

Liberia’s Response to IAJ/UIM Study Commission IV -22 “Judicial Workplace and Judicial Independence”

WHAT IS THE IMPACT ON JUDICIAL INDEPENDENCE OF THE JUDICIAL WORKPLACE (INCLUDING NOMINATIONS AND APPOINTMENTS, INDEPENDENCE IN DECISION MAKING, GOVERNANCE, ASSIGNMENTS, FUND AND OTHER RESOURCES)?

Please provide examples in the judicial workplace that foster judicial independence and identify barriers and practices that impede or negatively impact judicial independence.

Let us first define the principle of *judicial independence* and then the concept of *judicial workplace*. The principle of judicial independence has a broad meaning. In order to limit the scope of this paper, we shall narrow the definition of judicial independence – definition within which the scope of this paper will be limited.

Judicial independence is “the ability of the courts and judges to perform their duties free of influence or control by other actors”¹ – the Legislature and Executive, for the purpose of this paper. It “is the concept that the judiciary should be independent from the other [two] branches of the government”² – the legislative and executive branches. It means that the “courts should not be subject to the improper influence from the other branches of government.”³ In fine, judicial independence is the ability of the courts and judges to administer impartial justice based on the facts and law of the case devoid of improper influence from the legislative and executive branches thus ensuring public trust and confidence in the courts. Judicial workplace, then, is that ideal and enabling environment, the courthouse and those amenities attending thereto, where the courts and judges perform their duties free of improper influence and control from the legislature and executive.

In Liberia, there are constitutional, statutory and canonical safeguards that foster judicial independence of the judicial workplace with respect to judicial nominations and appointments, independence in decision making, governance, assignments, fund and other resources. Amid these safeguards that foster judicial independence of the judicial workplace, yet, there are barriers and practices that impede or negatively impact judicial independence.

1. Judicial nominations and appointments

Under the doctrine of checks and balances, and to avoid executive abuse of power and prohibit the President from unilaterally nominating and appointing judges he wishes to work at his/her will and pleasure, qualified candidates for the judgeship are nominated with: 1. The assistance of the Liberian National Bar Association (LNBA); and 2. Appointed with the consent of the Senate, the Upper House of the Legislature.

The LNBA, through the Chief Justice, submits the names of three qualified candidates to the President, one of whom is nominated by him/her and forwarded to the Senate for confirmation hearing and subsequent appointment by the President. In practice, the President had many a time

nominated candidates for the judgeship without the assistance of the LNBA since he/she is not legally bound to be assisted in nominating judges. This practice impedes and negatively impacts judicial independence. Such practice does not mean that judges unilaterally nominated by the President will necessarily render them not independent; nevertheless, it shows an appearance of want of judicial independence.

However, Articles 68 and 69 of the Constitution respectively provide that the President shall appoint justices of the Supreme Court and judges of the courts of record with the consent of the Senate, thus fostering judicial independence since the appointment is not unilaterally made at the will and pleasure of the President.

2. *Independence in decision making*

Article 73 of the Constitution safeguards and guarantees judicial independence in decision making by granting judges immunity from being summoned, arrested, detained, prosecuted, or tried civilly or criminally because of their judicial opinions and acts. Further safeguarding and guaranteeing judicial independence in decision making, Article 72(a) protects judicial compensation against diminution and Article 72(b) gives judges' security of tenure whereby their retirement age is fixed at 70 years. Furthermore, judges hold their office *quamdiu se bene gesserint* – “during good behavior.” Judges cannot be removed arbitrarily at the will and pleasure of the Executive and/or Legislature. Accordingly, under Article 71 of the Constitution, judges are only removed by “impeachment and conviction by the Legislature based on proved misconduct, gross breach of duty, inability to perform the function of their office, or conviction in a court of law for treason, bribery, or other infamous crimes.” Moreover, Section 13.4(2) of the New Judiciary Law prohibits reduction of the compensation of Justices of the Supreme Court, judges and magistrates. Finally, Judicial Canon # 5 mandates that judges be paid adequately.

The foregoing constitutional, statutory and canonical safeguards and guarantees foster judicial independence in the judicial workplace because judges should and would not be afraid, amid the legal protection of judicial compensation and tenure, of dismissal at the will and pleasure of the Legislature and/or Executive based on their decisions making.

Unfortunately, notwithstanding this legal protection of judicial independence in decision making, there are complaints of the Executive and Legislature interfering with judicial decision making. This practice impedes and negatively impacts judicial independence of the judicial workplace. For example, Associate Justice Kabineh M. Ja'neh was impeached and removed from office in 2020 for his judicial opinions.

3. *Governance*

Up to 1959 and before the enactment of the New Judiciary Law (1972), governance - administrative control and operation - of the Judiciary was largely performed by the Executive Branch. Ministerial officers (bailiffs), clerks of courts, and even some judges, Revenue Court Justices, were under the administrative governance of the Executive Branch. For instance, Section 130 of the Old Judiciary Law (1956) put Revenue Courts and their Justices under the governance of Revenue Collectors, Treasury Department, now Ministry of Finance &

Development Planning, a Ministry in the Executive Branch; and under Section 134 of said Old Judiciary Law, the President was empowered to promulgate rules and regulations for the governance of the Revenue Courts and their judges. This practice undermined, impeded and negatively impacted judicial independence of the judicial workplace.

The New Judiciary Law (1972) now places governance, administrative control and operation of the Judiciary under the Judiciary Branch itself, headed by the Chief Justice and assisted by an administrative assistant, the Court Administrator. See Sections 21.1(1) and 21.2(1), New Judiciary Law (1972). According to Section 21.1(2) of the New Judiciary Law, “All judges, clerks and ministerial officers of the courts of the Republic shall be under the administration of the Judiciary Branch of Government.” Also, Section 21.3 of the New Judiciary Law as amended and revised (2006) gives the Judiciary Branch financial autonomy to control and administer its budget and bank account. Further, it is the Supreme Court, not the President that promulgates rules governing all courts pursuant to Article 75 of the Constitution. These statutory and constitutional provisions placing governance in the Judiciary foster judicial independence of the judicial workplace.

4. *Assignments*

The assignments of judges do not vest in the Executive and/or Legislature; otherwise, this would undermine and impede judicial independence of the judicial workplace. For example, the Ministry of Justice, a part of the Executive Branch, represents the Government in the courts in cases where the Government is a party. So, if the law were to authorize the Executive to assign judges to decide cases in which the Government is a party, this means that the Executive would be assigning judges to decide her own cases in which the Executive has an interest. This would have the appearance of the Executive being judges in their own cases, a violation of the doctrine of *nemo iudex in causa sua* – one cannot be a judge in his/her own case; and thus impeding judicial independence of the judicial workplace.

Therefore, in order to foster judicial independence in the judicial workplace, Section 3.9 of the New Judiciary Law (1972) authorizes the Chief Justice to assign circuit judges rotationally to preside over the various circuit courts during the quarterly terms of court.

5. *Fund and other resources*

The International Crisis Group on post-war Liberia recognized “the long years of very low remuneration and generally poor working conditions of judicial officers and staff ... and the low pay does not attract the talented professionals.”⁴ In order “to enhance the functioning and effectiveness of the Judiciary”⁵ and thus fostering judicial independence in the judicial workplace, the Judiciary’s Strategy Plan culminated in the establishment of a Judiciary budgetary independence, building of courthouses, the raising of judicial officer’s salaries⁶, among others.

Though the Judiciary is empowered to control its own budget under an act amending the Judiciary Law (2006), an act providing financial autonomy to the Judiciary, in practice, it is the

Executive and Legislature that control the Judiciary's budget and continue to reduce same annually for reason of "lack of sufficient fund", the Executive and Legislature continually argue.

Finally, resources like electricity, stationary, computers/typewriters, among others, needed in the judicial workplace to foster judicial independence, are in short supply. The Judiciary lags behind in recruiting qualify staff, particularly in rural arrears, due to lack of sufficient fund to employ qualified staff. Judicial officers' remunerations have been greatly reduced. Judges do not have law clerks. All these are among the barriers that impede and negatively impact judicial independence of the judicial workplace in Liberia.

FOOTNOTES

¹Britannica: judicial independence – britannica.com/topic/judicial_independence

²Wikipedia: judicial independence – en.m.wikipedia.org/wiki/judicial_independence

³Ibid.

⁴The Judiciary of the Republic of Liberia Branch: Strategy Plan (2010-2011) – A paper prepared by the International Crisis Group on post-war Liberia.

⁵Ibid.

⁶Ibid.