

## THE JUDICIAL WORKPLACE AND THE INTERSECTION WITH JUDICIAL INDEPENDENCE

### Fourth Study Commission Questionnaire – 2023

For most, appointment to judicial office represents not only immense personal achievement but also public acknowledgment of professional eminence. In this Fourth Study Commission analysis, we will look at the judicial workplace and examine aspects of appointment to judicial office, promotion within the judiciary, equitable allocation and distribution of judicial workload and removal from judicial office. This review also endeavors to consider how the judicial workplace is or not comparable to other workplaces.

Please answer the following in respect of your own country.

#### 1. APPOINTMENT TO JUDICIAL OFFICE

- A. Please describe the process by which a person is appointed to judicial office in lower courts, intermediate courts and superior courts pointing out any relevant differences between appointment in criminal, civil or appellate courts.

**Answer:** *The Chief and Associate Justices of the Supreme Court, the highest court, and judges of courts of record, the intermediate court between the Supreme Court and courts not of record (magistrate, traffic, juvenile and justice of the peace courts), are appointed by the President with the advice and consent of the Senate, the Upper House of the Legislature, pursuant to Articles 68 & 69 of the Constitution and Sections 2.3, 3.6 and other corresponding provisions of the Judiciary Law. Judges and magistrates of courts not of record, the lowest and first instance courts, are appointed solely by the President without the advice and consent of the Senate.*

*There are “relevant differences between appointment in criminal, civil and appellate courts” to the extent that judges of the criminal assize of the circuit courts are appointed to hear felonies - serious crimes; while judges (magistrates) of the magistrate courts are appointed to hear misdemeanors - less serious crimes. The criminal assize of the circuit courts have appellate jurisdiction over criminal cases from the magistrate courts. The Supreme Court has final appellate jurisdiction over all criminal cases from the criminal assize courts. The judges of the civil assize of the circuit courts and specialized civil courts judges are appointed to hear civil cases where the money or property/chattel involved is above \$2,000.01; while magistrates have original jurisdiction over cases where the money or chattel involved does not exceed \$2,000.01. The judges of the civil assize of the circuit courts and the specialized civil courts judges have appellate jurisdiction over civil cases from the magistrate courts. The Supreme Court has final appellate jurisdiction over all civil cases from the civil assize of the civil courts.*

- B. If applicable, please identify whether political influences of any description bear upon in any way the appointment of a particular person to judicial office.

**Answer:** *Appointment to judicial office is non-political, as in some states jurisdictions in the United States of America. In fact, when one is appointed to judicial office, under Section 13.2 of the Judiciary Law and Canon 37 of the Judicial Canons of Liberia, he/she is prohibited from engaging in party politics.*

- C. Is ethnic or gender diversity in any way relevant to appointment to judicial office? And if so, please describe why and in what respect each may be relevant.

**Answer:** *Neither the Constitution nor statutory law requires that one be appointed to judicial office based on his/her ethnicity or gender. However, Article 18 of our Constitution states that: "All Liberian citizens shall have equal opportunity for work and employment..." This constitutional provision of "equal opportunity for work and employment" also applies to judicial office. And as a matter of public policy, appointment to judicial office is sometimes based on ethnicity and gender in order to promote ethnic and gender diversities. When Associate Justice Kabineh Ja'neh, an ethnic Mandingo, was impeached and removed from office the President stated that he would and did appoint to the Supreme Court a Justice from the Mandingo ethnic group. Judge Yussif D. Kaba, Resident Circuit Judge of the 6<sup>th</sup> Judicial Court, a Mandingo, was therefore elevated to the Supreme Court as Associate Justice. President George Weah has always talked about appointments of females in his administration. Following the retirement of Chief Justice Francis S. Korkpor in 2022, Associate Justice Sie-A-Nyene Yuoh was promoted as Chief Justice of the Supreme Court.*

- D. Describe whether and if so in what way the process of appointment to judicial office is independent of government.

**Answer:** *Articles 68 & 69 of our Constitution and provisions of the Judiciary Law (e.g. Section 2.3 Appointment of Justices of the Supreme Court, and Section 3.6 Appointment of Circuit Judges) grant exclusive power to the Government to appoint individuals to judicial office. There is no commission or body empowered by law, like in some jurisdictions, through which the Government makes appointment to judicial office. Legally, therefore, appointment to judicial office is not independent of government. However in practice, the Government had many a time deferred to the Chief Justice and the Liberian National Bar Association (LNBA) in making appointments to judicial office.*

## 2. PROMOTION WITHIN THE JUDICIARY

- A. Does scope exist for promotion within the judiciary? If so, please describe how and in what circumstances a magistrate or a judge may be promoted.

- B. **Answer:** *There is scope for promotion within the judiciary. For example, a circuit judge in the order of seniority shall be promoted, though temporarily, "to sit as an **ad hoc** justice of the Supreme Court," pursuant to Article 67 of our Constitution. Also, Section 3.7 of the Judiciary Law, for instance, provides scope or opportunity for a circuit judge to be promoted as a justice of the Supreme Court; while under Section 7.6 of the Judiciary Law a magistrate can be promoted as a Circuit or Specialized Court Judge. Indeed, many circuit judges, from the early days of our judiciary's history to present, were promoted as Justices of the Supreme Court. In practice, however, a very few magistrates were promoted as Circuit or Specialized Court Judges.*

- C. To what extent is political affiliation of political partisanship relevant to promotion within the judiciary?

**Answer:** *As indicated earlier, unlike in some jurisdiction where the judgeship is based on party politics, judges are statutorily and canonically barred from engaging or affiliating in partisan politics. See Section 13.2 Prohibited Activities, Judiciary Law, and Judicial Canon 37. Following one's appointment to the bench he/she ceases to engage in active politics. As a matter of human nature, however, one who was a member or an affiliate of a political party could be promoted on that basis. There is an isolated case, for instance, where it has been said that a judge and a magistrate were promoted because of party affiliation – real or perceived.*

- D. Describe the transparency involved in the process of promotion within the judiciary.

**Answer:** *The Chief Justice and the LNBA do recommend one for promotion within the Judiciary, though the President is under no legal obligation to accept such recommendation. Notwithstanding, before a judge is recommended for promotion by the Chief Justice and the LNBA, the recommendee's legal and moral, ethical and professional competencies are evaluated. Similarly, when the recommendee appears before the Senate for confirmation hearing, a public hearing, he/she is examined as to his/her competency.*

### 3. WORKLOAD WITHIN THE JUDICIARY

- A. In broad terms, what are the requirements for magistrates and judges in relation to the number of sitting days per year or other measurement of judicial workload requirements?

- B. **Answer:** *Magistrates sit weekly from Mondays to Saturdays. Sundays and statutory holidays are excluded. There are 52 Sundays in a year (365 days) or 54 Sundays in a leap year (366 days); and there are 10 National (statutory) holidays in Liberia.  $365 \text{ days} - 52 \text{ Sundays} + 10 \text{ holidays} = 303 \text{ days}$ ; and for leap year,  $366 \text{ days} - 54 \text{ Sundays} + 10 \text{ holidays} = 302 \text{ days}$ . Therefore, magistrates' sitting days per year are 303 days or 302 days (leap year). The specialized courts judges sit monthly. They, like magistrates, also sit weekly from Mondays to Saturdays, Sundays and legal holidays excluded. Therefore, the sitting days for specialized courts judges, like magistrates, are 303 days yearly or 302 days (leap year).*

*Circuit judges sit quarterly yearly: 42 days' trial session plus 10 days chamber session before the trial session, and 10 days chamber session after the trial session, totaling 62 days per quarter, excluding Sundays and holidays.  $62 \text{ days per quarter} \times 4 \text{ quarters} = 248 \text{ days}$ . Therefore, the sitting days for circuit judges are 248 days yearly. In addition to these 248 sitting days, the law requires that the circuit courts "shall be considered always open for adjudication of matters ... and for the purpose of filling and pleading ... or ... issuing and returning mesne and final processes and of making and directing all interlocutory motions, orders and rules." See: Section 3.10 Judiciary Law.*

- C. If a judge is encountering trouble keeping up with the workload, describe the regime that applies by which –

- (i) That judge's workload is allocated to other judges.

**Answer:** *Section 3.9 of our Judiciary Law empowers the Chief Justice to assign another judge to assist the judge encountering trouble keeping up with his/her workload. "The Chief Justice of the Supreme Court shall assign, on a rotating system, a Circuit Judge to each quarterly session of the various Circuits and if all business before a Circuit is disposed of before the expiration of a quarterly session, the Chief Justice shall have the power to reassign the Circuit Judge assigned thereto to sit for the balance of the quarterly session in any other Circuit in addition to the Circuit Judge currently assigned there, if he deems such reassignment will aid the prompt disposition of judicial business." Section 3.9 of the Judiciary Law also applies to all specialized courts judges encountering overload problems.*

- (ii) The overloaded judge can recover from workload arrears and from any other disabling factor that led to overload.

**Answer:** *No regime applies.*

- (iii) There are other mechanisms to address judicial delinquency.

**Answer:** *Another mechanism to address judicial delinquency is that Section 3.6 of the Judiciary Law as amended provides for four (4) Relieving Judges to sit in the event of unavailability of circuit judges and to address the problem of judicial overload.*

- D. Are Judges expected or required to assist overloaded judges who may be adversely affected from overload so as to ensure that the business of the court is discharged in a timely manner?

**Answer:** *Judges are not only expected but also required by law to assist overloaded judges, under Section 3.9 of the Judiciary Law, to ensure that the business of the overloaded court is discharged timely.*

#### Finally, 4. REMOVAL FROM JUDICIAL OFFICE

- A. Does a regime currently exist in your country pursuant to which a sitting judge may be removed from office? If so, please describe any such regime, giving all relevant details including -

- i. Who decides that the judge is to be removed from office?

**Answer:** Under Article 71 of the Liberian Constitution judges are “removed upon impeachment and conviction by the Legislature ....” Pursuant to Article 43 of the Constitution, “a bill of impeachment is vested solely in the House of Representatives, and the power to try all impeachments is vested in the Senate. According to this same Article, when a judge is being tried, “the President of the Senate [the Vice President] shall preside.”

- ii. Does the judge have a right of audience on any such motion or otherwise possess a right to be heard against the removal and is there an appeal process if removed?

**Answer:** The judge has a due process of law right to be heard in an impeachment trial because under Article 20(a) of our Constitution: “No person shall be deprived of ... 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.”

- iii. What are the grounds for seeking the removal of a sitting judge?

**Answer:** Grounds for removal of a sitting judge by impeachment are: the commission of “treason or other felonies, misdemeanor or breach of the peace,” according to Article 73 of the Liberian Constitution. Violation of the Judicial Canons may also be ground for removal under Judicial Canon 39 of the Judicial Canons of Liberia. The Judiciary Inquiry Commission under Judicial Canon 40 is the body that hears complaints of violation of the judicial canons by judges and magistrates. The Commission’s findings and recommendations are reviewable by the Supreme Court.

- iv. What is the relationship between violation of the ethics code/principles and removal?

**Answer:** Like removal by impeachment of a sitting judge pursuant to the Constitution, the penalty for violation of the judicial canons by a sitting judge extends to removal by impeachment, depending on the gravity of the violation. The recommendation for impeachment is made by the Supreme Court to the Legislature.

- v. Describe the transparency in the Process.

- vi. **Answer:** There is transparency in the removal process. Both in impeachment trial and Judicial Inquiry Commission hearing for the removal of a sitting judge, the judge is entitled to be heard as provided by Article 20(a) of the Constitution; Article 21 of the Constitution guarantees public trial or hearing, right of the judge to produce witness and right to confront witness produced against him/her; and the right to be represented by counsel, according to Article 21(h & i) of the Constitution.

- B. If removed from office, describe the adverse consequences that may affect the removed judge including -

- a. Financial (especially pension) consequences.

**Answer:** *Only retired judges receive retirement benefits. A removed judge who was not honorably retired cannot possibly receive retirement benefits. The law provides no such benefits for removed judge. The law does not, however, bar a removed judge from engaging in the private practice of law. Notwithstanding, the stigma of his/her dishonorable removal can prejudice his/her private practice of law and thus adversely affects the removed judge's clientele and **a fortiori** his/her financial position.*

- b. Future employment consequences following removal.

**Answer:** *A removed judge, under Article 43 of our Constitution, disqualifies him/her from holding public, not private, office. After his/her removal, he/she may also be tried in court "for the same offence," according to Article 43 of the Constitution. Under Article 43, however, judgment in removal proceeding and that in court trial for the same offence, "shall not extend beyond ..." these judgments.*

- c. Societal consequences including loss of title or civic decorations.

**Answer:** *As a removed judge, he/she ceases to be designated the title of "Judge Emeritus" or "Retired Judge." The removed judge does not however lose his/her professional title of "Attorney-at-law" or "Counsellor-at-law," nor does the removed judge lose his/her civil decorations because Article 43 of the Constitution provides that: "Judgment in such cases shall not extend beyond removal from office and disqualification to hold public office in the Republic" of Liberia.*

- d. Disciplinary steps that may be taken against a Removed Judge.

**Answer.** *A removed judge may subsequently be tried in court "for the same offence," according to Article 43 of the Constitution.*