Justice Project (WJP) Rule of Law Index presented a disappointing score for the post-conflict nation. The WJP Rule of Law Index 'scores range from zero (0) to one (1), with one (1) indicating the strongest adherence to the rule of law'.[257] The post-conflict nation crumbled in the report accumulating a total point of '0.46 with a rank at 97th place amongst 126 countries'.[258] The index further indicated that Liberia accumulated '0.32 under no corruption in civil justice, 0.38 under no corruption in criminal justice and 0.30 under absence of corruption in the Judiciary'.[259] These data only indicate widepread abuse of power, unethical and unprofessional conduct, and sporadic corruption in the Liberian Judiciary.

Judicial corruption are 'acts or omissions that constitute the use of public authority for the private benefit of judges, court personnel, and other justice sector personnel that result in the improper and unfair delivery of judicial decisions'.[260] These acts of judicial corruption ranges from 'acts of bribery, theft of public funds, extortion, intimidation, influence pedaling, the abuse of court procedures for personal gain, and any inappropriate influence on the impartiality of the judicial process by an actor within the court system'.[261]

In the Liberian Judiciary, where Justice of the Peace Court and Magistrates' Court are courts of first instance and are accessed by most Liberians in the urban and peri-urban areas, 'judicial corruption is perhaps at its worst at this

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[257] World Justice Project, Rule of Law Index (2019), p 6 & 97, Accessed at: https://worldjusticeproject.org/sites/default/files/documents/ROLI-2019-Reduced.pdf , Last Accessed: 11 March 2020

[258] Ibid. at p 97

[259] Ibid.

[260] Igbanugo, Herbert A., The Rule of Law, Judicial Corruption, and the Need for Drastic Judicial Reform in Sub-Saharan Africa's Nation States., International Law News, 00470813, (Summer2013), Vol. 42, Issue 3, p 1

[261] Ibid.

level'.[262] In its 2017 report, the Independent Human Rights Commission of Liberia reported that 'the restriction of accused person's right to bail, the inability of the 33 public defenders deployed across the Country to cover their assigned areas, and the inadequacy of prosecutors are among the key factors hampering justice service delivery and judges often show partiality in the dispensation of justice as a result of bribery, social and political connections and in some instances, submission to influences from the echelon of State power'.[263]

Finally, corruption in the Liberian Judiciary takes the form of bribery of judges, lawyers, and jurors; fraud, commingling, misappropriation, and conversion of client's money by lawyers; abuse of power, and other unethical behavior by lawyers and judges. These appalling and despicable acts of corruption in the Judiciary undermine public confidence in the entire justice system of the nation, make justice an illusion, deny citizens access to effective justice, increase backlog of cases at the different courts in the nation, plummet inequality, scare away potential investors, and worst of all increase poverty among the citizenry.

3.1 Bribery as an Act of Corruption

Bribery in the Liberian Judiciary is one of the most devastating menace which is corroding the fabric of the post-conflict nation's Judiciary on a daily basis. Judges, magistrates, and justice of the peace are parading in bribery in every court through the length and breadth of the nation and their judgments are heavily influenced by bribe.

The 2004 States Department Human Rights report outrageously indicted the Liberian Judiciary by indicating that 'the Judiciary was corrupt, judges were subject to political, social, familial, and financial pressures, and Courts regularly received bribes or other illegal gifts out of damages that they awarded in civil cases'.[264] Fourteen years later, after the nation has made tremedous gains in consolidating its democracy with the hosting of three peaceful and uninterrupted presidential elections which ushered in two different administrations, the State Department report was not favorable for the post-conflict nation. The latest report indicates that 'corruption persisted in the legal system and some judges accepted bribes to award damages in civil cases'.[265] The report went on to outlined that 'judges sometimes solicited

[262] International Crisis Group Working to Prevent Conflict Worldwide, LIBERIA: Resurrecting The Justice System, Africa Report (N°107 – 6 April 2006), p 4
[263] Independent National Commission of Human Rights, Liberia Human Rights Situation Report (2017), Section 1.6, p 19, Accessed at: https://inchrliberia.com/images/INCHR_Human_Rights_Situation_Report_2017_final_edit-min.pdf, Last Accessed: 20 February 2020
[264] United States Department of State Human Rights Report, Bureau of Democracy, Human Rights, and Labor (2004), Liberia, February 28, 2005, Accessed at: https://2009-2017.state.gov/j/drl/rls/hrrpt/2004/41611.htm , Last Accessed 25 February 2020
[265] United States Department of State Human Rights Report, Bureau of Democracy, Human Rights and Labor (2018), Liberia, p 11, March 13, 2019, Accessed at:

bribes to try cases, grant bail to detainees, or acquit defendants in criminal cases and defense attorneys and prosecutors sometimes suggested defendants pay bribes to secure favorable decisions from judges, prosecutors, and jurors, or to have court staff place cases on the docket for trial'.[266]

In its 2017-2018 report on the rule of law, the World Justice Project index highlighted that the 'absence of corruption in the Liberian Judiciary was at 0.32, while in civil justice no corruption was at 0.28, and in criminal justice no corruption was at 0.32, thus ranking Liberia at 94 out of 113 countries'[267] accessed during the period under review. Bribery in the Judiciary has created a situation where 'all members of society are not held accountable to the law because the system is corrupt, courts are not transparent as to why litigants are charged fees, parties use their wealth and power to influence judges, and laws are not equally enforced because the system lacks the resources to function in many parts of the country'.[268]

In a classic act of bribery on the part of one of the judges of the Commercial Court, the judge 'exorted over Nineteen Thousand Five Hundred United States Dollars from a party litigant in an action of debt before him and promised the party litigant that he would have rendered a favorite judgment on his behalf'.[269] When the party litigant lost the matter in the Commerical Court, he complained the judge to the Supreme Court and the Supreme Court held that 'bribery and other mischievous deeds are not carried out in the open, they are usually secret covenants between the parties involved and the respondent judge actions were contrary to the judicial canons and they were a gross ethical breach and the respondent judge was suspended for a period of one year, recommended to the Legislature for impeachment, the judgment in the case was set aside, and a new trial in the case was ordered'.[270]

In a case in the Civil Law Court in Montserrado County characterized by bribery, criminality of the highest degree, fraud, and conflict of interest at which time 'Cllr. Flaawgaa R. McFarland represented conflicting interests in the same case and obtained a second judgment without strict conformity of the trial procedure in Liberia, in that the entire case records reveal no motion filed by either of the parties to rescind the previous ruling of May 25, 2005 and Cllr. McFarland was the legal Counsel for Finance and Development Corporation (FIDC) represented by and thru Karel Sochor et al. and he filed the petition for cancellation of the Sales Agreement on behalf of FIDC by and thru Karel Sochor et al. and there was no showing that his position as counsel

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https://www.state.gov/wp-content/uploads/2019/03/Liberia-2018.pdf , Last Accessed: 25 February 2020

[266] Ibid. at 11

[267] World Justice Project, Rule of Law Index (2017-2018), p 106, Accessed at: https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf, Last Accessed: 11 March 2020

[268] Compton, Jonathan, The Peril of Imposing the Rule of Law: Lessons From Liberia (2014), University of Minnesota Law School Scholarship Repository, p 73

[269] In Re: Judicial Inquiry Commission report: Complaint of L. Swansey Fallah Against his Honor Richard S. Klah, Associate Judge, Commercial Court of Liberia, August 16, 2019

[270] Ibid. at p 26

for FIDC et al. was ever changed, but the selfsame McFarland turned around and became legal Counsel for Mr. Juha, an adversary to Karel Sochor, et al.'.[271] Based upon the visible acts of bribery, fraud and conflict of interest, the Supreme Court of Liberia 'vacated and set aside the second judgment entered by the trial judge on the 7th day of July 2005 as though never entered, reinstated the first judgment of May 25, 2005, and suspended Cllr. McFarland from the practice of law within the bailiwick of the Republic of Liberia directly or indirectly for a period of three (3) years'.[272]

Finally, despite prohibition of bribery in Liberia and the Judiciary specifically; bribery is systemic and entrenched in the statutory legal system. Bribery has become 'a primary obstacle to justice, focusing on the lack of transparency of the fees charged to litigants, as much as on the ability of wealthier or more powerful parties to influence the judge'.[273]

3.2 Judicial independence, Immunity, and Political Interference, and Maneuvering in the Judiciary

3.2.1 Judicial Independence and Immunity

The Liberian Constitution established the Judiciary as an independent branch of the government which coordinates with the other two branches of government for the smooth administration of the State. It grants judicial immunity to judges for all official acts. The constitution succintly states that 'no judicial official shall be summoned, arrested, detained, prosecuted or tried civilly or criminally by or at the instance of any person or authority on account of judicial opinions rendered or expressed, judicial statements made and judicial acts done in the course of a trial in open court or in chambers, except for treason or other felonies, misdemeanor or breach of the peace'.[274] The Constitution went on to state that 'statements made and acts done by such officials in the course of a judicial proceeding shall be privileged, and subject to the above qualification, no such statements made or acts done shall be admissible into evidence against them at any trial or proceeding'.[275]

Despite these constitutional safeguards and guarantees for judicial officials, the Judiciary in Liberia has been lambasted for not being independent in its modus operandi. In a survey conducted by the World Economic Forum (WEF) on the independence of Judiciary across the globe with 'one (1) meaning not independent at all and seven (7) being entirely independent'[276],

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[271] In re Complaint of Sochor v McFarland (2007), p 3, Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/2007/20.html?stem=0&synonyms=0&query=Mcfarland, Last Accessed: 11 March 2020

[272] Ibid. at p 14-15

[273] Rawls , Amanda C. , Policy Proposals for Justice Reform in Liberia: Opportunities Under the Current Legal Framework to Expand Access to Justice (Paper No. 2: 2011), p 5

[274] Article 73, Constitution of Liberia, 1986

[275] Ibid.

[276] World Economic Forum, Executive Opinion Survey (2018), Judicial Independence, p 1, Accessed at http://reports.weforum.org/pdf/gci-2017-2018-

the post-conflict nation's Judiciary sat at the rock bottom of the survey. Liberia accumulated a total score of '3.3 sitting at a bottom 97th place among 137 countries'.[277] The absence of independence in the Liberian Judiciary has led to little faith in the Judiciary. 'Judges and magistrates are subject to influence and engaged in corruption'.[278] The Bangalore Principles of Judicial Conduct emphases that 'judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects'.[279]

In a total disregard for judicial independence and immunity a 'private prosecutor alleged that Ms. Zoe Gboie had unauthorizedly taken from his control items amounting to the value of six thousand, one hundred sixty-five Liberian Dollars (L$6,165.00). Apparently, the defendant beared some relationship to officials of the Ministry of National Security (the contemnors). The comtemnors had requested the Magistrate (relator in the contempt proceedings) to turn the private prosecutor over to them to undergo another investigation, after the Magistrate had ordered the defendant in the case before him arrested and detained, because the defendant could not post bail bond pending the trial of the case. The Comtemnors realized that the defendant was in prison, they took several security personnel, converged at the Magisterial Court and placed the relator under arrest, brutalized the relator, took him to their office, tortured the relator as a means of subduing him and forcing him to order the release of the defendant, but the relator invoked judicial immunities and independence, but the Comtemnor continue to mete out the torture which was so inhumane and unbearable that the relator yielded and signed the order for the release of the defendant. Thereafter, relator was released and complained to the Supreme Court'.[280]

The Supreme Court found 'the contemnors guilty of the offense of criminal contempt for their deliberate usurpation of the authority and jurisdiction of the Supreme Court, for their violation of the constitutional doctrine of separation of powers, and for their violation of the constitutional immunity granted to judicial officers in the performance of their duties. Contemnors were adjudged guilty of contempt of the Judiciary and sentenced to imprisonment in the common jail for a period of one (1) calendar year'.[281] On Judicial independence, the Court had earlier held that 'no department of the Government can exercise judicial functions but the court itself. Legislation,

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scorecard/WEF_GCI_2017_2018_Scorecard_EOSQ144.pdf , Last Accessed: 11 March 2020

[277] Ibid. at p1

[278] United States Department of State Human Rights Report, Bureau of Democracy, Human Rights and Labor (2018), Liberia, p 11, March 13, 2019,

[279] Value 1, The Bangalore Principles of Judicial Conduct, 2002

[280] In re Honourable Prince Quaye Toe (1999), 39 LLR 802, Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/1999/45.html?stem=0&synonyms=0&query=In%20re:%20HONOURABLE%20PRINCE%20QUAYE%20TOE , Last Accessed: 11 March 2020

[281] In re Honourable Prince Quaye Toe (1999), 39 LLR 814

therefore, is unconstitutional which seeks to have other branches of Government participate in judicial work'.[282]

3.2.2 Political Interference and Maneuvering

The lack of an independent Judiciary in the post-conflict nation can be attributed to the power of the president to appoint all senior judicial officials. The Constitution provides that the 'President shall appoint the Chief Justice and Associate Justices of the Supreme Court and judges of subordinate courts'.[283] As indicated earlier, these subodinate courts include all of the Circuit Courts, Specialized Courts, Magistrate, and Justice of the Peace Courts.The Judiciary Law also empowers the 'President to appoint clerks of all courts, sheriffs, constables, and other court officials'.[284] This imperial power of the President to appoint officials of the entire Judiciary creates a situation where the independence of the Judiciary has become a mirage.

This mirage has become problematic and has been criticized that 'the judicial branch has always been little more than an appendage of the presidency, with successive presidents appointing all judicial officers and removing those showing any independence and dependence on the Executive is an entrenched practice'.[285] This criticism vilifies access to justice in a democratic society especially for a post-conflict country which needs to invest substantially in the rule of law in order to build trust among its citizens.

In its annual report, the Independent National Human Rights Commission of Liberia lamented that 'there is no independent constitutional or statutory framework established to vet the competency, integrity, and qualification of would-be judges in Liberia and absence this framework, the Judiciary is prone to political influences from imperial presidency which has haunted the Judiciary throughout the historical development of Liberia and eroded confidence'.[286]

The Human Rights Committee in its general comment with regards to the independence of tribunal and courts outlined that 'the requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature'.[287] The Committee further enounced that 'States should take specific measures guaranteeing the

[282] In re Constitutionality of Legislative Act (1914), 2 LLR 157, Syl. 2
[283] Article 53 (C), Constitution of Liberia, 1986
[284] New Judiciary Law of Liberia, 1972 – See relevant Court Statutes and Appointments
[285] International Crisis Group Working to Prevent Conflict Worldwide, LIBERIA: Resurrecting The Justice System, Africa Report (N°107 – 6 April 2006), p 1-2
[286] Independent National Human Rights Commission of Liberia, 2018 Human Rights Situation Report of Liberia, p 17-18, May 2019
[287] Human Rights Committee, General Comment No. 32 (2007), Right to equality before courts and tribunals and to a fair trial, para 19

independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension, and dismissal of the members of the judiciary and disciplinary sanctions taken against them and it is necessary to protect judges against conflicts of interest and intimidation'.[288]

In a rather strange and unorthrodox move, the local media reported that 'the President of Liberia replaced a Stipendiary Magistrate of the Monrovia City Court, whose ruling on November 4, 2019 disagreed with argument by government lawyers in the writ to close-down the Roots FM 102.7 radio station'.[289] The reportage by the local media indicates how presidential abuse of power is hindering the independence of the Judiciary contrary to the guidance provided by the treaty body.

Finally, in its show of strength in order to draw the constitutional demarcation between the Executive Branch and the Judiciary Branch of Government and as a basis to sketch out its independence, the Supreme Court of Liberia held in a contempt proceedings against Christiana P. Tah, Minister of Justice 'for her conduct in releasing, without reference to the Court, a person imprisoned as a result of contempt of Court and her persistent affront to the Court in her refusal to reverse the action; the Court suspended her from the practice of law for a period of six (6) months'.[290]

3.3 Prohibition of Corruption, Measures to Curb Corruption, and Abuse of Power in the Judiciary

3.3.1 Prohibition of Corruption

It is an undeniable fact that corruption permeates every strata of the Liberian society and it is ingrained in the fabric of the three branches of the Liberian Government. Liberian laws prohibit corruption on one hand and on the other hand criminalizes corruption. Liberia 'ratified the United Nations Convention Against Corruption in 2005'.[291] While corruption in the Liberian Judiciary has remain pervasive, the supreme law of the post-conflict nation mandates the Supreme Court to regulate the Judiciary in general, including the legal profession.

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[288] Ibid.
[289] Davis, Abenego, Reprisal Replacement: The Daily Observer Newspaper online, November 8, 2019 Edition, Accessed at: https://www.liberianobserver.com/news/reprisal-replacement/ , Last Accessed: 11 February 2020
[290] Contempt Proceedings Against Hon Tah et al. (2014), LRSC 2, Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/2014/2.html?stem=0&synonyms=0&query=Tah , Last Accessed: 25 February 2020
[291] Status and Ratification Status, United Nations Convention Against Corruption, Accessed at: https://www.unodc.org/unodc/en/corruption/ratification-status.html , Last Accessed: 26 February 2020

The Constitution enounces that 'the Supreme Court shall from time to time make rules of court for the purpose of regulating the practice, procedures, and manner by which cases shall be commenced and heard before it and all other subordinate courts'.[292] Furthermore, the Constitution oultined that the Supreme Court 'shall prescribe such code of conduct for lawyers appearing before it and all other subordinate courts as may be necessary to facilitate the proper discharge of the court's functions. Such rules and code, however, shall not contravene any statutory provisions or any provisions of this Constitution'.[293]

The UN Convention Against Corruption elucidates 'State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary and such measures may include rules with respect to the conduct of members of the judiciary'.[294]

Based upon the constitutional dictates and the provisions outlined in the UN Convention, and in order for the Supreme Court of Liberia to effectively regulate the administration of justice at which time all justices, judges, and lawyers will be bind by ethical standards; the Court through its rule making power enacted the Judicial Canons to regulate the ethical behavior of all judges. It also enacted the Code of Moral and Professional Ethics to regulate the professional conduct of all lawyers practicing before all courts in Liberia.

3.3.2 Measures to Curb Corruption and Abuse of Power

The Judicial Canons

The Judicial Canons of Liberia were developed to exclusively regulate the ethical behavior of all judges within the bailiwick of the republic during the course of their professional duties. The Canon places high moral and ethical standards on all judges from respecting and upholding all the laws of Liberia, to laying down essential conduct of judges, as well as 'prohibiting judges from receiving gifts and involving in corrupt acts; to serve the public interest and to administer justice fairly and equitably'.[295]

The Canon forbids 'a sitting judge from practicing law directly and indirectly, cautions a judge to conduct himself or herself in a decent and honorable manner in society, and the judge should at all times be alert in his or her ruling and the conduct of the business of the court'.[296] It also imposes a duty on the 'judge to be temperate and attentive in the discharge of his or her duties,

[292] Article 75, Constitution of Liberia, 1986
[293] Ibid.
[294] Article 11, United Nations Convention Against Corruption, 2005
[295] Canons 1-24, Judicial Canons of Liberia, 1999, Accessed at: https://judiciary.gov.lr/judiciary-connons-of-the-republic-of-liberia/ , Last Accessed: 26 February 2020
[296] Ibid. at Canons 4-24

should not permit private interviews, arguments or communication designed to influence his or her judicial action and a judge should exert independence in his or her duties'.[297] A judge can be reprimanded or punished for corrupt practices or breach of ethical standards by the Supreme Court. The Judicial Canon enounces that 'a judge should be subject to disciplinary action for the wanton and reckless abuse of discretion which become violative of the Constitution, statute, and laws'[298] of Liberia.

Mechanism to Probe Judges' Unethical Conduct and Corruption

Judges who breach the standards set up in the canons are subjected to disciplinary measures through an organ of the Judiciary established in the Canon known as Judicial Inquiry Commission (JIC). The Commission has 'exclusive power and authority to receive and investigate complaints against judges of all courts for violation of any provision of the Judicial Canons'[299] and 'the penalty for violation of any provision of the Judicial Canon shall be either fine, suspension, impeachment, and/or prosecution in a court of law according to the gravity of the violation'.[300]

The JIC is composed of 'an Associate Justice of the Supreme Court, two Judges of Court of Records, the President of the Liberian National Bar Association and the Chairman of the Grievance and Ethics Committee of the Supreme Court'.[301] These members of the JIC investigate allegations of ethical breach against judges. The primary role of the JIC is to serve as 'a watchdog of judicial officials making sure that judges exercise due diligence, respect for the rule of law, and due process while in the performance of their duties as the ultimate guiding principle of their duties and functions'.[302]

During the JIC's investigation of an ethical breach against a respondent judge, 'it does not employ technical rules of evidence and procedure'.[303] The practice is that 'a complaint is made by an individual against a judge to the Chief Justice, normally in simple writing. The Chief Justice reviews the complaint and forward same to the JIC and the JIC sends the complaint to the respondent judge for his response. The JIC cites the complainant and the respondent judge to a conference, where the accused confronts the accuser with witnesses, pieces of evidence, and a hearing is conducted in the matter'.[304]

After the conference,'the JIC comes up with its findings and recommendations and submit same to the Chief Justice. The Chief Justice

[297] Ibid.
[298] Ibid. at Canon 35
[299] Ibid. at Canon 40
[300] Ibid. at Canon 39
[301] Ibid. at Canon 40
[302] In Re: Suah v Judge Nuta (2013), p 8, Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/2013/23.html?stem=0&synonyms=0&query=Korboi%20nuta Last Accessed: 26 February 2020
[303] Ibid. at p 18
[304] Ibid. at p 3-19

instructs the Clerk of the Supreme Court to forward the JIC's recommendations and findings to the respondent judge to file returns or response through a counsel of his or her choosing. A date for an assignment of the proceedings is also issued by the Clerk of the Court. Within the discretion of the Chief Justice, he may appoint amicus curiae to provide issues and supporting law'.[305] The 'Amicus Curiae's role is to review the facts and issues in the case and cite relevant laws that were breached by the respondent and make a non-binding recommendation'.[306] During the argument of the matter, the repsondent judge's counsel and the amicus curiae make separate presentations in open court before the full bench of the Supreme Court, excluding the Associate Justice who presided over the matter at the JIC, who normally recuses himself or herself.

After the arguments, at a later date, the Supreme Court hands down a ruling based upon the facts, circumstances, pieces of evidence reviewed and the supporting law. The ruling normally includes 'a penalty of fine, suspension, or recommendation for impeachement based upon the gravity of the matter or acquittal of the respondent judge'.[307] It is important to note, that the counsel for the respondent judge has the right to challenge the report of the JIC in its totality or partially on substantive or procedural legal grounds.

In a shady and dishonest transaction between a judge and his neighbor, where the judge 'loaned money to a his neighgbor with compound interest rates contrary to the dictates of the law, the respondent judge's counsel challenged the procedure of hearing adopted by the JIC in the conduct of investigation of ethical transgression that the said investigation violated the principle of due process of law'.[308]

In elucidting this very germane principle of law enounced by the respondent judge's counsel, the Supreme Court of Liberia held that 'the respondent judge was accorded his due process rights because the respondent was duly notified of the complaint against him, cited in an orderly manner, accorded adequate opportunity to confront the complainant, defended himself and called witnesses in support thereof and to further appear before the Supreme Court in exercise of his constitutional right to an appeal'.[309]

Code of Moral and Professional Ethics

The Code of Moral and Professional Ethics governs the professional conduct of all lawyers in Liberia and it imposes high standards on lawyers in their dealings with their fellow lawyers, the courts, and their clients. The standards carved out in the Code articulates that lawyers should not 'undermine or

[305] Ibid. at p 3-19
[306] In Re: Allison v Counsellor Jones (2013), p 9, Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/2013/32.html?stem=0&synonyms=0&query=title(In%20Re:%20Allison%20near%20Counsellor%20Jones) , Last Accessed: 26 February 2020
[307] Canon 40, Judicial Canon of Liberia, 1999
[308] In Re: Suah v Judge Nuta
[309] In Re: Suah v Judge Nuta (2013), p 10

impugn the authority, dignity, integrity of the courts or judges thereby hindering the effective administration of justice and the conduct of lawyers before the court and with other lawyers should be characterized by candor and fairness'.[310] The Code went on to warn lawyers to 'avoid publication of anything pertaining to pending or anticipated litigation, as such publication might interfere with a fair trial of the matter, and prejudice in the administration of justice'.[311]

The Judiciary Law provides that 'the Supreme Court is mandated to institute disciplinary proceedings against all attorneys and counsellors at law for professional misconduct, malpractice, fraud, deceit, crime or misdemeanor or any conduct prejudicial to the administration of justice and this mandate extends to censure, suspension, and disbarment from the practice of law'.[312] The Supreme Court has held that 'it is in harmony with its powers to regulate the conduct of lawyers and there are cases in which a Bar Committee may sua sponte take notice of the professional misconduct of a lawyer and cite him to appear and answer for notorious acts, even if no complaint be otherwise made within reasonable season'.[313]

Mechanism to Probe Lawyers' Unethical Conduct and Corruption

The sole administrative mechanism that is used to investigate and further probe the unethical behaviors of lawyers is the 'Ethics and Grievance Committee of the National Bar which is constituted by the Chief Justice of the Supreme Court of Liberia'.[314] This Committee is a cardinal organ of the Judiciary and it 'is one of the organs of the Judiciary that deals with allegations of unethical and unprofessional conduct of members of the legal profession in Liberia and the Committee has jurisdiction to inquire into and consider any complaint made against any lawyer involving his character, integrity, professional standing or conduct as a member of the bar'.[315]

The Supreme Court of Liberia has also said that 'it is within the competence of the Committee to employ the means of fact finding, conciliation, mediation, arbitration or adjudication in relation to any written complaint made against a lawyer and the Committee shall not be bound by the strict rules of evidence; however, every effort shall be made to accord the litigants due process, and any evidence offered or admitted shall be relevant and

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[310] Part 1 & Rule 22, Code of Moral and Professional Ethics, 1999, Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/legis/rules/comape307/comape307.html?stem=0&synonyms=0&query=professional%20code , Last Accessed: 26 Februry 2020

[311] Rule 20, Code of Moral and Professional Ethics, 1999

[312] Chapter 17, Section 17.7, New Judiciary Law of Liberia, 1972

[313] In re Complaint of Sochor v McFarland (2007), p 8 - Also see: Gray v Ware, 6 LLR 61 (1937), Syllabi 2 & 3

[314] Rule 39, Code of Moral and Professional Conduct, 1999

[315] IN RE: Cllr. Gibson Report of the Grievance and Ethics Committee (2017), Accessed at: Last Accessed: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/2017/5.html?stem=0&synonyms=0&query=ethics%20committee , 26 February 2020

material within the res gestate'.[316] Similar practices as indicated earlier that are used before the JIC are employed by the Ethics and Grievance Committee during its investigation which accord due process and ensure that both complainant and respondent's rights are upheld.

Finally, in a rather strange move by a 'lawyer who was requested to received payment of money on behalf of his client in five installments as a result of a final judgment in the Debt Court, the lawyer received the last installment of the payment and retained possession of the entire amount of thirty one thousand six hundred fifty three dollars thirty three cents (US$31,653.33), without handing it over to his client. When the client made an official complaint to the Chief Justice and the complaint was forwarded to the Ethics and Grievance Committee, the lawyer challenged the jurisdiction of the Committee that such matter was not justiciable before the Committee'.[317] The Supreme Court of Liberia in disposing of the controversial matter held that 'the complaint by the complainant was properly cognizable before the Grievance and Ethics Committee as the Committee has jurisdiction to enquire and delve into any complaint against a lawyer whose character, integrity, professional standing or conduct as a member of the Bar is brought into question'.[318]

3.4 Ethical Transgressions by Judicial Officers as Corruptible Acts in the Judiciary

While it is a fact that the Code of Moral and Professional Ethics regulates lawyers' behavior on one hand and the Judicial Canons regulates judges on the other hand, the officers of the Liberian Judiciary have infested the Judiciary with perennial ethical transgressions from all aisles of the Judiciary. These incidents have a corroding effect on the integrity of the Judiciary. It has corrupted its fabric and undermine the rule of law. Though, the Supreme Court has the constitutional mandate to regulate the behavior of its officers, this has been a daunting task and uphill battle for the Court, which has made little gains in disciplining Judges and Lawyers. These little gains through disciplinary actions have been overwhelmed by more ethical transgressions. Some officers of the court at times have challenged the jurisdiction of the organs of the Court, when investigating acts of alleged ethical breaches.

The Supreme Court has remained firm and has made it abundantly clear that it is 'the Supreme Court's inherent constitutional duty to act when the behavior of judicial officials and other employees tend to bring the Judiciary into disrepute, impair its image and integrity, and erode the public trust and confidence in the Judicial Branch'.[319] The Court further clarified that 'the judicial authority is vested in and may be properly exercised by the Supreme Court to regulate and control the conduct and behavior of all legal practitioners; the Grievance and Ethics Committee as well as the Judicial

[316] Ibid.
[317] Ibid.
[318] Ibid.
[319] In Re: Suah v Judge Nuta (2013) , p 16

Inquiry Commission are legally constituted bodies set up by the Supreme Court under its rule making powers and they are vested with the full authority to investigate complaints of unethical conduct on the part of lawyers and judicial officers, including judges'.[320]

3.4.1 Corrupt Practices and Ethical Transgressions by Judges

While the Supreme Court has expounded these lengthy principles of discipline in its jurisprudence, Judges are lurk in ethical transgression which is undermining the rule of law in the post-conflict nation and hindering access to effective justice for most Liberians. Judges' actions have caused a situation in which there is an apathy about taking complaints to the court system in Liberia. The Supreme Court has confessed that 'courts in the nation are last beacon of hope for Liberians and people feel aggrieved and see little or no hope for redress, they turn to the Judiciary, the last beacon of hope, set up by the Constitution to ensure that wrongs committed to our people and those who venture into our jurisdiction, are addressed'.[321]

As the Supreme Court says one thing, judges tend to do something completely different, which undermines the integrity of the Judiciary. In an action of ejectment case, which was tried in '1968 before the Sixth Judicial Circuit Court and judgment entered in favor of the plaintiff with no appeal by the defendant and the plaintiff was put in possession of the property. It was atonishing that after almost 38 years Judge Emery S. Paye (new judge) who took over will be influenced by a lawyer to serve precepts on a dead person, assigned the case for the disposition of law issues on October 18, 2006, proceeded to jury trial, received the verdict and rendered final judgment that Same day',[322] thus undermining key legal principles of res judicata , concurrent jurisdiction, and due process of law. The Supreme Court held that 'Judge Paye violated by his conduct of the trial in the ejectment case, the statutory laws, the Rules of Court, and the Code of Ethics, and that the violations are of such magnitude that he is deserving of the penalty and he was ordered suspended as a judge for a period of six (6) months without pay and benefits'.[323]

Conversely, Judge Emery Paye in another case in the Sixth Judicial Circuit Court that involved the 'sale of iron ores where the interest of the Government of Liberia was at jeopardy by the judge's impugned decision at which time the Government of Liberia was not served any precept and the judge empanelled a special jury on April 16, 2005 when the regular Jury for the term was still empanelled. He charged the special jurors and they returned a verdict of 15.9 million United States Dollars in special and general damages

[320] Ibid. at p 16
[321] In Re Judicial Inquiry Against Judge Emery S. Paye (2013) LRSC 3, p 1, Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/2013/3.html?stem=0&synonyms=0&query=emery%20paye, Last Accessed: 26 February 2020
[322] Ibid.
[323] Ibid. at p 36

against the Government of Liberia. On April 20, 2005, Judge Emery Paye entered default judgment against the Government of Liberia without any notice to the Government and he affirmed the Jury's damages.The Government of Liberia through the Ministry of Justice filed a writ of prohibition before the Supreme Court, to quash the illegal judgment by the inferior court judge'.[324]

The Supreme Court held that 'the entire proceedings in the trial court were rigged with fraud, irregularities, and unethical conduct committed by lawyers and judges and granting the writ of prohibition is a matter of extreme necessity to perfect the administration of justice. The writ of prohibition will lie to completely undo and restrain the enforcement of the bogus and fraudulent US $15.9 million final judgment of April 20, 2005'.[325] The Supreme Court further outlined that 'it observes a consistent pattern of unethical conduct and deliberate disregard for the law by Judge Paye, thus bringing the image of the Judiciary into public ridicule and disrepute and the Court suspended Judge Emery Paye for a period of twelve (12) calendar months and ordered that he forfeits all salaries, allowances, and other emoluments'.[326]

In a corruptible act on the part a judge, the judge made the court a party to a contract contrary to dictates of the laws and his action undermine the Judiciary. Judge Korboi Nuta's unethical acts were discovered in the writ of prohibition filed by the Government of Liberia in FIDC case which was handled by Emery Paye. The 'record showed that between March 31, 2006, and June 16, 2006, he in collusion with Counsellor Flaawgaa R. McFarland made the court a party to the proceeding by designating the court as a seller in two separate sales agreements thus compromising the independence, integrity, and impartiality of the court'.[327] The Supreme Court 'suspended Judge Nuta for a period of six (6) months along with forfeiture of all his salaries, allowances, and other emoluments'.[328]

In another unethical conduct by Judge Korboi Nuta, as indicated earlier, he 'loaned forty two thousand Liberian Dollars (L$42,000) to Mr. Stanley Y. Suah, at a compounding interest rate and Mr. Suah used his three (3) lots of land deed as a collateral but defaulted on the loan due to health conditions. Judge Nuta opted to seized the deed and his property. Mr. Suah made efforts to make payment to recover his property but all efforts prove futile so he complained to the Cheif Justice'.[329] In a decision by the full bench of the Supreme Court after the JIC findings, the Court held that 'Judge Nuta had contravened Judicial Canons Six and Seven and he was ordered suspended from the office of Circuit Judge for a period of six (6) months along with

[324] LIMINCO v. Judge Paye et. al (2017
[325] Ibid. at p 59
[326] Ibid. at p 60
[327] LIMINCO v. Judge Paye et. al (2017), p 60
[328] Ibid. at p 60
[329] In Re: Suah v Judge Nuta

forfeiture of all benefits appertaining to the office of Circuit Judge, including salaries, allowances, and transportation facilities'[330].

As stated earlier in an act of bribery on the part of one of the judges of the Commerical Court, 'the judge exorted over Nineteen Thousand Five Hundred United States Dollars from a party litigant in an action of debt before him and promised the party litigant that he would have rendered a favorite judgment on his behalf. When the party litigant lost the matter in the Commercial Court, he reported the judge to the Supreme Court and the Supreme Court held that bribery and other mischievous deeds are not carried out in the open, they are usually secret covenants between the parties involved and the respondent judge actions were contrary to the judicial canons and they were a gross ethical breach and the respondent judge was suspended for a period of one year, recommended to the Legislature for impeachment, the judgment in the case was set aside, and a new trial in the case was ordered'.[331]

In the Debt Court at the 9th Judicial Circuit Court in Bong County, Judge Francis Danuweli , the presiding judge in the Debt Court after handing down his judgment 'in favor of the plaintiff, promised to pay the plaintiff, the amount of seven hundred thirty United States Dollars (US$730.00) and nineteen thousand four hundred Liberian Dollars (L$19,400.00) in settlement of one of the co-defendant's obligation and the co-defendant would give the judge a number of rubber stumps and fertilizers in consideration of the agreed amount to be paid by the Judge on behalf of one of the co-defendants after incarcerating the other co-defendant for failure to comply with his judgment in the debt action.The Judge paid the co-defendant an amount of one hundred fifty United States Dollars (US$150.00) and since then refused to pay the balance, even though, he had received the rubber stumps and fertilizers'.[332]

In establishing his cupability of corruptible acts and unethical behavior, the Supreme Court of Liberia held that the Judge 'created a situation wherein he could not enforce his own judgment due to the personal interest he manifested in the matter for the purpose of receiving pecuniary benefits, thereby becoming an indirect party to the suit and the Judge was suspended for a period of 12 months for two counts of unethical behavior, without salary and benefits, and was recommended to take up courses in legal ethics during the course of his suspension'.[333]

Judges of Magistrates' Courts are also involved in unethical and unprofessional conduct. A classic case is where Magistrate Kennedy Peabody was sanctioned for abuse of power and not being alert in the administration of his judicial duties. The Supreme Court 'suspended Magistrate Peabody for

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[330] Ibid. at p 19

[331] In Re: Judicial Inquiry Commission report: Complaint of L. Swansey Fallah Against his Honor Richard S. Klah, Associate Judge, Commercial Court of Liberia, p 26, August 16, 2019

[332] In Re: Danuweli Judicial Inquiry Commission (JIC) Report (2016), p 2-6, Accessed at: http://www.liberlii.org/lr/cases/LRSC/2016/38.html, Last Accessed: 28 February 2020

[333] Ibid. at p 13-14

two (2) months and reasoned that Magistrate Peabody should be sanctioned so as to alert him of the duty of caution and care imposed on him in the administration of his duty as a Judge'.[334]

In a real case of abuse of power and disregard for the principle of due process rights exhibited by Magistrate Richard Browne of the Buchanan Magisterial Court, the 'respondent Magistrate ordered the arrest and detention of Darty Kaba, a son of a lawyer who was to appeared before his court but due to family issues he could not appear and send his son (Darty Kaba) with a note to the Magistrate. His son had insisted that the Magistrate provide a receipt as authentication that he has received the said communication, but the Magistrate refused and indicated that Darty's father, Attorney Morris Kaba was to be imprisoned because of an alleged fraudulent criminal bond filed by him on behalf of his client. Darty Kaba resisted his arrest without due process and the Magistrate ordered his detention in a prison cell at the Buchanan Central Prison with convicted criminals who beat him and attempted sodomizing him'.[335] The Supreme Court of Liberia suspended Magistrate Browne for a period of 'six (6) months, with no salary or other benefits or entitlements for the entire period of the suspension and the court reasoned on the severity of the action by the respondent magistrate, the gravity of the abuse, and the utter disregard for the law and that such punishment will deterred others'.[336]

3.4.2 Corrupt Practices and Ethical Trangressions by Lawyers

The Code of Moral and Professional Ethics for lawyers imposes high professional standards for all lawyers in Liberia and it prescribes penalties, which include: suspension and disbarment from the practice of law. These standards set in the code are guiding principles to aid lawyers in upholding ethical standards, but some lawyers adherence to them is to the contrary and their professional behavior is sometimes incompatible with the dictates of the code. Their actions have infested corruption in the Liberian Judiciary.

In a complaint against Counselor Marcus Jones by Eric M. Allison to the Chief Justice of the Supreme Court, after which the complaint was forwarded to the Grievance and Ethics Committee for investigation, Mr. Allison 'complained that he lost his wife in a Kenya Airways plane crash in Abidjan, Ivory Coast and informed Cllr. Jones to handle the claims in the incident since he had been traumatized by the situation. He outlined that Cllr. Jones agreed and received the amount of one hundred eighty two thousand United States Dollars (US$182,000.00) as insurance benefits for Rev. Allison and his three children, and the amount was paid and deposited in Cllr. Jones's account at a

[334] In Re: Magistrate J Kennedy Peabody (2013), p 13, Accesed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/2013/22.html?stem=0&synonyms=0&query=kennedy%20peabody , Last Accessed: 28 February 2020
[335] Atty Kaba et al. v His Honor Browne (2015), http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/2015/45.html?stem=0&synonyms=0&query=Magistrate%20Court, Last Accessed: 12 March 2020
[336] Ibid.

local bank in Liberia. Cllr. Jones demanded thirty three percent (33%) of the total amount received as fees for his legal services, which Mr. Allison did not object to. Upon said agreement, Cllr. Jones made series of payment to Mr. Allison, but refused to finally pay Mr. Allison and his family the balance of Sixty two thousand, one hundred thirty United States Dollars (US$62,130.00) from his account despite demands from Mr. Allison and his family'.[337]

Upon investigation of the matter by the Grievance and Ethics Committee of the Judiciary, though Cllr. Jones challenged the jurisdiction of the Committee in said proceedings and upon submission of the Committee's recommendations to the Supreme Court, the Supreme Court 'suspended Cllr. Jones from the practice of law for the period of five (5) years and ordered him to pay the amount of sixty two thousand one hundred and thirty United States Dollars (US$62,130.00) to Rev. Allison and his children in three months, and his failure to do so will lead to his automatic disbarment'.[338]

In a case of conversion and misappropriation of a client's funds, Cllr. Charles Gibson had represented 'a client (GECCO) before the Debt Court against Global Bank and GECCO was awarded an amount of Two Hundred Eighty Six Thousand, Two Hundred United States Dollars (US $286,200.00). GECCO and the bank agreed that this amount would be paid in five installments. GECCO also authorized Cllr. Gibson to receive the full amount based upon the agreement of the parties, Cllr. Gibson should retain twenty percent (20%) as his compensation for legal services rendered on each installment payment and upon final payment of the last installment in the tune of Thirty One Thousand Six Hundred Fifty Three United States Dollars Thirty Three Cents ($31,653.33), he should remit the balance to another lawyer who was authorized by GECCO to received the money'.[339]

Upon receiving the final payment, 'Cllr. Gibson retained the amount and never transmitted the money to the other lawyer as mandated by GECCO. He indicated that he had deducted fees for other legal services he rendered for GECCO from the last payment'.[340] Based upon this, GECCO complained Cllr. Gibson to the Chief Justice after which the complaint was forwarded to the Grievance and Ethics Committee for investigation. Though, Cllr. Gibson challenged the Committee that it lacks jurisdiction in the matter and was even disrespectful to the Supreme Court by not receiving his assignment after efforts were made by the Marshall to serve him, the Supreme Court opined that based upon the 'conversion and misappropriation of his client funds, Cllr. Gibson is suspended from the practice of law for the period of two (2) months and his failure to pay the said amount within the two (2) months period specified, his suspension shall remain in full force and effect until the amount is fully paid'.[341]

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[337] In Re: Allison v. Counsellor Jones
[338] Ibid. at p 20
[339] IN RE: Cllr. Gibson Report of the Grievance and Ethics Committee (2017), p 14
[340] Ibid.
[341] Ibid.

On conflict of interest, the Supreme Court suspended a former Solicitor General of Liberia, who was a sitting Judge at the ECOWAS Community Court for gross conflict of interest in proceedings before a lower court and the Supreme Court, prior to his promotion to the community court. The Supreme Court held that 'Cllr. M. Wilkins Wright, then Solicitor General, who had previously represented his client, FIDC/Sochor, in this matter, without recusing himself, deliberately obscured the fact of the lawyer-client relationship with FIDC/Sochor. At that time Counsellor Wright conceded to the judgment of US$15.9 million which was against the Government of Liberia but in favor of his client, FIDC/Sochor. This act of Counsellor Wright is a gross conflict of interest in breach of Rules 8 and 9 of the Code for the Moral and Ethical Conduct of Lawyers. Counsellor M. Wilkins Wright is therefore suspended from the practice of law directly and indirectly within the bailiwick of this Republic for a period of 12 months'.[342]

Finally, as indicated earlier, the Supreme Court also reprimanded 'Cllr. McFarland when he was involved in unprofessional conduct, corrupt practices, and conflict of interest when he represented two conflicting interest in the same case. The Court suspended him from the practice of law within the bailiwick of the Republic of Liberia for a period of three (3) years and as well, vacated the earlier fraudulent and corrupt judgment which was entered by the trial judge'.[343]

3.5 Jury Tampering as Corruptible Acts in the Judiciary

3.5.1 Legal Basis of Trial by Jury

The organic law of Liberia enounces that 'justice shall be done without sale, denial or delay and in all cases arising in courts of records, the parties shall have a right to trial by jury'.[344] The Civil Procedure Law further indicates that 'any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than ten days after the service of a pleading or an amendment of a pleading directed to such issue and a party may not withdraw a demand for trial by jury without the consent of all other parties'.[345] The law also provides that 'a party may challenge a juror on the ground that he is disqualified under the Judiciary Law or by reason of any interest or bias'.[346] In order to regulate the Jury at each Circuit Court and restore public confidence in the Judiciary, the Legislature amended the Civil Procedure Code and created the 'Office of Jury Management with the primary mandate of jury selection, organizing the central jury pool and

[342] LIMINCO v. Judge Paye et. al (2017), p 59
[343] In re Complaint of Sochor v McFarland (2007), p 1-15
[344] Article 20 (a), Constitution of Liberia, 1986
[345] Chapter 22, Section 22.1 (2), Civil Procedure Law of Liberia, 1972
[346] Ibid. at Section 22.6 (2)

ordering the number of jurors necessary for the functioning of Circuit Courts'.[347]

3.5.2 Jury Tampering as Corruptible Acts

While these constitutional and statutory safeguards are in place, jury tampering is widespread across all the courts in Liberia and jurors are involved in corrupt practices which undermine the integrity of the Judiciary. The Supreme Court has defined jury tampering as a 'crime of unduly attempting to influence the composition and/or decisions of a jury during the course of a trial'.[348] The Court further stated that a 'classic example of jury tampering in the Liberian Jurisdiction is the willful placing of names in a jury wheel or bribery of jurors to influence their decision'.[349] Furthermore, in a whinging voice, the Court has acknowledged that 'jury tampering has become prevalent in the Liberian society; thereby creating a distrust in the judicial system, repugnant to a decent and credible Judiciary, and erodes the public confidence in the judicial system'.[350] The Court has held 'that where a party raises a charge of jury tampering, the trial court should suspend all proceedings to properly investigate this serious allegation'.[351]

Jury tampering has contributed to terrible verdicts being handed down by Jurors. In most cases, jurors are bribed to hand down favorable judgments in favor of party litigants in the different courts and this situation has corroded the fabric of the integrity of the Judiciary.

In a classic case of jury tampering in a 'petition for certiorari from the findings of Judge Blamo Dixon, Resident Circuit Judge for Criminal Court C, who conducted an investigation brought by the State of jury tampering in an economic sabotage, theft of property, and criminal conspiracy case brought before Criminal Court C on an indictment against Matilda Parker and Christiana Kpargbar Paelay, serving as Managing Director and Comptroller of the National Port Authority, respectively; the State brought to the attention of the trial judge allegation of jury tampering proffering several written communications said to have been brought to the State's attention by officers of the Liberian National Police assigned at the Temple of Justice. The State filed an application to the trial court praying for an investigation to be conducted and for the trial court to disband the jury based on jury tampering. The trial judge did not conduct a proper investigation and disband the jury based upon the allegations by the State'.[352]

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[347] Amendment to Chapter 22, Civil Procedure Code of Liberia and Establishing the Office of Jury Management, 2013 – Also see: Office of Jury Management, Judiciary of Liberia, Accessed at: http://judiciary.gov.lr/jury-management/ , Last Accessed 28 February 2020
[348] R.L. v His Honor, A. Blamo Dixon et al, LSCR, p 2, 2016
[349] Ibid.
[350] Ibid. at p 2 & 25
[351] Brown et al v RL (2010), Accessed at: Last Accessed: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/2010/10.html?stem=0&synonyms=0&query=jury%20tempering, , 28 February 2020
[352] R.L. v His Honor, A. Blamo Dixon et al, p 2 & 3, 2016

The Chamber's Justice held that 'the records, the credibility, impartiality, and the integrity of the entire panel of jurors were brought into question and a proper and credible investigation not having been conducted by the trial Judge (Judge Blamo Dixon) to confirm or deny the allegations made by the State and to restore public confidence in the entire jury panel which had been eroded by accussation of jury tampering, we are left with no alternative but to confirm our disbandment of the entire jury panel and order that the case be heard anew with a selection of a new panel of jurors'.[353] The Chamber's Justice then 'granted the peremptory writ of certiorari'.[354]

In a bizarre and inexplicable procedure adopted by the trial Judge in Criminal Assizes C, when the defendant's lawyer filed a motion for new trial on allegations that the 'foreman and secretary of the jury demanded one thousand five hundred United States Dollars (US$1,500), after the defendant's lawyer attached a copy of a note written to the defendant (appellant) by the foreman of the trial jury in order to return a verdict of not guilty and that the private prosecutrix had already given the jurors more than one thousand five hundred United States Dollars (US$1,500); since the evidence adduced at trial was insufficient for the State to prevail, the trial judge heard the said motion for new trial and denied same without instituting an investigation into the allegations of jury tampering'.[355]

Upon appeal by the appellant's (defendant's) lawyer, the Supreme Court held that 'a trial judge cannot reserve the right to investigate allegations into complaint of jury tampering by a party. It is a judicially mandatory duty imposed on the trial judge by law and moral ethics to immediately suspend the trial and conduct an investigation pursuant to allegations of jury tampering and, depending on the findings, disband the jury, and award a new trial. The trial judge commits a reversible error by not investigating the jury tampering complaint and in such situation the judgment must be reversed and a new trial awarded'.[356]

In another case of jury tampering, bribery, and corruption, a 'trial judge in the Sixth Judicial Circuit Court illegally empanelled a special jury to hear an action of breach of contract, when the regular jury for that Term was still empanelled. At the conclusion of the evidence, Judge Emery Paye charged the purported special jurors who subsequently returned a verdict in favor of the co-respondent. The special jurors held the Government of Liberia liable to the co-respondent, in the amount of US $12,000,000.00 (Twelve Million United States Dollars) for what was referred to as first special damages; US $750,000.00 (Seven Hundred Fifty Thousand United States Dollars) as second special damages; US $1,500,000.00 (One Million Five Hundred Thousand United States Dollars) as general damages; and counsel fees of ten

[353] Ibid. at p 26
[354] Ibid.
[355] Fangi v RL (2004), 42 LLR 74, p 4 -5, Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/2004/7.html?stem=0&synonyms=0&query=title(Fangi%20near%20RL%20) , Last Accessed: 28 February 2020
[356] Ibid. at Syl. 1, 2, & 12

percent (10%) of the special damages awarded. In total, the special jurors awarded the amount of 15.9 million United States Dollars to the co-respondent'.[357]

As indicated earlier, the Supreme Court of Liberia held that 'the entire proceedings in the trial court were rigged with fraud, irregularities, and unethical conduct committed by lawyers and judges, that granting the writ of prohibition is a matter of extreme necessity to perfect the administration of justice, and extinguish this outrage upon well settled principles of law and the writ of prohibition will lie to completely undo and restrain the enforcement of the bogus and fraudulent US$15.9 million final judgment and that the entire proceedings which culminated into the fictitious US$15.9 million final ruling is hereby declared null and void in all respect and same is hereby set aside and invalidated'.[358]

Furthermore, in another case of jury tampering and acts of corruption on the part of jurors in the Sixth Judicial Circuit Court, at which time a 'petit jury was empanelled to hear the case, two witnesses were produced to testify for the plaintiff without the jurors asking any questions to the witnesses and the jury handed down a verdict in favour of the plaintiff awarding a property and an amount of US$100,000.00 as damages. The trial judge in a ruling made on the same day and date, confirmed the verdict brought by the empanelled Jury and ordered the defendant evicted, ejected, and ousted from plaintiff's property'.[359] When the matter reached before the Supreme Court on a Writ of Prohibition, the Supreme Court held that 'the judge, under some form of influence, intended to and did circumvent the administration of justice and the court set aside the trial judge's ruling and granted the appellant the Writ of Prohibition'.[360]

Finally, in addressing a cross section of jurors; the Chief Justice 'warned the prospective jurors against making unfair and partial decisions because the consequences of such judgments will not be blamed on jurors but rather on the Judiciary'.[361] In its 2013 report on Liberia, Human Rights Watch decried that 'poor management of the Judiciary and corrupt practices by judges, jurors, ministry administrators, and others also severely undermine the dispensation of justice'.[362] These reports of jury tampering are acts of corruption in the Judiciary which hinder justice, undermine the Judiciary in general, and violate fundamental rights. These and other corrupt acts as elucidated have a direct linkage to increased pretrial detention across the post conflict nation.

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[357] LIMINCO v. Judge Paye et. al (2017), p 18
[358] Ibid. at p 59
[359] In Re Judicial Inquiry Against Judge Emery S. Paye (2013), p 5
[360] Ibid. at p 34-36
[361] Kwiah-Wiaplah, Naiye, Jury Service Critical to Liberia's Advancement, Accessed at: https://judiciary.gov.lr/jury-service-critical-to-liberias-advancementcj-korkpor/ , Last Accessed: 28 February 2020
[362] World Report 2014: Liberia, Human Rights Watch (Events of 2013), Accessed at: https://www.hrw.org/world-report/2014/country-chapters/liberia , Last Accessed: 28 February 2020

CHAPTER 4

In this chapter, I will investigate the wave of widespread and systemic pretrial detention in Liberia and directly link it to acts of corruption in the Judiciary. The analysis of prolonged pretrial detention in this chapter will establish the violation of the fundamental rights of alleged criminal defendants by the Judiciary in Liberia.

CORRUPTION IN THE JUDICIARY AND ITS NEXUS TO PRETRIAL DETENTION

It is a fact that there is an absolute prohibition of corruption within the Liberian Judiciary. This prohibition is solidified in both domestic laws and international laws; as well as guiding principles, and other soft international laws. Despite these legal instruments enouncing absolute prohibition of corruption, the scourge remains pervasive in all spheres of the Liberian Judiciary; which has led to the subjection of impoverished Liberians to prolonged pretrial detention, eroded confidence in the judicial system and contributed to the violation of fundamental rights.

The subjection of alleged criminal defendant to prolonged pretrial detention has its origin in the corrupt practices in the nation's 'justice-chain institutions of police, prisons, and courts'.[363]Corruption is chronic in the criminal justice system and walks through to the court system where 'judges, magistrates, and justices of the peace nurture widespread corruption'.[364] The nation's criminal justice system 'has three main components: the police, court, and prison. They work somehow like on an assembling or production line – that is, the police investigates and arrests; the court prosecutes, and the prison is the custodian that rehabilitates the criminal for social re-integration. Thus understandably, if were the system to be effective all three of its components must necessarily be efficient; none must be overcrowded or congested, rusted and corrupt. There must also be a mutual respect and an harmonious working relationship'.[365]

The police stands out tall as the the face of the criminal justice system, but there has always been outrageous accusations that the 'police were considered to be the most corrupt institution in the country';[366] despite being the face of the justice system and such rampant corruption in the police has contributed to subjection of alleged criminals to prolonged pretrial detention and violation of fundamental rights. The Liberian Police Act prohibits police officers from

[363] Chalmers, Shane, Liberia and the Dialetic of Law, Critical Theory, Pluralism, and the Rule of Law, (Routledge 2018), p 89
[364] International Crisis Group Working to Prevent Conflict Worldwide, LIBERIA: Resurrecting The Justice System, Africa Report (N°107 – 6 April 2006), p 1
[365] Thomas-Queh, James, Liberian Criminal Justice System: In Retrospect and Reforms (2006), Accessed at: https://www.theperspective.org/articles/0217200602.html , Last Accessed: 02 March 2020
[366] Human Rights Watch: No Money, No Justice , Police Corruption and Abuse in Liberia (2013), p 19, Accessed at: https://www.hrw.org/report/2013/08/22/no-money-no-justice/police-corruption-and-abuse-liberia , Last Accessed: 02 March 2020

'engaging in any act of corruption, giving or receiving of bribes, and detaining any person unlawfully'.[367] These marauding acts of 'police corruption severely impedes proper administration of justice and denies Liberians their basic rights to personal security and redress , including equal protection under the Liberian constitution and international law and eliminating police corruption is required for any country that has establishing the rule of law as a national objective'.[368]

Corruption in the Judiciary has led to 'prisoners languishing for months and years in pretrial detention because the courts lack personnel, bookkeeping, and case management skills'[369]on one hand. On the other hand, 'people held in police custody or detention in Liberia pay the police for their release regardless of whether they are innocent or guilty of the alleged crime and the police sometimes told the accused to pay for the case to be dropped before the person was formally charged'.[370]

Finally, in the current development agenda of the post-conflict nation, the government has recognized the need to tackle pretrial detention. The government has elucidated that 'excessive pretrial detention undermines the respect for the rule of law by reinforcing the perception that the justice system is unfair, 64% of all those detained by the state have not been to trial, and pretrial detention remains a major concern from both an access to justice and human rights perspective'.[371]

4.1 Legal Basis of Pretrial Detention and Length of Pretrial Detention

4.1.1 Legal Basis of Pretrial Detention

The organic law of Liberia enounces that 'every person arrested or detained shall be formally charged and presented before a court of competent jurisdiction within forty-eight (48) hours. Should the court determine the existence of a prima facie case against the accused, it shall issue a formal writ of arrest setting out the charge or charges and shall provide for a speedy trial and there shall be no preventive detention'.[372] The constitution sketches out forty-eight (48) hours period for a suspect to be detained and formally charged by a court of competent jurisdiction. Surpisingly, this constitutional dictate has often been abrogated by the actors in the justice chain institutions of the post-conflict nation. These blatant violations of the constitution has

[367] Section 22.90 (b) (v, vi, & xii), Liberia National Police Act, 2016, Accessed at: https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/104011/126691/F287332341/LBR104011.pdf , Last Accessed: 02 March 2020
[368] Human Rights Watch: No Money, No Justice , Police Corruption and Abuse in Liberia (2013), p 19 & 20
[369] International Crisis Group Working to Prevent Conflict Worldwide, LIBERIA: Resurrecting The Justice System, Africa Report (N°107 – 6 April 2006), p. 1
[370] Human Rights Watch: No Money, No Justice, Police Corruption and Abuse in Liberia (2013), p 23
[371] Pro-poor Agenda for Prosperity and Development (2018), Chapter 4, Pillar 3, p 75
[372] Article 21 (f), Constitution of Liberia, 1986

undermined the confidence in the justice sector and contributed to overcrowding at various prison and detention centers across the country.

Liberia's Criminal Procedure Laws enunciates that 'a defendant in a criminal action is presumed to be innocent until the contrary is proved; and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal'.[373] The criminal code succintly provides that 'the prosecuting attorney may by leave of court file a dismissal of an indictment or complaint or of a count contained therein as to either all or some of the defendants and the prosecution shall thereupon terminate to the extent indicated in the dismissal'.[374] It went further to state that 'a court shall dismiss a complaint against a defendant who is not indicted by the end of the next succeeding term after his arrest for an indictable offense or his appearance in court in response to a summons or notice to appear charging him with such an offense'.[375] Despite these statutory mandates, pretrial detention is at an alarming rate in the post-conflict nation.

4.1.2 Length of Pretrial Detention

The constitution guarantees the right to a writ of habeas corpus in the event an individual is subjected to prolonged pretrial detention. The constitution enunciates that 'the right to the writ of habeas corpus, being essential to the protection of human rights, shall be guaranteed at all times, and any person arrested or detained and not presented to court within the period specified (48 hours) may in consequence exercise this right'.[376] In expounding on the office of the writ of habeas corpus, the Supreme Court of Liberia has held that 'habeas corpus is a proceeding brought by any person whose liberty has been restrained without due process of law, the person seeking the benefit of this writ is entitled to it as a matter of right, and whenever the court is satisfied that the person seeking the benefit of a writ of habeas corpus is being restrained of his liberty and that such detention is illegal, the judge cannot deny the issuance of the writ'.[377]

In trials before all trial courts within the bailiwick of Liberia, the alleged criminal defendant is entitled to bail consistent with the constitution of Liberia. The provision of the constitution on bail states that 'all accused persons shall be bailable upon their personal recognizance or by sufficient sureties, depending upon the gravity of the charge, unless charged for capital offenses or grave offenses as defined by law and excessive bail shall not be required, nor excessive fines imposed'.[378] Similarly, the Criminal Procedure Code enounces that 'any person charged with the commission of an offense

[373] Section 2.1, Criminal Procedure Law of Liberia, 1972
[374] Ibid. at Section 18.1
[375] Ibid. at Section 18.2
[376] Article 21 (g), Constitution of Liberia, 1986
[377] Jallah v RL, 37 LLR 635 (1994), Syllabi 7 & 8, Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/1994/36.html?stem=0&synonyms=0&query=writ%20of%20habeas%20corpus , Last Accessed: 02 March 2020
[378] Article 21 (d) (i & ii), Constitution of Liberia, 1986

not capital shall be entitled as of right to be admitted to bail, whether before conviction or pending appeal'[379] and the court 'can release a defendant without bail'.[380]

In interpreting the essence of a bail, the Supreme Court of Liberia has held that 'the purpose of bail is to serve the convenience of the accused, without interfering with or defeating the administration of justice. Therefore in the exercise of his right to bail, an accused shall be given a fair opportunity to obtain bail and the primary purpose of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping the accused pending trial and at the same time to keep the accused constructively in the custody of the court, whether before or after conviction, to ensure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his attendance is required'.[381]

Finally, while these constitutional and statutory provisions are sketched out in the laws of Liberia on one hand and the jurisprudence developed by the Supreme Court on the other hand, pretrial detention stands at an alarming rate in the nation with 'one thousand three hundred thirty-three (1,333) pretrial detainees nationwide, representing sixty-four percent (64%) of the prison's population'.[382]

4.2 Police Corruption and Abuse of Power by Judges as an Impetus for Subjection to Pretrial Detention

As indicated earlier, the Constitution mandates that when a suspect is arrested, the suspect must be charged within forty-eight (48) hours and forwarded to court in order to challenge the allegations against him or her. The Criminal Procedure Law mandates that when an alleged criminal defendant is not indicted after two terms of court, the court on its own must dismissed the complaints against the defendant. Under Liberian Laws, alleged criminal defendants are also entitled to a bail, which temporarily releases the defendant from detention in offenses which are not categorized as capital offenses.

While these constitutional and statutory safeguards are sketched out in the Liberian Jurisdiction, widespread and massive corruption in the police,on one hand has contributed to the huge influx of pretrial detainees across the West African nation. On the other hand, corruption within the Magistrate's Courts and Justice of the Peace Courts has significiantly contributed to the huge

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[379] Section 13.1 (2), Criminal Procedure Law of Liberia, 1972
[380] Ibid. at Section 13.5
[381] Zuo v Morris et al, 37 LLR 604 (1994), syllabi 3 & 4, Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/1994/32.html?stem=0&synonyms=0&query=bail , Last Accessed: 02 March 2020
[382] Thirty-second progress report of the Secretary-General on the United Nations Mission in Liberia (August 2016), p 12/21, Accessed at: https://unmil.unmissions.org/sites/default/files/n1624814.pdf , Last Accessed: 02 March 2020

population of pretrial detainees at various prisons across the country. The abuse of power, corruption, and the lack of judicial will on the part of Circuit Court judges to dismiss complaints against defendant who are not indicted for more than two terms of courts have also contributed to the huge wave of pretrial detention in the post-conflict nation.

4.2.1 Police Corruption and its Linkage to Pretrial Detention

The Police have often been heralded as the face of the justice chain institutions but they are entangled in massive corruption, usurpation of court's function, arbitrary arrest, and abuse of power; which contribute enormously to the congestion of prisons across the country. In its 2013 report on Liberia, Human Rights Watch indicated that 'police corruption severely impedes proper administration of justice and denies Liberians their basic rights to personal security and redress including equal protection under the constitution and international law'.[383]

The report further indicates that 'citizens pay the police for justice, police can extort money from citizens at every stage of an investigation including payment to register a case, payment of police transportation and other logistics fees to and from the scene of the crime, and payment for release from police detention. The police sometimes told the accused to pay for the case to be dropped and to leave the police station before the person was formally charged'.[384] These are glaring signs that police corruption hampers access to justice, crush the rule of law, and increase pretrial detention in the post-conflict nation.

In its 2018 human rights report, the Department of State highlighted that 'police officers or magistrates frequently detained citizens for owing money to a complainant'.[385] In the UN Secretary's report to the Security Council, the reported highlighted that 'there were 1,333 pretrial detainees nationwide, representing 64 per cent of the prison population and the high percentage is attributed to weak internal oversight capacity within the justice system and outdated legislation'.[386]

Furthermore, in its 2018 country report on Liberia, Bertelsmann Stiftung's Transformation Index (BTI) highlighted that 'police routinely extort motorists on roads and may undertake arrests arbitrarily or with insufficient evidence. Expenses incurred by police and others, such as transport of

[383] Human Rights Watch, No Money, No Justice: Police Corruption and Abuse in Liberia (2013), p 20
[384] Ibid. at p 20-23
[385] United States Department of State , Country Reports on Human Rights Practices for 2018 (Liberia), p 7, Accessed at: https://www.state.gov/wp-content/uploads/2019/03/Liberia-2018.pdf, Last Accessed: 04 March 2020
[386] Thirty-second progress report of the Secretary-General on the United Nations Mission in Liberia (August 2016), p 12/21, Para 47, Accessed at: https://unmil.unmissions.org/sites/default/files/n1624814.pdf , Last Accessed: 04 March 2020

accused offenders, often have to be taken on by plaintiffs'.[387] These corrupt practices on the part of the police which has significantly contributed to high pretrial detention across the country draws a very close nexus to how vulnerable people are deprived of justice. There is also usurpation of power and abuse of power by the police. As the face of the criminal justice system that works closely with the courts, these corrupt practices draws a nexus to corruption in the Judiciary since the police is an essential component of the criminal justice system and they work as officers of the court to effect arrest and carry out other duties.

Liberia's Criminal procedure Law mandates that 'a peace officer may arrest a person when he has a warrant commanding that such person be arrested or he has been informed on good authority that a warrant for the person's arrest has been issued and he has reasonable grounds to believe that the person is committing or has committed an offense'.[388] The Supreme Court of Liberia has held that 'court officers are soldiers of the court and are moved by instructions given to them by the clerk or judge. They have a duty to maintain law and order; they also have a responsibility to execute orders issued by the Court and disobedience of their order or an attack on them (court officers) constitutes an affront to the court'.[389]

4.2.2 Abuse of Power by Judges and its Linkage to Pretrial Detention

The surge of corruption in the first instance courts and the failure of Circuit Courts to muster the courage in using their indomitable judicial will to release alleged criminal defendants who have not been indicted after two terms of court, consistent with the dictates of the Criminal Procedural Laws have immensely contributed to the huge congestion of prisons with pretrial detainees across the fifteen (15) political sub-divisions of Liberia.

While the Constitution along with the Criminal Procedure Code guarantees bail for an alleged criminal defendant in cases which are not capital offenses, nearly all Magistrates' Courts and Justice of the Peace Courts have seized this opportunity to extort money from defendants and failure to effect a bail by a defendant would see him or her ending up in detention. In its report, the United States Department of State indicated that 'the bail system was inefficient and susceptible to corruption, though bail may be paid in cash, property, insurance, or be granted on personal recognizance'.[390]

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[387] BTI 2018, Liberia Country Report, p 10-11, Accessed at: https://www.bti-project.org/en/reports/country-reports/detail/itc/lbr/itr/wca/ , Last Accessed: 04 March 2020
[388] Section 10.2 (1) (a-c), Criminal Procedure Law of Liberia, 1972
[389] In Re: Magistrate J. Kennedy Peabody (2013), P 12, Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/2013/22.html?stem=0&synonyms=0&query=kennedy%20peabody, Last Accessed: 04 March 2020
[390] United States Department of State, Country Reports on Human Rights Practices for 2018 (Liberia), p 19, Accessed at: https://www.state.gov/wp-content/uploads/2019/03/Liberia-2018.pdf, Last Accessed: 04 March 2020

Magistrates and Justice of the Peace would rather ignore the law specifically on personal recognizance and opt for posting of a bail, simply because there are pecuniary gains for them. The law on release of a defendant without bail or personal recognizance stipulates that 'when from all the circumstances the court is of the opinion that the defendant will appear as required either before or after conviction without giving bail, he may be released without security upon such conditions as may be prescribed to insure his appearance. These conditions may include parole to the custody of a member of the family or other person exercising moral influence over the defendant, or the requirement that the defendant report periodically to a probation officer of the judicial circuit'.[391]

Magistrates and Justice of the Peace hardly make use of these provisions in the statute and this has contributed to huge cogestion of the prisons across the country with pretrial detainees. As of 'December 19, 2018, there were one thousand six hundred sixty four (1,664), approximately twenty-five percent (25%) of detainees were held longer than two terms in court. At the Monrovia Central Prison approximately thirty-eight percent (38%) of detainees were held longer than two terms'.[392] Furthermore, the States Department report also highlighted that 'pretrial detainees accounted for approximately sixty-three percent (63%) of the prison population across the country. As of August, those arrested for sexual and gender based violence (SGBV) crimes and armed robbery constituted the fastest-growing categories of pretrial detainees'.[393] These statistics paints a grim picture about the state of pretrial detention and how corruption and abuse of power in the courts have fueled the flood of pretrial detention in the post-conflict nation.

Circuit Court Judges have failed to use their discretion to release alleged criminal defendants who have not been indicted for more than two terms of court. This has contributed to the flood of pretrial detainees at various prisons across the country and only point to their lack of judicial will to decongest prisons. The statutes states 'unless good cause is shown, a court shall dismiss a complaint against a defendant who is not indicted by the end of the next succeeding term after his arrest for an indictable offense or his appearance in court in response to a summons or notice to appear charging him with such an offense. Unless good cause is shown, a court shall dismiss an indictment if the defendant is not tried during the next succeeding term after the finding of the indictment. A court shall dismiss a complaint charging a defendant with an offense triable by a magistrate or justice of the peace if trial is not commenced in court in response to a summons or notice to appear'.[394]

In his thirtieth progress report to the Security Council, the Secretary General of the United Nations lamented that 'prolonged pretrial detention and the

[391] Chapter 13, Section 13.5, Criminal Procedure Law of Liberia, 1972
[392] United States Department of State, Country Reports on Human Rights Practices for 2018 (Liberia), p 10, Accessed at: https://www.state.gov/wp-content/uploads/2019/03/Liberia-2018.pdf, Last Accessed: 04 March 2020
[393] Ibid. at p 9
[394] Chapter 18, Section 18.2, Criminal Procedure Law, 1972

resulting overcrowding of prisons, and the associated human rights and due process issues, remained intractable concerns. As at 1 August 2015, persons held in pretrial detention accounted for sixty-eight percent (68%) of the prison population nationwide and as much as eighty-two percent (82%) of the population of the Monrovia Central Prison'.[395]

In a classic case of abuse of power, which led to pretrial detention, as indicated earlier, 'Magistrate Browne abused his power, denied Darty Kaba his due process rights, and placed him in a jail among convicted criminals (armed robbers and murderers), and the criminals beat Darty Kaba and attempted to sodomize him'.[396]

In an earlier case mentioned with ethical transgression and abuse of power at the Ninth Judicial Circuit Court in Bong County, 'Judge Danuweli of the Debt Court incarcerated a Labor Commissioner without assuming jurisdiction of a matter and proceeding by rules that are alien to the Liberian jurisdiction'.[397] The Supreme Court 'suspended him for a period of 12 months for the two counts of unethical behavior, without salary and benefits, and he was recommended to take up courses in legal ethics during the course of his suspension'.[398]

Finally, a corrupt bail system in first instance courts on one hand and the abuse of power by judges, as well as the failure of judges to utilize the statute to release pretrial detainees who are not indicted for over two terms of courts on the other hand, contribute to the flood of pretrial detainees across the post-conflict nation. These acts on the part of judicial officers undermined the integrity of the Judiciary and crack the tenets of governance in a democratic society. Corruption and Abuse of power in the Judiciary are clear nexuses of subjection to prolonged pretrial detention in the post-conflict nation and have immensely contributed to the overcrowding of prisons. These acts contribute to the gross violation of the fundamental rights of pretrial detainees.

4.3 Subjection to Prolonged Pretrial Detention as a Violation of Fundamental Human Rights

Legally, to navigate on the pendulum of subjection to prolonged pretrial detention, it is absolutely essential to sketch out a dichotomy between a detained person and an imprisoned person. A detained person is 'any person deprived of personal liberty except as a result of conviction for an offence, while an imprisoned person is any person deprived of personal liberty as a result of conviction for an offence'.[399]

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[395] Thirtieth Progress Report of the Secretary-General on the United Nations Mission in Liberia (13 August 2015), p 10/21, Para 47, Accessed at: https://undocs.org/S/2015/620 , Last Accessed: 04 March 2020

[396] Atty Kaba et al. v His Honor Browne

[397] In Re: Danuweli Judicial Inquiry Commission (JIC) Report (2016), p 11

[398] Ibid. at p 13-14

[399] Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment , United Nations General Assembly resolution 43/173, 9 December 1988,

Subjection to prolonged pretrial detention undermines the rule of law, denies victims access to effective remedy before the law and subjects victims to punishment which they are not convicted of. Prolonged pretrial detention is also prohibited by national and international legal instruments and it stifles the fundamental human rights of victims in all aspects of society and corrodes confidence in the entire justice system.

The most cardinal rights that are violated as a result of prolonged pretrial detention include: presumption of innocence, deprivation of liberty and security of the person, the right to speedy and fair trial, and the right to equality before the law and due process of law.

4.3.1 Presumption of innocence

The Constitution of Liberia proclaims the concept of presumption of innocence as a fundamental right, that must be judiciously protected at all times. The organic law states 'in all criminal cases, the accused shall have the right to be represented by counsel of his choice, to confront witnesses against him and to have compulsory process for obtaining witnesses in his favor. He shall not be compelled to furnish evidence against himself and he shall be presumed innocent until the contrary is proved beyond a reasonable doubt'.[400]The Criminal Procedure Law delineates that 'a defendant in a criminal action is presumed to be innocent until the contrary is proved; and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal'.[401]

In interpreting this delicate constitutional and statutory provision of presumption of innocence, the Supreme Court of Liberia said 'presumption of innocence attends all proceedings against the accused from their initiation until they result in a verdict which either finds him guilty or converts the presumption of innocence into an adjudged fact; it has relation to every fact that must be established against him to prove his guilt beyond a reasonable doubt'.[402] In another case, the Court held that 'an accused, under our statute is presumed innocent until the contrary is proven'.[403] By subjecting an alleged criminal defendant to prolonged pretrial detention far beyond constitutional and statutory periods violates the doctrine of presumption of innocence. The prolonged detention is more of a punishment, contrary to the controlling laws in the Liberian jurisdiction; which do not support such action.

Accessed at: https://www.ohchr.org/Documents/ProfessionalInterest/bodyprinciples.pdf , Last Accessed: 03 March 2020

[400] Article 21 (h), Constitution of Liberia, 1986

[401] Chapter 2, Section 2.1, Criminal Procedure Law, 1972

[402] Saar v RL (1981), 29 LLR 35, Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/1981/3.html?stem=0&synonyms=0&query=presumption%20of%20innocence , Last Accessed: 03 March 2020

[403] RL v Eid et al (1995), 37 LLR 761, Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/1995/6.html?stem=0&synonyms=0&query=presumption%20of%20innocence, Last Accessed: 03 March 2020

The doctrine of presumption of innocence is also espoused in international human rights law. The Universal Declaration of Human Rights outlines that 'everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence'.[404] The International Covenant on Civil and Political Rights enounces that 'everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law'.[405]

In providing a guidance on this provision of the ICCPR, the Human Rights Committee emphasised that 'the presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle of presumption of innocence'.[406]

Subjection to prolonged pretrial detention violates an individual's fundamental rights and punishes the individual for the crime that he or she has not been convicted of, it undermines the doctrine of presumption of innocence laid down in national and international law and the said practice runs contrary to the tenets of good governance and democracy.

4.3.2 Deprivation of Liberty and Security of the Person

Subjection to prolonged pretrial detention also violates another fundamental right of the accused, the individuals inherent right to liberty and security of his or her person. When an individual is detained for a prolonged period of time, the person's liberty ceases as a result of such detention and his or her security is at risk in that detention center, especially in post-conflict country like Liberia, where the detention and prison facilities are in a dilapidated condition and there is congestion of the prisons.

In its quarterly brief report, the United Nations Mission in Liberia outlined that 'detention conditions in Liberian prisons and Liberia National Police stations continued to fall short of international standards including the Standard Minimum Rules for the Treatment of Prisoners and overcrowding of detention center worsen and such overcrowding of detention centres may pose a risk to security'.[407]

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[404] Article 11 (1), Universal Declaration of Human Rights, 1948
[405] Article 14 (2), International Covenant on Civil and Political Rights, 1966
[406] Human Rights Committee, General Comment No. 32 (2007), Para 30
[407] UNMIL, Quarterly Report on the Human Rights Situation in Liberia, February - April 2007, Paras 22 & 23, Accessed at: https://www.ecoi.net/en/file/local/1352332/470_1207650673_humanrights-feb-april-2007-report.pdf , Last Accessed: 03 March 2020

The constitution of Liberia proclaims in pertinent part that 'no person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in the Constitution and in accordance with due process of law'.[408] The Supreme Court of Liberia has held that 'where the trial of an accused has been purposely concocted by the prosecution and the court aids the gross irregularities resulting into a denial of the basic rights of the accused, he should be granted relief from further denial of his liberties by a discharge without day'.[409] The subjection of an alleged criminal defendant to prolonged pretrial detention undermines the very essence of this constiutional provision.

The ICCPR outlines that 'everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law'.[410] The Human Rights Committee of the ICCPR has interpreted deprivation of liberty and security of person in pertinent part as 'liberty of person concerns freedom from confinement of the body, security of person concerns freedom from injury to the body and the mind, or bodily and mental integrity'.[411] The Committee went further and outlined that 'deprivation of liberty involves more severe restriction of motion within a narrower space than mere interference with liberty of movement, deprivation of liberty include police custody, arraigo, remand detention, imprisonment after conviction, house arrest, administrative detention, involuntary hospitalization, institutional custody of children and confinement to a restricted area of an airport, as well as being involuntarily transported'.[412]

Subjection to prolonged pretrial detention violates an alleged criminal defendant rights to liberty and deprives that alleged defendant security , which are inconsistent with national and international laws. It is absolutely important that post-conflict country like Liberia ensure that the rights enshrined in national and international instruments are guaranteed and implemented for everyone including those detained within its jurisdiction.

4.3.3 The Right to Speedy and Fair Trial

The Constitution of Liberia (at article 20) states in relevant part that 'justice shall be done without sale, denial or delay'. In interpreting this sacred provision, the Supreme Court of Liberia held that 'the prolonged detention of an accused without a hearing is a violation of his human right, his right to a speedy trial, and his right to the equal protection of the law'.[413]

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[408] Article 20 (a), Constitution of Liberia, 1986
[409] Feleku v RL (1982), 30 LLR 189, syllabus 3, Accessed at: http://www.liberlii.org/cgi-bin/disp.pl/lr/cases/LRSC/1982/49.html?stem=0&synonyms=0&query=speedy%20trial , Last Accessed 03 March 2020
[410] Article 9 (1), ICCPR, 1966
[411] Human Rights Committee, General comment No. 35 (2014), para 3
[412] Ibid. at paras 4 & 5
[413] Feleku v RL (1982), 30 LLR 189, syllabus 4

The UDHR enunciates that 'everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law'[414] on one hand and on the other hand, the ICCPR enounces that everyone shall 'be tried without undue delay'.[415] These international instruments emphasised the need for effective remedy and speedy trial of any alleged criminal defendant.

In providing a guidance to State Parties to the ICCPR, the Committee has strongly emphasised that 'the right of the accused to be tried without undue delay, provided for by article 14, paragraph 3 (c), is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice'.[416]

The Independent National Human Rights Commission of Liberia in its 2018 report has frowned on prolonged pretrial detention and linked the situation to limited access to a speedy trial before the courts. The Commission outlined in its report that 'the slow pace of trial and fewer days of court sitting contribute partly to prolonged pretrial detention and prison overcrowding as evidenced by the fact that pretrial detainees accounted for more than half of the total prison population of Liberia'.[417] The denial of the fundamental right to speedy trial will only ensure that more alleged criminal defendants are stocked up in prisons across the country; contribute to the overcrowding of the prisons, and deny them their day in court.

4.3.4 Deprivation of the Right to Equality before the Law and Due Process of Law

The Constitution of Liberia proclaims that 'all persons are equal before the law and are therefore entitled to the equal protection of the law'[418]. The organic law of the land went on to state in pertinent part that 'no person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law'.[419]

The constitution, as the bedrock of the post-conflict nation's democracy laid down two cardinal principles. The principle of equality before the law and due process of law. Subjection to prolonged pretrial detention undermines these fundamental principles as enunciated by the constitution, simply because the alleged criminal defendant is subjected to arbitrary detention,

[414] Article 8, UDHR, 1948
[415] Article 14 (3)(c), ICCPR, 1966
[416] Human Rights Committee, General Comment No. 32 (2007), Para 35
[417] National Commission of Human Rights, 2018 Human Rights Situation Report, p 15
[418] Article 11 (c), Constitution of Liberia, 1986
[419] Ibid. at Article 20 (a)

denial of liberty without an outcome of due process of law. This demeans the defendant and does not make him or her equal before the law with others.

In interpreting due process of law, the Supreme Court of Liberia held that 'the term due process of law is synonymous with the term the law of the land. It is a law which hears before it condemns ; which proceeds upon inquiry, and renders judgment only after trial. It extends to every governmental proceeding which may interfere with personal or property rights, whether the proceeding be legislative, judicial, administrative, or executive. It relates to that class of rights the protection of which is peculiarly within the province of the judicial branch of the government and due process of law means in brief that there must be a tribunal competent to pass on the subject matter, notice actual or constructive, an opportunity to appear and produce evidence, to be heard in person or by counsel, or both, having been duly served with process or having otherwise submitted to the jurisdiction'.[420]

On the other hand, the Supreme Court of Liberia has said that equality before the law means 'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty, property, and in their pursuit of happiness. Equal protection of the law means that no person shall be subjected to any restriction in the acquisition of property. The enjoyment of personal liberty, and the pursuit of happiness which do not generally affect others; that no person shall be liable to others or greater burdens and charges than such as are laid upon others; that no greater or different punishment is enforced against a person for a violation of the law'.[421]

Despite these landmark rulings, subjection to prolonged pretrial detention without due process is prevalent across the post-conflict nation. In his August 2015 progress report to the Security Council on Liberia, the Secretary General of the United Nations indicated that 'prolonged pretrial detention and the resulting overcrowding of prisons, and the associated human rights and due process issues, remained intractable concerns. As at 1 August, persons held in pretrial detention accounted for 68 percent of the prison population nationwide and as much as 82 percent of the population of the Monrovia Central Prison'.[422]

On the other hand, the UDHR enounces 'all are equal before the law and are entitled without any discrimination to equal protection of the law'.[423] The ICCPR outlines in pertinent part that 'all persons shall be equal before the courts and tribunals and everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law'.[424]

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[420] Wolo v Wolo (1937), 5 LLR 423, syllabi 1-5
[421] RL v Leadership of LNBA et al (2001), 40 LLR 635, Syllabi 37 & 38
[422] Thirtieth Progress Report of the Secretary-General on the United Nations Mission in Liberia (August 2015), para 47, Accessed at: https://undocs.org/S/2015/620 , Last Accessed: 03 March 2020
[423] Article 7, Universal Declaration of Human Rights, 1948
[424] Article 14 (1), International Covenant on Civil and Political Rights, 1966

The treaty body, in providing guidance on this provision of the treaty has indicated that 'article 14 encompasses the right of access to the courts in cases of determination of criminal charges and rights and obligations in a suit at law. Access to administration of justice must effectively be guaranteed in all such cases to ensure that no individual is deprived, in procedural terms, of his or her right to claim justice'.[425]

Finally, subjection to prolonged pretrial detention denies alleged criminal defendants their fundamental rights to equality before the law and due process of law, this leads to overcrowding of prisons, undermine confidence in the justice system of the nation, and weaken the rule of law.

[425] Human Rights Committee, General Comment No. 32 (2007), Para 9

CHAPTER 5

CONCLUDING ANALYSES

In my concluding analyses, I will provide answers to the below research questions based upon the laws researched, cases analyzed, and argumentation proffered in the different chapters of this research:

- *Is access to justice in Liberia a fundamental human right?*
- *Can judicial corruption and abuse of power be alleviated in the Liberian Judiciary?*
- *Is subjection to prolonged pretrial detention against the rule of law in Liberia?*
- *Is the Liberian Judiciary stifling the rule of law as a result of corruption?*

5.1 Is Access to Justice in Liberia a Fundamental Human Right?

My research found that access to justice is a fundamental right enshrined in the Constitution of Liberia, international instruments the country has ratified or acceded to as well as regional, and sub-regional instruments that the nation has ratified or acceded to. Effective access to justice by individuals within its jurisdiction is absolutely essential in building trust in the legal system and restoring law and order after decades of anarchy. I also found that effective access to justice builds trust in the legal system when individuals within the jurisdiction of Liberia can access the legal system unhindered with their controversies; receive adequate and timely redress consistent with the dictates of the law, and their problems can be remedied using the principles of the law.

Addressing peoples' grievances by using the principles of the law can aid and abet in the process of restoring the rule of law in Liberia, simply because years of mistrust and subversion of the rule of law led to decades of conflict. By using the rule of law to resolve conflicts, it can automatically restore law and order and over a protracted period eventually wipe away anarchy and the culture of impunity.

Finally, I found that as access to justice is gradually being entrenched in the post-conflict nation, and law and order is gradually being restored, it is important for Liberia to build upon these gains in order to consolidate its pillars of democratic governance; which will have a ripple effect in attracting huge investment in the nation and ushering in an era of economic prosperity. Investors will feel confident that whenever their grievances are taken to the courts, it would be settled amicably within the ambits of the law.

5.2 Can Judicial Corruption and Abuse of Power be Alleviated in the Liberian Judiciary?

I found that in a post-conflict nation like Liberia, there is limited capacity of judicial officers and a challenged economic environment. With these prevalent, judicial corruption and abuse of power cannot be easily eliminated from the judicial landscape of the nation; rather, it can be minimized to a considerable extent, but with an indomitable political and judicial will on the part of the administrators of justice.

I found that minimizing corruption in the Liberian Judiciary will require increment in judges' salaries which will trigger livable and decent wages for them and it will serve as a primary imperative to curbing corruption. Continuous training and capacity building of judges on one hand, and awareness creation about the danger of corruption in the Judiciary on the other hand would eventually lead to minimizing corruption in the Judiciary.

I also found that lawyers who are officers of the courts, need to exhibit high degree of professional and ethical attributes in their dealings with the courts and their clients, this would contribute to reducing corruption in the Judiciary. Lawyers breach of ethical standards, manipulation, and manuvering contribute to systemic corruption in the Judiciary. Constant training and capacity building on behavior change of lawyers would ensure that corrupt practices by lawyers are minimized.

I also found that there is a lack of clearly defined and structured rules to conduct proceedings before the JIC and GEC. There is lack of harsher disciplinary measures to deter corruption and ethical breach in the Judiciary. There is also lack of a uniform standard for punishment of lawyers and judges. These have contributed to the flood of corrupt practices and ethical breaches on the part of lawyers and judges. A uniformed punishment guideline and rules of procedure need to be developed and be used as a benchmark to investigate and punish lawyers and judges who are accused of corrupt practices and ethical breaches.

Most often, institution of punishment is handed at the discretion of the Supreme Court; which at times can not serve as a deterrent and cannot be proportional to the ethical breach or corrupt practice. Drawing on analyses in the Judge Emery Paye, Judge Korboi Nuta, and Judge Richard Klay corruption and ethical breach cases; it shows differences in the treatment of each of these judges which violate the constitutional principle of equality before the law. Emery Paye and Korboi Nuta were suspended twice by the Supreme Court for corrupt practices and ethical breaches, but they were never recommended by the Court for impeachment; while Judge Klah became a victim of lack of a uniform standard of punishment, he was suspended and

subsequently recommended for impeachment when he was investigated and culpable for acts of bribery for the first time.

The Supreme Court vacillated when it meted out punishment on Cllr. Marcus Jones and Cllr. Charles Gibson. When Cllr. Marcus Jones challenged the jurisdiction of the JIC (which he has a legitimate reason to) and disrespected the members of the Committee during a hearing into his corrupt practices and ethical breaches, the Court highlighted his behavior before the Committee, suspended him for five years, and further held that if he does not repay his client's money which he had comingled with his personal money within three months, his suspension would automatically become disbarment. Cllr. Charles Gibson disrespected the Supreme Court and the JIC. He refused to be served his assignments by the Marshal of the Supreme Court in an action where he was held liable for conversion and misappropriation of his client's money. The court handed him a lesser punishment of two months suspension, with no caveat that he will be disbarred for failure to pay within two months. Cllr. Gibson never paid within the specified period of time and was never disbarred by the Court.

As indicated earlier, Cllr. Wilkins Wrights, a former Solicitor General of Liberia was suspended for a period of one year by the Supreme Court for unprofessional conduct and corrupt practices which brought the inegrity of the legal profession into public disrepute. Similar actions of unprofessional conduct was carried out by Cllr. Theophilus Gould, a former Solicitor General of Liberia and he was fined five hundred United States Dollars (US$500).

Finally, I found that the Liberian Judiciary is infested with corruption and it is not independent consistent with national laws and international best practices. To cure these deficits and curb abuse of power in the Judiciary, it requires more than education on the part of lawyers and judges. It requires upholding ethical standards by lawyers and judges and sustained advocacy by civil society organizations by naming and shaming lawyers and judges involved in abuse of power and corruption.

5.3 Is Subjection to Prolonged Pretrial Detention Against the Rule of Law in Liberia?

I found that subjection to prolonged pretrial detention is contrary to the constitution of law, international treaties the post-conflict nation has ratified or acceded to and as well it undermines the object and purpose of its criminal procedure statute. Prolonged pretrial detention also undermines the rule of law, denies alleged criminal defendant, who are victims in this situation effective remedy before the law, and subjects them to harsh punishment for crimes which they have not been convicted of before a court of competent jurisdiction. I also found that prolonged pretrial detention crushes on the cardinal human rights of alleged criminal defendants. These cardinal rights include: presumption of innocence, deprivation of liberty, security of person, right to speedy and fair trial , equality before the law and denial of due process

of law. By detaining an alleged criminal defendant for a prolonged period of time without a trial consistent with the dictates of the law, his or her presumption of innocene is vitiated and this leads to his or her deprivation of liberty and security in that holding prison.

Finally, I found that prolonged pretrial detention denies an alleged criminal defendant a very fundamental right to equality before the law. Failure to conduct a speedy and fair trial, in a competent court for an alleged criminal defendant and accord him or her with his or her rights like all others, who were convicted and imprisoned undermines the sacred doctrine of equality before the law and the due process of law principle. Due process demands that an individual must be tried before a competent and impartial tribunal, before any form of punishment can be instituted against him or her.

5.4 Is the Liberian Judiciary Stifling the Rule of Law as a result of Corruption?

I found that the Liberian Judiciary, while it is entangled in abject corruption at the lower courts or inferior courts, which are the face of the Judiciary is stifling the rule of law by violating the basic rights of alleged criminal defendants, denying them bail, as well as not utilizing the statute to release people who have not been indicted after two terms of court. I also found that as a result of backlog of cases that have not gone to trial, it has immensely increased overcrowding of prisons across the country, thus stifling the rule of law.

I found that the Judiciary is suffocating the rule of law in Liberia simply because judges and lawyers at inferior courts are engaged in unethical and unprofessional conduct that are contrary to the dictates of the ethical standards set up by the Supreme Court for all lawyers and judges to adhere to. Lawyers breached these ethical standards by engaging in conflict of interest, comingling, conversion, and misappropriation of clients funds. Judges presiding over inferior courts are involved in egregious vandalism of the Judicial Canons, in order to seek wealth and prestige at the detriment of the rule of law.

I found that the Judiciary in its totality is not independent consistent with the dictates of the Constitution of Liberia, international laws, and soft international law instruments. The Liberian Judiciary remains just an extension of the Executive Branch of Government, because the President appoints all senior officials of the Judiciary to include: the Chief Justice, Associate Justices, Judges of all courts, Magistrates, Justice of the Peace, Clerks of Court, Sheriffs, Constables, and other ministerial officers of the Court. I also found that, the Judiciary Law grants the President the power to establish Magisterial areas and Justice of the Peace Courts. These are glaring evidence of a Judiciary that suffers from independence and is in need of independence. The Judiciary is completely depended upon the Executive

Branch to implement its constitutional mandate. This undermines the rule of law, stifles the work of the Judiciary, and its independence.

Finally, I found that while Liberia is making tremendous strides to entrench the rule of law, discipline unethical judges and lawyers; the nation has an imperial and patromonial Presidency that can remove magistrates and justices of the peace at the will of the President. They also serve at the pleasure of the patromonial President. This is specifically troubling because, as stated earlier Justice of the Peace Courts and Magistrates' Courts are the Janus-faces of the Judiciary and when these courts differ with the Executive Branch or any of its officers through a judgment handed down, it could lead to the removal of the judges of these lower courts, which is contrary to the rule of law and judicial independence.

5.5 Final Thoughts

In my legal opinion, in order for the Supreme Court of Liberia to curb unethical and unprofessional behaviour on the part of judges, it must follow the disciplinary standard in the Klah's opinion, which I argue as Egregious Vandalism of the Judicial Canon. Using this standard, the Supreme Court will suspend and recommend a judge for impeachment, in the event that the judge vandalizes the rules in the judicial canon through extortion of money from party litigant, corrupt practices, lying under oath, and engagement in unethical conduct unbecoming of a judge. This is a very high standard that the court has enounced in the Klah's opinion and by virtue of Liberia's common law system and under the doctrine of stare decisis, the court must ensure that whenever any judge engages in similar acts, similar punishment must be meted against the judge. By extension, this decision in the Klah's opinion should also spill over to lawyers in the event they are involved in egregious vandalism of the code of moral and professional conduct for lawyers.

While the Supreme Court hands down different punishment for lawyers and judges who abrogate the code of ethics, I am of the opinion that the court needs to ensure transparency in the punishment for breach of ethical standards by judges and lawyers. Development of a uniform rules of procedure for the JIC and GEC and a uniform standard of punishment for lawyers and judges will ensure greater transparency in the punitive measures instituted by the court for violators of the judicial canons and the code of moral ethics. Development of said standards will also serve as a deterrent for would be violators, send out a strong caveat about the preparedness of the Judiciary to stamp out and shame the bad apples, and restore dignity to the legal profession.

The lack of this uniform standard of punishment has led to differences in the punishment handed down by the Supreme Court for different individuals which undermines the sacred doctrine of equality before the law and due process of law. Similar acts of violation, ethical breach, and corrupt practices in the Judiciary must commensurate with the same punishment. The harsher

punishment issued against Cllr. Jones on one hand and the lesser punishment issued against Cllr. Gibson on the other hand for similar actions validate my assertion. The corrupt, unethical, and unprofessional conduct of two former Solicitor Generals of Liberia carried a harsher punishment for Cllr. Wright and a lesser punishment for Cllr. Gould. The double suspension of Judge Paye and Judge Nuta should have led the Court to recommend them for impeachment, while Judge Klah single suspension was sufficient to earn him his recommendation for impeachment. Two lawyers (Cllr. Sayma Syrenius Cephus and Cllr. Roland F. Dah) who tried to divest the Supreme Court of its constitutional authority in the FIDC Case were warned for their actions. They should have never been off the hook of the court.

Finally, the post-conflict nation needs to amend its constitution and other laws to ensure that the appointment of justices of the Supreme Court, judges of all courts, magistrates, justices of the peace, and other court officers in the Judiciary are appointed through a transparent and competitive process void of the President and they should enjoy tenure for life or specified number of years. This will ensure greater independence in the Judiciary as the third branch of government and it will put an immediate end to criticism that the Judiciary is a mere extension of the Executive Branch of Government.

5.6 Concluding Remarks

It remains a cliché throughout this research that access to justice is a fundamental right guaranteed under the Constitution of Liberia, international law, and other international soft law instruments, but the post-conflict nation has taken little steps to ensure that all citizens within its jurisdiction access justice. It will be prudent, for the post-conflict nation to ratify protocols creating the African Court on Human and People's Rights, the first optional Optional Protocol to the International Covenant on Civil and Political Rights, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the third Optional Protocol on a communication procedure for the Convention on the Rights of the Child, and the Optional Protocol to the Convention on the Rights of Persons with Disabilities. The ratification of these instruments will enable people within the jurisdicition of the State to file complaints with these bodies if their rights are violated and after exhaustion of local remedies. It will also provide greater access to justice for people within the jurisdiction of the post-conflict nation and it will inspire investors' confidence in the legal system of Liberia that they can access effective remedy whenever their rights are violated. It will also make the post-conflict nation justice system stronger, attract more investments, increase economic growth and development, and create an environment where small businesses will thrive.

It is also important that the Judiciary ensure that the Environmental Court is operational. Since the Environmental Protection Statute was enacted nearly seventeen (17) years ago, the Environmental Court has not been operational which is a violation of the statute on one hand and denial of access to justice

in enviromental issues on the other hand. The failure of the Judiciary to operationalize the environmental court defeats the object and purpose of the statute and could give rise to more violation of environmental rights in the country.

The post-conflict nation, friendly governments, and international organizations have heavily invested in the Statutory Legal System that is not only corrupt, but expensive with rigid legal technicalities and procedures, thus denying people in rural parts of the nation to access justice effectively. This has led to rural Liberians maintaining and utilizing the Customary or Traditional Legal System which has always been used by indigeneous Liberians before the coming of the freed slaves to the shores of what is today known as Liberia.

Though, the traditional or customary legal system is used by most Liberians in rural areas, it is not expensive and implores traditional methods of dispute resolution in rural communities; but it is entangled in egregious human rights violations ranging from trial by ordeal and meting disproportional punishments and other despicable traditional punishments, which undermine the rule of law. There is a need to harmonize the formal and informal legal systems in order to pave a way so that appeals emanating from the traditional or customary system are placed before the Judiciary instead of the Executive Branch, which is the practice now and a violation of the nation's Constitution on separation of power and judicial review.

Though, the Supreme Court has ban trial by ordeal and other terrible practices in the Customary System, but they are still existing in every rural community in Liberia today, because the statutory system does not have presence in all rural areas of the country, thus violating the Constitution of Liberia, that the Judiciary's presence should be grounded in the entire republic. The Supreme Court has also reminded the other branches of government about the doctrine of separation of power and its inherent power of judicial review. The Constitution empowers the Supreme Court to interpret customary norms, but a clear and legal framework has not been fully developed.

The Legislature must establish a customary court of appeals or some quasi judicial or administrative mechanism within the National Traditional Council of Liberia, so that decisions from the Paramount Chief Courts can go to either of these bodies and then to the Supreme Court in order for the Supreme Court to exercise its power of appellate jurisdiction. Specific provisions of the Act of the Ministry of Internal Affairs that confers powers on the Minister of Internal Affairs to review decisions from the customary system and other laws must be amended to realized this important milestone in the customary legal system.

While corruption remains endemic in the post-conflict nation's Judiciary, steps taken are yielding little results but the scourge has evaded the entire Judiciary and undermine its independence. The Judiciary Inquiry Commission and Grievance and Ethics Committee as organs of the Judiciary

are making strides to fight unethical conduct of judges and lawyers but their efforts need to be complemented by harsher punishments for violators of the codes of ethics and judicial canons.

The menace of pretrial detention that has overwhelmed the prisons in Liberia is a terrible human rights violation; that has the proclivity to undermine the gains made by the post-conflict nation. Judges are as well responsible for the overcrowding of prisons, because they have made a constitutional right to bail, a playbook of corruption and they have failed to utilized the statute to release alleged criminal defendants from pretrial detention who have spent more than two terms of court without indictment.

Ultimately, it is absolutely important for the United States of America, to continously help rebuild and stregthen the legal system in Liberia in order for the Liberian Legal System to thrive on one hand, dispense equitable justice, and subscribe to the rule of law on the other hand. Revamping Liberia's legal system will only enhance the justice system, attract more investors, provide access to justice for its citizens, serve as a beacon of hope for Liberians, and most of all Liberia can become a rising star in the sub-region.

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