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ACCESS TO JUSTICE SIN QUI NON TO PEACEFUL CO-EXISTENCE IN POST WAR LIBERIA

BY

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Ladies and Gentlemen

I want firstly to thank the Steering Committee, the Supreme Court and the entire Judiciary for the invitation extended to me to speak at this forum on the subject "Access to Justice Sin Qui Non to Peaceful Co-existence in Post War Liberia". Every so often we need to pause, look over our shoulders to see our accomplishments and our failings, assess where we have come from, where we are and the challenges that confront us, and make the critical decisions as to where we want to be. This forum, I believe, is intended to do just that and I am grateful to be a part of the dialogue.

Permit me however to advance two caveats. The first is a disclaimer with regard to the institution with which I am currently engaged. The opinions expressed in this Paper and to this gathering do not reflect or represent the views or position of the Law Reform Commission, a distinct institution. The opinions expressed herein are my personal opinions and reflect the embodiment of my accumulated views based on my practice as a lawyer, my studies into our legal system, my experiences with public and private institutions (including as a UNDP Consultant to the then Governance Reform Commission and my tenure as Minister of Justice and Attorney General of Liberia), my interaction with the legal community, fellow colleagues, the international community, my examination of our civil society in general, and my continuing review of our legal system in my current position.

My second caveat is that I have refrained from quoting international sources that profess to know how to cure our problems. Many of their recommendations are worth noting, but the acceptance of those recommendations must be with caution, since often times the authors have never either been to Liberia or have never seriously interacted with Liberia or have spent very little time in

Liberia and with Liberians to fully understand the intricacies of our problems, our culture, our behaviour pattern, our system, and the historical underpinning of our nation. Many a times also a good deal of those have are based primarily on second hand sources that also have never come to Liberia or have no appreciation of our system. This thought reflect my impression of certain views stated at the Conference on Legal Pluralism held in November of last year in Washington, DC. Therefore, while I shall give consideration to broader international perspectives, my views are principally restricted to reviewing principally the Liberian context. As many of you may know, as a UNDP Consultant to the then GRC, I had the opportunity to fully examine our legal system, principally from without; as Minister of Justice, I had the opportunity to review the system and to experience first hand the difficulties confronting it from within. Today, as Chairman of the Law Reform Commission, I am opportune to continue to undertake that review, from a different perspective but still first hand. In the Concept Paper culminated my examination of the legal system whilst serving with the GRC, I attempted to document the challenges facing the Liberian legal system, particularly its justice system, including the Judiciary, and the impact felt by the rule of law. It suggested ways in which the challenges confronting the system could be addressed. My experience at the Ministry of Justice has added new dimensions to my review of the system, especially from within.

I intend to be bold, frank, honest and challenging with you. I do not intend to shield the Judiciary, including the Supreme Court, the Liberian National Bar Association, the legal community in general, our contributing partners, or even myself, from the errors made and which we continue to make, for to do so will be a disservice to us, to our people and to our nation. Not to deal with our problems head on, I believe, may render us unable us to confront squarely the problems of our justice system or to design the appropriate solutions to overcome those challenges that have prevented our people having access to justice. Accordingly, some of what I will say may not be pleasant, perhaps even hurtful or painful, including to myself, but I believe that the time is ripe for us to stop being hypocritical, to acknowledge the realism of the environment in which we find ourselves, one just emerging from a devastating civil conflict, a contributing factor to which, we are told, is our justice system and its failure to meet the expectations of our people.

I am convinced today, the same as I was almost four years ago, and perhaps even more now than in the past, that our justice system is in dire need of a full and complete overhaul, and that unless we stop pretending that things are well and begin to grasp in honest the problems and challenges facing the system, we will lead the system into greater perils than it was before the war. One knows that the system is in serious trouble when the Chief Justice deems it necessary to invite a judge to his Chambers for consultation on the manner in which the judge is conducting a trial or to leave his Chambers to confront a trial judge in the middle of a case---acts which in and of themselves can at the very least be characterized as very irregular, perhaps even improper, but which were motivated (perhaps even necessary) to seek to preserve the sanctity of justice, then we are really in serious trouble. When you review the Supreme Court opinions and see that the rulings and decisions of certain judges are repeatedly reversed, then we have a serious problem; when in a court term only one or two cases are heard, then we have a serious problem, not necessarily due to the incompetence of the judge, but to procedural bottlenecks, then we have a problem; when jurors believe that service on a jury is a means of livelihood or a means to illegal enrichment, then we have a problem. We know that the system is in trouble when the House takes on the role of a criminal investigating agency of a matter criminal in nature, conducts a hearing and determines that the State lacks the basis for criminal prosecution and the Liberian National Bar Association is silent. We know that our legal and justice system is in trouble when the President of Liberia continues openly to express concern that the system is working as it should, when the impression is given that lawyers only care how much money they can make no matter the violations committed in the process of trying to achieve that goal or the consequences attending their conduct, and when even lawyers themselves view their most prestigious institution as nothing more than a social club.

In recent times, particularly in the last few years, many studies have been conducted into what the investigators believe has been a failure of the formal justice system to accord access to justice to the Liberian people, especially people who are so far remote from the system that the opportunity for access and near to impossible; and that even where there seemingly is access, the cost is so astronomical and the trust of the people (based on their experience) so low that they have very little faith in the formal system. The conclusion drawn is that the informal system, the customary law system, the traditional system, should be accorded greater opportunity to

administer justice to the people, particularly where grievances are deemed to have arisen within settings where semblances of traditional practices still exist. While such advocacies are welcome, they present a troubling impression that our formal system is incapable of providing justice to our people, that access to justice in this formal setting is not only not guaranteed but is not easily accessible. My position on such advocacy is that if our formal system is incapable of providing the expected access to justice to our people, then we must muster the strength, seek the resources and determine the priorities that will ensure that our people have access to justice.

The one thing we can console ourselves of is that it was not of any recent making. Yet, we cannot allow continued perpetuation. I am of the view that the purpose of this Judicial Conference is for us to take a close and critical introspective look at ourselves and our failings as a legal community, as an avenue of justice for our people, to see how these have impacted on the rights of those we are obligated to accord access to justice, and to see how we can now address and correct the system, as will ensure that our people truly have access to justice, a prime requisite for the peace and stability of our nation.

The theme of this presentation has two critical elements: "Access to justice" and "peaceful co-existence". When one generally speaks of access to justice, the normal approach is to limit ourselves to seeing how persons who are incarcerated are given the opportunity for speedy trials; ensuring that their incarceration is not prolonged. The error we often make is that in treating access to justice in this circumscribed context, where we the only aggrieved persons as being those whom the Government has incarcerated or who are otherwise affected by acts of the Government, we fail to address the greater problems that go beyond mere criminal perspectives or governmental contacts, forgetting that many persons resort to criminal behavior not because they have inherent criminal tendencies but because the system, the civil component of the system, has failed them.

This leads me to my definition of "Access to justice". In my opinion "access to justice" is the ability of the State to afford or accord a person the opportunity to have a right protected, and where violated by any person, the State being a part of that process, to have the grievance addressed in an impartial and timely manner by a mechanism designed for that purpose.

"Peaceful co-existence", in my view, pre-supposes, in the context of the blame factor that is said to have contributed to our armed conflict, is the result of a people having access to justice, and that in the absence of that access, peace cannot readily be assured. I believe that this was the thought of the framers of the 1986 Liberian Constitution when they sough to include in that sacred instrument some form of mechanism that would accord access to justice to all of the Liberian people.

It seems therefore that the proper place to begin a dialogue on "access to justice" is the Constitution. Let me state, as has been acknowledged many times, that that document is not perfect. Indeed, I recall that the Liberian people, when asked to ratify the document through a referendum, were informed that the document contained flaws, but that it was better to have a flawed document that could be corrected in the future under a constitutional government than to continue to retain military rule. I was a part of that constitutional process, and as hurtful as it may be, I admit that errors were made and that flaws exist, some due to internal factors (as for example the very diverse composition of the National Constitution Commission) and others to external (the military dictates, the overpowering political and sometimes even aggressive and threats, and the intervention of the Constitutional Advisory Assembly). Thus, the document, in seeking to cure the problems of justice and access to justice experienced by the Liberian nation-state prior to the military seizure of power, may even have opened up avenues for additional problems. Then there was the armed conflict, which generated more issues and problems that may have been overlooked or wrongly dealt with by the Constitution. Yet, notwithstanding the limitations and the perceived shortcomings, the Constitution still provides the basis for an examination of the principle of access to justice.

The Constitution is littered with provisions that can be interpreted as attempts to secure for the people avenues for access to justice. Article 11 states that we are all born equally free, independent and possess certain rights, including the right to enjoy and defend life and liberty, to maintain and pursue the security of the person, to possess and protect property, to freedom of expression, to equality before the law and the equal protection of the law. Articles 20 and 21 consolidate those themes. Article 20 states: "(a) 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. Justice shall be done without sale, denial or delay; and in all cases not arising in courts not of record, under courts-martial and upon impeachment, the parties shall have the right to trial by jury" and "(b) The right of an appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable. The Legislature shall prescribe rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal."

Then that is Article 26, which states that "Where any person or any association alleges that any of the rights granted under this Constitution or any legislation or directives are constitutionally contravened, that person or association may invoke the privilege and benefit of court direction, order or writ, including a judgment of unconstitutionality; and anyone injured by an act of the Government or any person acting under its authority, whether in property, contract, tort or otherwise, shall have the right to bring suit for appropriate redress. All such suits brought against the Government shall originate in a Claims Court; appeals from judgment of the Claims Court shall lie directly to the Supreme Court."

The thrust of those mandates is that all Liberians and those within the borders of Liberia have a guaranteed right of access to justice, whether it involves injuries suffered at the instance of another person, the government's constraint of the exercise of the rights stipulated by the Constitution, or the inappropriate pursuit of those rights. Much of the responsibility for achieving the constitutional objectives and actualizing a process and a mechanism to ensure the enjoyment of the rights is placed on the Legislature. Article 34(e) mandates the Legislature "to constitute courts inferior to the Supreme Court, including circuit courts, claims courts and such other courts with such prescribed jurisdictional powers as may be deemed necessary for the proper administration of justice throughout the Republic." That mandate is reinforced by Article 65, which provides 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. The courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature". To ensure that the process is not politicized, the provision adds: "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. Nothing in this Article shall prohibit administrative consideration of the justiciable matter prior to review by a court of competent jurisdiction."

Article 66 further clarifies the process and the mechanisms which the Legislature is mandated to set up: "The Supreme Court", it says, "shall be the final arbiter of constitutional issues and 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 except cases involving ambassadors, ministers, or cases in which a county is a party. In all such cases, the Supreme Court shall exercise original jurisdiction. The Legislature shall make no law nor create any exceptions as would deprive the Supreme Court of any of the powers granted herein."

No person, whether they embody the courts, the legislature or the executive, has the right to deprive a person of the protection of or access to secure the protection of the rights guaranteed by the Constitution. The document is very clear in that respect. It states at Article 2 that "This 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." Further, to make sure that there are no misgivings as to the pronouncement, the document further stipulates that "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. The Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional."

We know that the Legislature is given the primary responsibility to establish the institutions that will enable the citizens to have access to justice, that the Judiciary needs to ensure that justice is administered to all of our citizens, although a few past Supreme Courts seem to hold otherwise, and that the Executive has in place the frame to guide those rights and prevent abuses. The question therefore is whether the various government branches, not just of the present but also of the past, established under Article 3 of the 1986 Constitution, and prior thereto under Section 14th of Article I of the 1847 Constitution, have met up with its constitutional mandates. Equally important is the query whether the society at large has met its own obligations in ensuring that the branches meet their constitutional mandates. I submit that in each of the mentioned situations there have been recognized failings. Let us examine the status of the structures and processes put into place to accord our people access to justice, giving some consideration to the historical perspectives.

According to the latest population census, Liberia has a population of about 3.5 million people, with the most highly concentrated counties being Montserrado, Nimba, Lofa, Bong, Grand Bassa and Margibi. The nation has one Supreme Court which, under the Constitution, mandatorily has jurisdiction over the entire 3.5 million inhabitants and over any and every imaginable matter. Further, the nation, as we know, is divided into fifteen counties, the basis for the division being more a matter of political expediency than on the needs of the people. Each county, except for Montserrado County, has one circuit court, over which a single judge presides in a specific

quarterly term. This means that on the average, population wise, a single circuit court judge has original jurisdictional and appellate powers over more than 233,000 persons. The life, property, freedom and every other guaranteed rights of those many persons lie in the hands of one person, more reason to ensure that such persons is amongst the most qualified and honest, and will be in the position to ensure that access to justice is not merely rhetoric. The Liberian people continue to look for evidence of that, and until they can see such evidence, they will not only continue to hold the perception that justice is elusive but that the system cannot be trusted.

Then there is a second problem with the system---the establishment of a circuit based not on the needs of the people but solely on the basis of the creation of a county, and whose creation is direct result of political expediency by the Executive and/or Legislative Branches. What this means and has meant in the past, in terms of access to justice, is that the capacity for access to justice for such counties as in Nimba, Lofa, Bong, Grand Bassa, Margibi and others with huge population base and high incidence of crimes and other violations of rights, is at the same level as counties such as River Gee, Barpolu and Grand Kru, which have very small population bases and very low incidents of crimes or violations of rights.

This state of affairs can be traced back to the founding of the Liberian nation-state. Beginning with three counties and the concept that an intermediate court, at the time the court of quarterly session, be established in each county, we saw the concept maintained as more counties were added. Five counties meant five circuit courts, nine counties meant nine circuit courts, thirteen counties meant thirteen circuit courts, and fifteen counties meant fifteen circuit courts, each being manned by a single circuit court judge at any given time or term, regardless of the population base of the county. What those who manned the system as it evolved failed to recognize was that that structure was put into place to cater to a particular segment or category of the population, and therefore it coverage limited to very small designated areas of the country; that the structure was put into place at a time when justice, as we know it today, was virtually almost non-existent for most of our people, especially those within the interior of Liberia and those not associated with the then ruling class; when there were only a few concentrated business activities, limited to a privileged few; when human rights wasn't even a theme in our nation; and when much of the interior was not accessible, due in part to the policy of the government of the

day. The interior was governed primarily by the Interior Department, and, for the most part, the formal courts were not available to address the grievances of most of the people. Indeed, most of the people had never seen, experienced, or been introduced to the formal courts; and that even in those areas where the courts were accessible, many persons did not trust them because of the national style of governance. They saw the formal system merely as mechanisms of the exploiters. The grievances of the people were therefore dealt with primarily under customary law, which many a times also transgressed the rights guaranteed by the Constitution, due process being virtually non-existent. In short, the operating dynamics at the time were quite different from today.

What is noteworthy to emphasize is that even as the governmental sphere over the society was increasingly expanded to cover the wider population and more of our people became involved in the process of nation building and becoming a part of a greater national frame, and the country took on a greater united national front and focus, there was a failure to make the adjustments required that would ensure that all, not just some of our people, would have equal access to justice. As a consequence, that structure has maintained the same format since the nation's independence in 1847. The last time the structure, basically unchanged except for greater elaboration of the functions and powers of the courts, was comprehensive set forth was under the 1956 Code, more than one-half century ago. Neither the military coup in 1980 nor the war that began in 1989 changed the legal dynamics that had consumed our nation. We seemed intolerant of the need for change, and the system therefore continues today as it did in the past. And we expect that our people would have access to justice or that they would even believe that justice can be accorded to them under an archaic structure that was and remains devoid of recognition of the development and changes that have immersed our society since the declaration of independence of the Republic? Naturally, access to justice today, under those conditions, faces monumental challenges.

So where have we and we continuing to go wrong? The new Constitution, even with its flaws, seemed to have provided the basis for change. It recognized, for example that our female citizens were being accorded the same rights as our male citizens. Indeed, that our female citizens were not even being accorded equal rights amongst themselves. Those female citizens married under

customary law were not entitled, under the old practice, to rights of inheritance as were female citizens who were married under customary law. The framers of the 1986 Constitution recognized that the practice that existed theretofore deprived this segment of our population of certain basic rights, which under the prior Constitution, as interpreted by our courts, including the Supreme Court, was said not to exist. The framers therefore had inserted into the new Constitution a provision (Article 23(b)), which imposed upon the Legislature the mandate to "enact laws to govern the devolution of estates and establish rights of inheritance and descent for spouses of both statutory and customary marriages so as to give adequate protection to surviving spouses and children of such marriages." This mandate, given since 1986, was neglected until the nation was in a state of war, a virtual transitional phase when governance had almost completely lost its essence, the President had been forced to resign and new Transitional Government was being evolved, that the mandate was hurriedly carried out by the passage into law, with very little thought being given to how those rights might be adequately protected and how, if violated, access to justice may be secured and assured. This was in 2003, and there is no doubt in my mind that that Act needs serious review and revision.

Numerous other failings are true of the constitutional mandate imposed of the Legislature. Almost a quarter century after the mandate, the Legislature has yet to establish a claims court to which Liberians and residents of Liberia, aggrieved of certain actions of the Government and of government functionaries, can take their grievances. Let us revert to Article 26 of the Constitution. It states that all suits brought against the Government shall originate in a Claims Court and that appeals from the judgment of the Claims Court shall lie directly to the Supreme court. Jurisdictionally, that is the only that court, the Claims Court, that has the legal authority to entertain such claims. Why, then have we been unable to see, to grasp the reality, that when the Constitution states that all claims against the Government shall originate in a claims court and the failure to establish such a court legally deprives a large segment of our population, persons who are aggrieved by certain acts of the Government and its functionaries, of access to justice, and that this could create a problem for the peaceful co-existence of our people? And where are the institutions (the Liberian National Bar Association, the human rights organizations) that should advocate for such justice and mount the pressure for the establishment of a Claims Court. The Law Reform Commission should and must begin a process of consultation and seriously

consider drafting of some proposed legislation for the consideration of the Executive and the Legislature. This, in my view, is crucial to creating an avenue not just for access to justice but also for maintaining the peace.

Like the situation with the Claims Court, the Constitution also mandates the Legislature to set a standard for the courts to deal with matters involving customary law. To date, no such standard has been formulated by the legislature and therefore the circuit courts remain without any clear direction as to their jurisdictional authority or how to deal with access to justice in matters involving customary law. But more troubling is the fact that our courts have still to be established on the basis of the needs of the various communities rather than on expediency. I have no doubt in my mind that the current structure needs reforming. The Law Reform Commission should begin to review both the population data and crime related data to determine where that is need for the creation of more needed courts and what form those courts should take. For example, should there be in Nimba, Lofa or Bong County one circuit court, but with various divisions (criminal, civil, commercial, etc.), each such divisions being manned by a separate circuit judge? Or should there be created new circuit courts in those areas to be able to have the people have greater access to justice, both regarding civil and criminal matters. Should the terms of court be extended, from the current 42-day jury session to perhaps 60 days or beyond? Should the jury system be reform, and I submit that it is in dire need of reform?

The Government may be required to realign its budgetary process to achieve this goal, and the institution that could play a big role in this process is the LNBA. I submit further that the Judiciary must review and revise its current plans of establishing massive court structures worth ½ million United States dollars in each county, especially when this will mean that some counties will never be privileged to have such structures for a considerable period of time. Rather, a more realistic approach seems to me to be putting smaller structures in a greater number of counties in the shortest period of time so that justice draws closer to the people and they can feel its presence and know that they readily have access to it. The size of the structure, for the present, should be based on the population size, the levels of the violations and the ability of the county to address such violations. No massive structures in Grand Kru, River Gee, Rivercess or Gbarpolu County can have the same effect as one in Nimba, Lofa or Bond County. I

had the occasion to visit River Gee County last year. There wasn't even a court, because the one that I saw was a mud house with no doors and no windows. My visit to Gbarnga revealed a rather dismal situation with respect to the Circuit Court structure. When it rains, the Court, the judge and the court's documents are all rendered unsafe. Many of the circuit courts around the country are in a similar state. How the can we justify expending such massive amount on one structure in a small locale where the violations are at a minimum, compared to the other substantially larger counties where the needs are so great and the resources lacking? I therefore submit that rather than expending US$500,000 to construct one court house in such small counties, one-fifth (or less) of such funds be used to build decent court houses in a number of the other smaller counties, or perhaps even be used to construct a large number of magisterial courts in the counties, to which the people can take their disputes and feel comfortable that the may be able to have justice, as opposed to a situation where the magisterial court is in the private home of a person or the rent is being underwritten by a wealthy persons or business entity. This must be our focus in according access to justice to our people.

We know that structures, as important as they are, are not the only elements that are crucial to enabling our people to have access to justice. When an incompetent or dishonest lawyer is appointed as a judge, the people invariably are denied access to justice. This means that the selection process must now be very vigorously supervised by the Executive and opened to scrutiny by the legal community and the public at large. Again, let me stress that the Bar has a pivotal role to play in helping the Judiciary gain direction and focus that best meet the challenges currently being faced by the legal system to ensure that our people have access to justice. In some jurisdiction in the region, a separate body has been set up that evaluates the candidates and makes recommendations as to their competence and honesty. It is not the sole mission of the Executive or the Bar Association or even of the Supreme Court. It comprises a core of competent and respectable persons in the society, including the Attorney General, retired Justices and Judges, civil society, etc. we may do well to look at the operation of such a body in fashioning out a process that removes the selection and recommendation from a single body that has not proved itself to a more diverse group from a number of select institutions to recommend such officials for appointment by the Executive.

We also know that when a corrupt lawyer is appointed as a judge, or a corrupt person appointed as an official of the court, there is a strong possibility that access to justice will be denied, for to gain such access one must be willing to pay for it. The result therefore is effectively a denial of access to justice. And the inability of our Law School to challenge our society by the standard and caliber of graduates produced has not aided the process. The strong decision must now be taken, as painful as that may be, to rid the School of any professor or lecturer who lacks the will, time or ability to contribute meaningfully to the School, as this also contribute to depriving our people the quality of persons they need to afford them access to justice. For access to justice is not just dependent on the government's ability to provide it, but also on lawyers who, by the display of their competence and qualification, can cause the government to give greater attention to or demand of the government the establishment of the required mechanisms and processes to ensure that the mechanisms are in place for people to have access to justice. Indeed, one is prompted to wonder if this may have been the reason for Judiciary not allowing the admission to the Bar of a large number of law graduates for almost one year after their graduation and application for admission to the practice of law. I hold the view that the act of not having these lawyers admitted was not right; for even if there were issues concerning qualification, and I do not believe that this was the case, otherwise there would not have been an arbitrary selection of some and the exclusion of others without subjecting the to some form of scrutiny, in and of itself deprived some segments of the society of the representation it needed to afford them greater access to justice. And when it takes the Judiciary almost a year to pas upon a group of lawyers who have applied for admission to the Bar, then our justice system has a problem. How long, I am constrained to ask, will it take for the more recent graduates to be admitted to the practice of law---another year, two years? If we have a problem with how the system currently operates, then let us work to change it, not cause the society to continue to suffer on account of it.

What is of equal concern is that the Bar seemed unable to state openly its concern about what was occurring or to mount the deserving pressure for the admission of those graduates to the practice of law. Several weeks ago, I recall, when the Nigerian President left his country for medical attention and did not return for two months, the Nigerian Bar Association was a key proponent in petitioning the courts to make a determination on the President's absence. Could the LNBA have taken such a decision? I doubt it. But we must be sufficiently brave, as members

of the Bar, to enquire of the Supreme Court as to the reason for the action, if we are to champion the improvement of our system of justice. And if the action was due to any member of the Bar, as some persons would have us believe, with the result that the act by the member precluded or deprived the persons of admission to the Bar, then it is time to change the admission process rather than allow the process to affect our people right to justice. We, as members of the Bar, must now find the strength to speak, as is expected of us, when we see what we believe to be an injustice. If we cannot do it, then who may I ask, should we expect to protect the rights, not just of ourselves but also of the greater society.

I believe very strongly also in the position that when the Constitution is denied the right of an appeal in a matter, criminal or civil, that is a denial of access to justice, a right guaranteed to all, including the Government, by our Constitution. This is why I have said that we seem to be fearing change, not just for the sake of change, but for the improvement of our legal system as would accord our people access to justice. The statute ordinarily relied on by persons who claim that the Government has no right of an appeal is unconstitutional. The new Constitution outlaws such interpretation and renders the statute void. Such interpretation violates the very tenet of Article 2 of the Constitution. No where in the new Constitution does it state that the Government does not have the right of appeal in criminal cases and any law which suggests that is unconstitutional and effectively deprive a people of the right to access to justice. But more than that, the truth of the matter is that when the Government loses a case, it is more than the Government that has lost a case. In more cases than not, it is a citizen or a group of citizens who have been aggrieved by the acts of another citizen or resident or group of citizens or residents that have lost the case. Thus, when the Government is denied the right of an appeal, it is not the Government that suffers; it is the citizen whose rights have been abridged or violated that suffers and which rights the Government is championing for that citizen. Is that citizen not entitled to justice or to access to justice? Access to justice, in the Liberian context, must take into consideration the rights of the victims or those who have been aggrieved by the conduct or acts of another and whose grievance the Constitution mandates the Government to address by subjecting the perpetrators or violators to prosecution.

Yet, we would not have our Supreme Court review a criminal case when the Government loses, not because there is no evidence, but because in spite of the evidence and because of some other factors, including perhaps even financial consideration, a decision is made adverse to the State and to the aggrieved party(ies). A careful examination of the proceedings of the National Constitution Commission will reveal that there was no such intent by the framers to deprive a segment of our population of access to justice by the denial of the right of appeal to the Government, and I believe that it is time to challenge any such decision by the trial courts and have our Supreme Court take a fresh look at it. If trial courts and party litigants knew that the right of appeal was inviolate, even with respect to the Government, the temptation for corruption will be reduced and our people will at the same time be assured of greater access to justice. Imagine the number of persons who have been denied access to justice because of the denial of the right of appeal to the Government. I guarantee you that obedience to the Constitution by according the Government the right of appeal will result in the overturning of a tremendous number of cases and cause to be more cautious in the handling of criminal cases.

I believe further that we must commence a comprehensive review of our court procedures. This means a review of both our civil and criminal procedure laws, factors in the notion of access to justice. Very soon, we will have the Law Reform Commission begin a dialogue aimed at that comprehensive review. Perhaps we may even want to consider the creation of Appeals Courts so as to ease the burden on the Supreme Court and enable greater disposition of cases, which form a part of the access to justice doctrine, for if our people know that they can still have a further avenue for justice that would enable a more speedy disposition of their cases, they may be motivated to appeal harmful decision rather than determine to suffer the consequences of such harmful decisions.

The time may also have come for us to consider whether procedural errors made by lawyers, such as the late filing of some appeal documents, should serve as a basis for denying justice to our people or to party litigants, rather than imposing a penalty on the lawyer.

Also access to justice would be grossly incomplete if we did not give critical attention to a critical review and revising of our jury system. As Minister of Justice I spoke of the deficiencies

in our jury system, and while I was castigated for holding such position, I continue to hold such position. Our jury system is corrupt and we must repair it if our people are to seriously have access to and a roper administration of justice; where justice will not go to the highest bidder or friends and families of court officials do not become the bedrock of the jury selection process. In many jurisdictions, including in our West African Region, the corrupt nature of the jury system has led to it being dispensed with. We may need to keep that as an option in the review process. Of course, we must also review how judges are selected and the acts and process that could warrant their removal from office.

Access to justice also requires a new core of court officials, trained in the rudiments of court record management. I recall as far back as the 1970s when the Judicial Conference was held, there was talk of training court stenographers. Almost forty years later, we can boast of not a single court stenographer as would speed up the taking of records and thus the speedy disposition of cases. It may also be time for a system to be put into place that allows recording of the court proceedings so as to speed up the trial process. In such situations, the recordings are transcribed at the end of the day by the appropriate court personnel and are available to the court and to the lawyers the following morning. The speeding up of cases will give the public greater confidence in the system and aid in the development of the perception that there is access to justice.

Additionally, the Executive must now move with deliberate but well designed strategy to put into place competent magistrates. The Judiciary can aid this process by moving urgently with the training of lower level judges at the Judicial Training Institute, under new standards and certification as a condition for appointment by the President. The Judicial Council, recommended below, will also play a key role in the appointment process. Important to the process must be reconciling the respective roles of the Legislature and the Executive on the establishment of such magisterial courts. The Legislature cannot pass an act vesting in the President the right to establish magisterial areas for the purpose of establishing magisterial courts and appointing magistrates to man those courts and at the same time continue to politicize the process by continuing to establish such courts in areas where they are neither needed nor warranted. This confused state of affairs only serves to deprive the State of having such courts established where they are most needed and warranted and where they can afford the population greater access to

justice. At the Law Reform Commission, we will make the effort to address some of those issues and to set forth the appropriate recommendations for change in the legal system and the legal community.

Lastly, I believe that access to justice can be improved by the creation of a judicial body that will champion the aspirations of that Branch of the Government, the same as we have in some other jurisdictions. In those jurisdictions, although the Chief Justice and the Associates Justices are, for example, part of the budgetary process, that process is not led by them but by a core of independent persons constituting the Judicial Council. It is such a Council that, working with other institutions such as the Bar Association, recommends to the Executive the appointment of judges and recommend, to the Executive or the Legislature, the removal of judges. This will give greater assurance that judges appointed possess the requisite qualification and competence for the duties they will be expected to perform. It is this Council also that will advocate for the salary structure and other core needs and benefits for judges and other judicial officers. It is this Council that will set a new standard for the selection of judges and thereby ensure that our best are brought into the system to determine the legal fate of our people. Such a Council will insulate the Judiciary from attacks of greed and frees it to concentrate more on the purpose for which that Branch was constituted in the first instance.