




LIBERIA ENFORCEMENT TRAINING PROGRAM

# **Enforcing the Labour and Criminal Law to Address Child Labour, Forced Labour, and Human Trafficking**

SENTENCING



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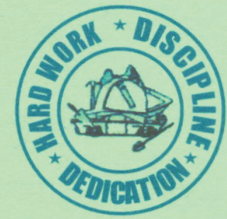




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November 28, 2022

The National Commission on Child Labor and the National TIP Secretariat  
c/o Child Labor and TIP Divisions, Ministry of Labour  
Ministerial Complex, Congo Town  
Monrovia, Liberia

Dear Colleagues:

I am pleased to extend our collective heartfelt appreciation to the US Department of Labor (USDOL) which funds the Winrock International ATLAS Liberia project. This project further engaged Lawyers Without Borders (LWOB) as technical partner in providing expertise to support efforts of the Government of Liberia to eliminate Child Labour, Forced Labour, and Human Trafficking.

Winrock ATLAS project and partners (Lawyers Without Borders) engaged the Government of Liberia to assess current circumstances relating to Child Labour, Forced Labour and Human Trafficking and then identified specific activities based on Government of Liberia priorities, along with ATLAS project and USDOL priorities to implement for the enhancement of building the government's capacities to address Child Labour, Forced Labour, and Human Trafficking in Liberia. In the engagement process, three key activities referred to as Differentiated Model of Practices (DMOPs) were identified by a special **Working Group** representing the Ministry of Labour, Ministry of Gender Children and Social Protection, Ministry of Internal Affairs, INGOs, Liberia National Police (LNP), Liberia Immigration Services (LIS), Liberia Drug Enforcement Agency (LDEA) and Civil Society Organizations (CSOs). The three key activities identified by the **Working Group** include: (1) Support to the Child Labour Monitoring System (CLMS) in Liberia, (2) TOT Training Program for Grassroots and Local Actors, and (3) Enforcement Training Program (ETP). The ATLAS project, partner and Working Group developed curriculums/Guidelines for each of these key activities (DMOPs).



The Ministry of Labour, through her designated staff from the Child Labour Division, Trafficking-In-Person Division and the Inspectorate Division were highly participatory in the development of concept notes, curriculums/guidelines, piloting, refinement, and institutionalization plans for these DMOPs. The result of our joint effort and as per MOU signed between Winrock International ATLAS project and the Ministry of Labour for the institutionalization and sustainability of these DMOPs, the Government of Liberia through the Ministry of Labour considers the process as part of the broader effort to advance the fight against the menaces of Child Labour, Forced Labour, and Human Trafficking.

The ATLAS project collaboration with the Ministry of Labour also extended to the development and endorsement of hazardous and light work lists for children in Liberia, and the drafting of Child Labour Law for Liberia that is currently in Committee Room for revision and for subsequent enactment by the National Legislature.

In view of the collaboration and MOU, the Ministry of Labour endorses these Training Curriculums/Guidelines and institutionalization plans that are developed through joint and collaborative efforts for the enhancement of building the capacities of key Actors and partners in the fight against Child Labour, Forced Labour, and Human Trafficking in Liberia.

Together, we can end Child Labour, Forced Labour, and Human Trafficking in Liberia.

Kind regards.

Very truly yours,



Cllr. Charles H. Gibson  
**MINISTER**



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# Introduction to Module 5

Module 5 of the *Enforcement Training Program* focuses on sentencing, the final step of the child labour, forced labour, and human trafficking case process unless there is an appeal. Sentencing plays an important role in the case process. It sanctions offenders, can serve as a deterrent to other potential offenders, and can provide closure and compensation to victims. The module looks at sentencing guidelines and factors that judges should consider when determining a sentence. The role of restitution is examined, along with the positive impact it can have for victims. The module examines the benefits and challenges of plea bargaining and how plea bargaining can be used. Finally, the module examines the Bangalore Principles of Judicial Ethics and the Judicial Canons of Liberia. The module uses seven interactive exercises to help apply what is learned to real-life scenarios; it also gives participants an opportunity to discuss important sentencing issues. Module 5 completes the case process that began with Modules 1 through 4. However, it should be noted that victim/survivor services may continue past sentencing.



Photo Credit: Dominic Chavez/World Bank, 2015, Liberia

# Lesson 5.1: Sentencing Guidelines

## **Objective:**

- To learn about sentencing guidelines and challenges. Practice child labour, forced labour, and human trafficking sentencing using scenarios.

## **Time:**



1 hour and 40 minutes

## **Steps:**

- Exercise 5.1.1: Sentencing Discussion
  - 15 minutes
- Present PowerPoint Presentation 5.1: Sentencing Guidelines
  - 15 minutes
- Exercise 5.1.2: Sentencing Scenarios
  - 1 hour and 10 minutes

## **Supplies:**

- Flip chart
- Markers
- PowerPoint Presentation 5.1: Sentencing Guidelines
- Projector
- Handout 5.1.2: Sentencing Scenarios

Sentencing is often discretionary, permitting the circumstances of the individual case, the accused, and the victims/survivors to be considered. Because of this individualized, discretionary approach, there can be sentencing disparities. These disparities can cause the public to lose confidence in the penal system if they feel sentences are arbitrary, and the sentencing process is unpredictable and unfair. While mandatory sentences may reduce sentencing disparities, they can also increase overcrowding in prisons and hinder the appropriate discretion of courts.



## **Sentencing Guidelines**

Sentencing guidelines may cover specific classes of cases or specific offenses. Sentencing guidelines are developed for the following reasons:

- Align the sentencing process with the Constitution
- Guide to the process of determining sentences
- Link the sentencing process to the overarching objectives of sentencing
- Structure the use of discretion to reduce disparities
- Provide a framework for exercising discretion
- Address the need to reduce the use of custodial sentences and promote the use of non-custodial sentences
- May encourage the participation of victims/survivors in the sentencing process

Judges should always consult local guidance and stay up to date on any changes to local sentencing guidelines.

In Liberia, Chapter 31 of the Criminal Procedure Law provides general sentencing guidelines, such as limiting the forms of a sentence to those authorized by law (§31.1), supporting survivors by allowing an order of restitution (§31.1), considering individual defendants' needs when choosing a correctional institution (§31.4), guiding presentence investigations (§31.5), and considerations for multiple sentences (§31.6).

Chapter 51 of the Liberian Penal Law also provides sentencing guidance on: how to conduct a sentencing hearing (§51.1), defendants' rights to challenge pre-sentence investigations and reports (§51.1) and to appeal a sentencing decision (§51.2), and how to sentence a defendant found guilty of a crime that subjects him or her to death penalty (§51.3).

Besides these general guidelines, judges should also research whether there are any specific sentencing guidelines for specific crimes. For example, Article I, Section 5 of the Revised Trafficking in Persons Act (2021) provides very detailed sentencing guidelines for human trafficking offenses.

## **Sentencing Procedures**

Sentencing procedures can vary by jurisdiction, but they generally require a judge to issue a sentence after considering a series of special factors.

### **1. Presentence**

A pre-sentence report is completed by a probation officer and includes information about the defendant and any reasons for imposing a greater or lesser sentence.

In Liberia, a presentence investigation and a written report is mandatory for some crimes where:<sup>1</sup>

- The defendant has been convicted of a crime punishable by more than one year's imprisonment; or
- The defendant is less than twenty-one years of age and has been convicted of a crime; or
- The defendant may be sentenced as a repeated offender under the Penal Law or as a multiple offender under section 31.6 of this title.

In other cases, the court may order a presentence investigation discretionally.<sup>2</sup>

According to Article I, Section 5 of the Revised Trafficking in Persons Act (2021), a person convicted of the crime of Trafficking in Persons is punishable by at least 20 years' imprisonment. Therefore, a presentence investigation is required for any human trafficking cases. Forced labour or child labour cases may involve multiple criminal offences. Judges need to double check whether a presentence investigation and report is needed for a defendant according to the criteria above.

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<sup>1</sup> Criminal Procedure Law, Title 2, Liberian Code of Laws Revised, §31.5 [hereinafter *Criminal Procedure Law*].

<sup>2</sup> Criminal Procedure Law §31.5 Paragraph 2 (When permitted).

The presentence investigation shall include an analysis of:<sup>3</sup>

- The circumstances attending the commission of the crime and
- The defendant's
  - History of delinquency or criminality,
  - Physical and mental conditions,
  - Family situation and background,
  - Economic status,
  - Education,
  - Occupation,
  - Personal habits, and
  - Any other matters that the probation officer deems relevant or the court directs to included.

In addition, the court may order "the defendant to submit to psychiatric observation and examination for a period of not exceeding ten days."<sup>4</sup> The court must let the defendant or his counsel know about the contents and conclusions of the presentence investigation or psychiatric examination and allow the defendant to challenge it.<sup>5</sup>

## 2. Sentence

In Liberia, a sentence hearing before the court is required for all cases of felonies and first-degree misdemeanors.<sup>6</sup> Human trafficking, child labour, forced labour cases likely require a sentence hearing,<sup>7</sup> so judges should familiarize themselves with the requirements of sentence hearings and defendant's rights as set forth in Section 51.1 (Sentence Hearing) of the Liberian Penal Law. One difference between a sentencing hearing and a conviction trial is that, at the sentencing hearing, "the court may consider and rely on hearsay evidence, whether included in the pre-sentence report or presented orally."<sup>8</sup>

### Factors that should be considered when determining the sentence for a defendant include things such as:

- Circumstances under which the offense was committed
- Offender's age
- Offender's health and means of livelihood
- Offender's attitude and remorsefulness
- Offender's likelihood of reform
- Offender's standing and role in the community
- Impact of the offence on the child labour, forced labour, or human trafficking victim
- Aggravating and mitigating factors
- Other relevant information

3 Criminal Procedure Law §31.5 Paragraph 3 (Data to be included).

4 Criminal Procedure Law §31.5 Paragraph 4 (Order for psychiatric examination).

5 Criminal Procedure Law §31.5 Paragraph 5 (Notice and opportunity to controvert).

6 Penal Law, Title 26, Liberian Code of Laws Revised, §51.1 Paragraph 1 (Requirement; pre-sentence report) [hereinafter *Penal Law*].

7 For example, a person commits a first-degree misdemeanor if he or she, as a parent, guardian, or other caregiver for the child, knowingly endangers the child's welfare by violating the legal duty of care, protection, or support, or otherwise neglects, ill-treats, or exploits the child entrusted to his or her care. See §16.4 of the Penal Law as amended by Children's Law (2011).

8 Penal Law §51.1 Paragraph 4 (Evidence considered).





In determining the sentence, the judge must consider aggravating and mitigating factors, particularly when they are included in legislation as increasing a penalty. In particular, judges should be aware of mandatory and discretionary increases in penalties for aggravating factors. For example, Article I, Section 5 of the Revised Trafficking in Persons Act (2021) contains mandatory increases in fines if a trafficking victim dies or suffers aggravated sexual abuse, among many other aggravating factors. The Act also prescribes five aggravating factors that can permit a longer sentence for convicted traffickers beyond the minimum 20 years. These factors are: (1) trafficking of two or more persons at the same time; (2) permanent or life-threatening bodily injury to a victim of trafficking; (3) trafficking in persons involving one or more children; (4) trafficking in persons involving one or more mentally incompetent persons or disabled persons; (5) trafficking in persons as part of an organized criminal group.<sup>9</sup>

The judge should also consider whether, if relevant, sentences should be served concurrently or consecutively. If permitted, an additional consideration is whether restitution should be granted to the child labour, forced labour, or human trafficking survivor(s). More information about restitution can be found in Lesson 5.2 (Restitution). Once the factors have been weighed, and the judge has made his or her decision, a sentence should be properly issued.

<sup>9</sup> Revised Act to Ban Trafficking in Persons Within the Republic of Liberia, of September, 2021, Article I Section 4 [hereinafter *Revised Trafficking in Persons Act (2021)*].

# Exercise 5.1.1: Sentencing Discussion

## Objective:

- To begin discussing sentencing and thinking about factors to consider when sentencing child labour, forced labour, and or human trafficking cases.

## Time:



15 minutes

## Materials and Preparation:

- One flip chart and markers for the facilitator

## Steps:

- Explain to the participants the objectives of the exercise.
  - 2 minutes
- Ask participants to discuss the following questions in a large group. Write key points on the flip chart:
  - What factors should be considered when sentencing cases?
  - Are there additional factors that should be considered for child labour, forced labour, and/or human trafficking cases?
  - 10 minutes
- Wrap up with key messages below.
  - 3 minutes

## Key Messages:

- There are a variety of factors to consider when sentencing cases, such as whether the offender is a first-time or repeat offender, the severity of the offense, the offender's remorsefulness, and other factors that will be discussed in the lesson.
- In child labour, forced labour, and human trafficking cases, factors to consider include the impact on the victims/survivors, the victim/survivor's age, and other factors that will be discussed in the lesson.



## **Chapter 31 (Sentencing) of the Liberian Criminal Procedure Law**

### **§31.1. Authorized dispositions of natural persons.**

#### **1. Limitations on forms of sentence.**

No person convicted of a crime, infraction, or petty offense as those terms are defined in the Penal Law shall be sentenced otherwise than in accordance with the provisions of this section.

#### **2. Capital offense.**

The court shall sentence a person who has been convicted of a capital offense to death by hanging.

#### **3. Forms of sentence for crimes generally.**

Except as provided in paragraph 2 of this section and subject to the applicable statutory provisions, the court may suspend the imposition of the sentence on a person who has been convicted of a crime or may sentence him as follows:

- (a) To pay a fine authorized by law;
- (b) To be placed on probation;
- (c) To imprisonment for a term authorized by law;
- (d) To fine and probation or fine and imprisonment,

Until chapters 33 and 43 and the coordinate provisions of chapter 41 become effective, no sentence of probation shall be imposed; and until that time a suspended sentence may be imposed only for a noncapital offense

- (a) When the defendant is under the age of sixteen years; or
- (b) When the defendant has never before been convicted of a crime.

#### **4. Restitution.**

The court may include in the sentence an order of restitution of the property or its value in favor of the person wrongfully deprived thereof. No sentence of imprisonment shall be imposed upon failure or inability of any person to comply with such an order, but it shall be enforced in the same manner as a civil judgment or, after the provisions of this title relating to probation become effective, in the manner provided by section 33.2 (2)(i).

#### **5. Further powers of the court.**

This chapter does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

### **§31.2. Authorized dispositions of corporations and unincorporated associations.**

The court may suspend the sentence of a corporation or an unincorporated association which has been convicted of an offense or may sentence it to pay a fine authorized by law.

### **§31.3. Indefinite sentences for certain felonies.**

— Repealed.

## **§31.4. Institution to which defendant committed.**

### **1. Commitment to institution suited to individual needs.**

A person sentenced to imprisonment or treatment in a correctional institution, whether for a definite or indefinite period, shall be committed by the sentencing judge to an institution appropriate to his individual needs as disclosed by the presentence report and by other information in the possession of the judge. The person sentenced shall be in the custody of the Division of Correction from the time of commencement of his sentence.

### **2. Interim provision; commitment to county prison.**

Until such time as paragraph 1 of this section becomes effective, a defendant sentenced to prison shall be imprisoned in the central prison of the country in which he was convicted.

## **§31.5. Presentence investigation and report.**

### **1. When mandatory.**

The court shall not impose sentence without first ordering the probation service of the court to make a presentence investigation of the defendant and according due consideration to a written report of such investigation where:

- (a) The defendant has been convicted of a crime punishable by more than one year's imprisonment; or
- (b) The defendant is less than twenty-one years of age and has been convicted of a crime; or
- (c) The defendant may be sentenced as a repeated offender under the Penal Law or as a multiple offender under section 31.6 of this title.

### **2. When permitted.**

The court may order a presentence investigation in any other case.

### **3. Data to be included.**

The presentence investigation shall include an analysis of the circumstances attending the commission of the crime, the defendant's history of delinquency or criminality, physical and mental conditions, family situation and background, economic status, education, occupation, and personal habits, and any other matters that the probation officer deems relevant or the court directs to be included.

### **4. Order for psychiatric examination.**

Before imposing sentence, the court may order the defendant to submit to psychiatric observation and examination for a period of not exceeding ten days. The defendant may be remanded for this purpose to any available clinic or hospital, or the court may appoint a qualified psychiatrist or other physician to make the examination. The report of the examination shall be submitted to the court.

### **5. Notice and opportunity to controvert.**

Before imposing sentence, the court shall advise the defendant or his counsel of the factual contents and the conclusions of any presentence investigation or psychiatric examination and afford fair opportunity, if the defendant so requests, to controvert them. The sources of information need not, however, be disclosed.

### **6. Copies of reports.**

If the defendant is sentenced to imprisonment, a copy of the report of any presentence investigation or psychiatric examination shall be transmitted forthwith to the Division of Correction or, when the defendant is committed to the custody of a specific institution, to such institution.

### §31.6. Multiple sentence.

When multiple sentences to probation or imprisonment or for a period of suspension are imposed on a defendant for more than one crime, including a crime for which a previous suspended sentence of probation has been revoked, or when a defendant who has previously been sentenced to probation or imprisonment or to a suspended sentence is subsequently sentenced to probation or imprisonment or to a suspended sentence for a crime committed either before or after the imposition of the former sentence, the terms for both sentences shall run concurrently.

## Chapter 51 (Sentencing Procedures) of the Liberian Penal Law

### § 51.1. Sentence Hearing

**1. Requirement; pre-sentence report.** Before pronouncement of sentence in all cases of felonies and first degree misdemeanors, there shall be a hearing before the court. If a pre-sentence investigation and report have been made in conformity with the provisions of Section 31.5 of the Criminal Procedure Law, including the case of a first degree misdemeanor, the procedure therein specified with regard to notice to defendant of the factual contents of such report and opportunity to controvert shall be followed.

**2. Time of hearing; presiding judge.** If practicable, the sentence hearing shall be held and sentence pronounced during the same term of court as the trial, and the judge who presided at the trial shall preside at the sentence hearing and pronounce sentence. If absence, resignation, illness or death prevents the same judge from presiding at the sentence hearing, the Chief Justice of the Supreme Court shall appoint an available judge of the Circuit Court to preside over the sentence hearing.

**3. Defendant's rights.** At the hearing, the defendant shall have the following rights:

- (a) To counsel;
- (b) To present evidence on his own behalf;
- (c) To subpoena witnesses subject to limitation if the court believes such right is being abused.

**4. Evidence considered.** At the sentence hearing, the court may consider and rely on hearsay evidence, whether included in the pre-sentence report or presented orally.

**5. Duty of defense counsel.** It shall be the duty of defense counsel at the sentence hearing to present any information concerning the defendant which may tend to mitigate the sentence to be imposed and to refute any inaccuracies contained in the pre-sentence report or in other evidence presented to the court. The defense counsel shall strive to protect the best interest of his client; he should consider not only the immediate, but the long-range interest of the defendant in avoiding further commission of offenses. He shall to this end:

- (a) Challenge and contradict to the extent possible, any material in the pre-sentence report or elsewhere detrimental to his client;
- (b) Familiarize himself with sentencing alternatives and community services available to the defendant, and to the extent consistent with his position as an officer of the court, recommend that sentence which most accurately meets the need of the defendant.

**6. Duty of prosecutor.** It shall be the duty of the prosecutor to appear before the court and present any evidence available relating to the type and severity of the sentence which should be imposed on the defendant. The prosecutor shall seek not the harshest sentence possible, but the one which, in his judgment, is most likely to achieve the purposes of this title.



**7. Further procedures authorized.** If the courts finds, after considering the pre-sentence report and any other information which may be presented at the sentencing hearing, that there is a need for further study and observation of the defendant before he is sentenced, it may take whatever steps are necessary in its opinion to obtain that information, including, but not limited to, the hiring of local physicians, psychiatrists, or other professionals, and ordering a more complete investigation of the defendant's background, social history and other facts bearing on the sentence to be imposed.

**8. Statement of reasons for sentence imposed.** Every determination by a court shall be accompanied by a statement of reasons for imposing that sentence. The statement shall be part of the offender's official file.

### **§ 51.2. Appeal from sentence.**

The defendant may appeal from any sentence imposed by the court on the ground that it is improper under the criteria stated in Criminal Procedure Law, Section 33.1. Such appeal shall be taken by oral announcement in open court at the time of imposition of sentence. The clerk of the court shall transmit at least six copies of the record on appeal to the appellate court within ninety days after imposition of the sentence and a copy shall be served on the appellee within the same time limit. The clerk of the appellate court shall docket the case forthwith and forward a receipt for the record to the clerk who transmitted it. The record on appeal shall include a copy of any pre-sentence report that was prepared, a transcript of the testimony before the sentencing court, and a copy of the statement of reason for the sentence imposed required by paragraph 8 of section 51.1. The provisions of section 24.9 of the Criminal Procedure Law with regard to the notice of completion of the appeal shall apply to appeals taken from the imposition of sentence. The appellate court may provide by rule of court for consolidation of the appeals from judgment of conviction and from the sentence pertaining to the same defendant.

### **§ 51.3 Sentence of death or life imprisonment.**

**1. Sentence of life imprisonment by court.** When a defendant is found guilty of any crime which subjects him to a sentence of death, the court shall impose a sentence of life imprisonment if it is satisfied that:

- (a) None of the aggravating circumstances enumerated in paragraph 7 or 8 of this section was established by the evidence at the trial or will be established if further proceedings are initiated under paragraph 2 of this section; or
- (b) The defendant was less than 18 years of age at the time of the commission of the crime; or (c) Although the evidence suffices to sustain the verdict, it does not foreclose all doubt respecting the defendant's guilt; or
- (c) There are other substantial mitigating circumstances which render sentence of death unwarranted.

**2. Separate proceeding to determine life imprisonment or death.** Unless the court imposes sentence of life imprisonment under paragraph 1, it shall conduct a proceeding to determine whether the defendant should be sentenced to death or life imprisonment. The proceeding shall be conducted before the court sitting with the jury which determined the defendant's guilt unless that jury has been discharged, in which case a new jury shall be empanelled for the purpose of determining the penalt

**3. Evidence and Instructions.** In the proceeding, evidence may be presented by either party as to any matter relevant to sentence including the nature and circumstances of the crime, defendant's character, background, history, mental and physical condition, and any aggravating or mitigating circumstances enumerated in paragraphs 6, 7, and 8 of this section. Any such evidence not legally privileged, which the court deems to have probative force may be received regardless of its admissibility under the exclusionary rules of evidence, provided that counsel be accorded a fair opportunity to rebut such evidence. The prosecuting attorney and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

**4. Verdict and sentence.** The determination whether a sentence of death shall be imposed shall be in the discretion of the court and the court may impose a sentence of life imprisonment even though the jury recommends death. If the jury recommends against the sentence of death or if the jury is unable to reach a unanimous verdict, the court shall dismiss the jury and impose a sentence of life imprisonment.

**5. Consideration of aggravating and mitigating circumstances.** In deciding whether a sentence of death should be imposed, the court and jury shall take into account the aggravating and mitigating circumstances enumerated in paragraph 6, 7, and 8 and any other relevant facts, but it shall not decide that the death sentence shall be imposed unless it finds, beyond a reasonable doubt, one of the aggravating circumstances and further finds that there are not mitigating circumstances sufficiently substantial to warrant leniency.

**6. Mitigating circumstances.** In the cases of both treason and murder the following shall be mitigating circumstances:

- (a) The crime was committed while the defendant was under the influence of extreme mental or emotional disturbance;
- (b) The defendant acted under unusual pressures or influences or under the domination of another person;
- (c) The crime was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct;
- (d) The defendant was an accomplice in a crime committed by another person and his participation was relatively minor;
- (e) At the time of the crime, the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication;
- (f) The youth of the defendant at the time of the crime;
- (g) The defendant has no significant history of prior criminal activity.

**7. Aggravating circumstances in cases of treason.** In the case of treason, the following shall be aggravating circumstances:

- (a) The defendant knowingly created a great risk of death to another person or a great risk of substantial impairment of national security;
- (b) The defendant violated a legal duty concerning protection of national security;
- (c) The defendant committed treason for pecuniary gain.

**8. Aggravating circumstances in cases of murder.** In the case of murder the following shall be aggravating circumstances:

- (a) The defendant was previously convicted of another murder or a felony involving the use or threat of violence to the person;
- (b) At the time the murder was committed the defendant also committed another murder;
- (c) The defendant knowingly created a great risk of death to many persons;
- (d) The murder was committed while the defendant was engaged or was an accomplice in the commission or attempting to commit robbery, arson, burglary, kidnapping or rape or deviate sexual intercourse by force or threat of force;
- (e) The murder was committed for pecuniary gain;
- (f) The murder was especially heinous, atrocious or cruel, manifesting exceptional depravity.

**Section 2.** Section 31.3 (Indefinite sentences for certain felonies) and section 32.1 (Imprisonment in default of payment of fine) of the Criminal Procedure Law are hereby repealed.

**Section 3.** This act shall take effect immediately upon publication.

Any law to the contrary notwithstanding.

# **Revised Trafficking in Persons Act (2021)**

## **Article I, Section 4: Convicted Trafficker**

Person(s) convicted of the crime of Trafficking in Persons shall be punished in accordance with Section 5 herein, but the presence of any one of the following aggravating factors can permit a longer sentence up to a minimum of 20 years:

- a) Trafficking of two or more persons at the same time.
- b) Permanent or life-threatening bodily injury to a victim of trafficking.
- c) Trafficking in Persons involving one or more children;
- d) Trafficking in Persons involving one or more mentally incompetent person(s) or disabled persons;
- e) Trafficking in Persons as part of the activity of an organized criminal group.

## **Article I, Section 5: Sentence**

Notwithstanding the Title of this Act, or any of the provisions and words contained herein the liability of an entity or person involved in Trafficking in Persons or any ancillary crime (labor trafficking, child labor, prostitution among others) may be criminal or civil or both. Such liability may be joint without prejudice to the criminal liability of any of the singular legal persons who have participated in the commission of the crimes involved. All legal persons held liable in accordance with this Title shall be subject to effective, proportionate, and dissuasive criminal and/or non-criminal sanctions, including monetary sanctions and awards of Restitution to the Victim of Trafficking in Persons.

A court of competent jurisdiction shall sentence a person convicted of the crime of Trafficking in Persons to a minimum of Twenty (20) years imprisonment, and in accordance with the following sentencing guideline:

- a. Whoever holds or returns any person(s) to a condition of Trafficking in Persons, or arrests, or detains any person(s) with the intention to place such person(s) in or returning the same to a condition of Trafficking in Persons shall, under this Title, be fined the sum of not more than One Hundred Thousand United States Dollars (USD100,000) or its Liberian Equivalent, and imprisonment for a term of not less than Twenty (20) years. If the victim of Trafficking in Persons dies as a result of being trafficked, or as a foreseeable consequence thereof, or if the violation included kidnapping or attempt to kidnap, aggravated sexual abuse or any other sexual offense under the Criminal Code, or an attempt to kill; the defendant shall be fined under this Title the sum of not more than Two Hundred Thousand United States Dollars (USD200,000) or its Liberian Equivalent, and imprisonment for a term of not less than Twenty (20) years.
- b. If the victim of Trafficking in Persons has not attained the age of eighteen (18) years, the defendant shall be fined under this Title the sum of not more than Two Hundred Thousand United States Dollars (USD200,000) or its Liberian Equivalent, and imprisonment for a term of not less than Twenty (20) years.
- c. If, in the course of perpetrating the offense of Trafficking in Persons or if at any time during the subsequent exploitation, the convicted person caused the victim of Trafficking in Persons to suffer a permanent or life-threatening injury, or be exposed to a life-threatening illness, or if the convicted person caused victim of Trafficking in Persons to become addicted to any drug or medication, the convicted person shall be fined the sum of One Hundred Thousand United States Dollar (USD100,000) or its Liberian Equivalent, and imprisonment for a term of not less than Twenty (20) years. In addition to satisfying the provision of Article 1, Section 6, on Payment and Restitution.
- d. If the offense of Trafficking of Persons occurred as a result of abuse of power or position of authority, including but not limited to a parent or guardian, or acting in loco parentis, teacher, children's club leader, or any other person who has been entrusted with the care or supervision of the child, or others with fiduciary responsibility, the convicted person shall be fined the sum of no more than One Hundred Thousand United States Dollars (USD 100,00) or its Liberian Equivalent, and imprisonment for a term of not less than Twenty (20) years. In addition to satisfying the provision of Article 1, Section 6, on Payment and Restitution.



- e. Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this Title shall be liable to pay a fine and imprisonment of up to Ten (10) years.
- f. The Trial Court shall have jurisdiction during sentencing to concomitantly impose term imprisonment and fines and to award restitution under Section 6 herein to the victim of Trafficking in Persons.



Photo Credit: Flore de Peneuf/PROFOR, 2012, Liberia

## Exercise 5.1.2: Sentencing Scenarios

### Objective:

- To determine appropriate sentences for child labour, forced labour, and human trafficking offenses.

### Time:

 1 hour and 10 minutes

### Materials and Preparation:

- Relevant local legislation and sentencing guidelines
- One flip chart for each group and one for the facilitator
- Markers
- Facilitator should print copies of the scenarios in Handout 5.1.2: Sentencing Scenarios to give to groups to guide group discussions
- Facilitator should also print copies of Handout 5.1.1: Selected Sentencing Guidelines in Liberia if Exercise 5.1.1: Sentencing Discussion is skipped.
- Facilitator should prepare one flip chart in advance that lists the following questions:
  - What sentence or sentences did your group feel was appropriate?
  - What factors did the group consider when making the determination?
  - Did any aggravating or mitigating factors impact the group's decision?

### Steps:

- Before the workshop, the facilitator should obtain copies of local relevant legislation and sentencing guidelines and ensure that participants receive an overview of those topics prior to completing this exercise.
- Explain to the participants the objectives of the exercise.
  - 5 minutes
- Ask participants to form small groups of 4–5 people. Instruct the groups to review the scenarios assigned to their group. Each group should determine a sentence they feel is appropriate for the case. The groups should then answer the questions on the flip chart at the front of the room by recording them either on a sheet of flip chart paper or on another sheet of paper.
  - 40 minutes
- Reconvene participants and ask each group to share their answers to the questions. Encourage comment and questions.
  - 20 minutes
- Wrap up with Q&A and key messages below.
  - 5 minutes

### Key Messages:

- Discretionary sentencing leaves room for judges to consider the facts and circumstances of each individual case. It also means that different judges could evaluate the same case and give different sentences.
- Mandatory penalties and aggravating factors can help make sentences more uniform but may also lead to an increase in incarceration and an inability to respond to the unique circumstances of a case.

## HANDOUT 5.1.2: SENTENCING SCENARIOS

**Scenario 1:** The defendant is accused of employing five children under the age of 14 on a fishing boat that operates under hazardous conditions. One of the children was seriously injured.

**Scenario 2:** The defendant is accused of running a small recruitment agency that recruited many workers from Liberia to work in the Gulf States. Recruited workers were required to pay a recruiting fee that was the equivalent of two months' salary. The defendant told recruits they would be working in a hotel, but instead, they were forced to work long hours in construction. The defendant claims he did not know the workers were being given different jobs upon arrival in the Gulf States. However, there is email evidence showing that this is false.

**Scenario 3:** The defendant employed two 14-year-old children work in her shop full time. The children were responsible for taking inventory of goods and working the cash register. The defendant has said she was only trying to help the children provide additional support to their families.

**Scenario 4:** The defendant is accused of trafficking 20 women and three girls under the age of 14 for prostitution. The women and girls were trafficked from rural areas and brought to Monrovia with the promise of working as cleaners in an office building.

**Scenario 5:** The defendant is accused of forced labour offenses, forcing men to work in a mine for little pay. Several of the men have become sick or injured during their time working in the mine.

**Scenario 6:** The defendant is accused of having children perform hazardous work on a large farm, including using chemicals and sharp tools. While the defendant claims the children were safe because they were trained and provided gloves, the children were not supervised.

**Scenario 7:** The defendant is accused of forcing women and children to work in a brick making factory. They were forced to work long hours and could not leave the premises without supervision. Their pay was frequently withheld to cover expenses. Multiple employees were beaten for failing to meet their quota for the day.

**Scenario 8:** The defendant is accused of child labour offenses because several parents brought their children to work on his rubber farm to meet their quota. The employer claims not to have known that the children were working. He has since started posting that children are not allowed to work in the fields.

**Scenario 9:** The defendant is accused of trafficking girls between age 13 to 16 from Sierra Leone to work as domestic workers. The girls had been told they would be attending school and working part time to cover their tuition fees. None of the girls were enrolled in school, and they have been forced to work long hours.



# Lesson 5.2 Restitution

## Objective:

- To learn about restitution and how to determine damages.

## Time:



1 hour and 15 minutes

## Steps:

- Exercise 5.2.1: Restitution Discussion
  - 15 minutes
- Present PowerPoint Presentation 5.2: Restitution
  - 15 minutes
- Exercise 5.2.2: Restitution and the Enforcement Training Program (ETP) Case Studies
  - 45 minutes

## Supplies:

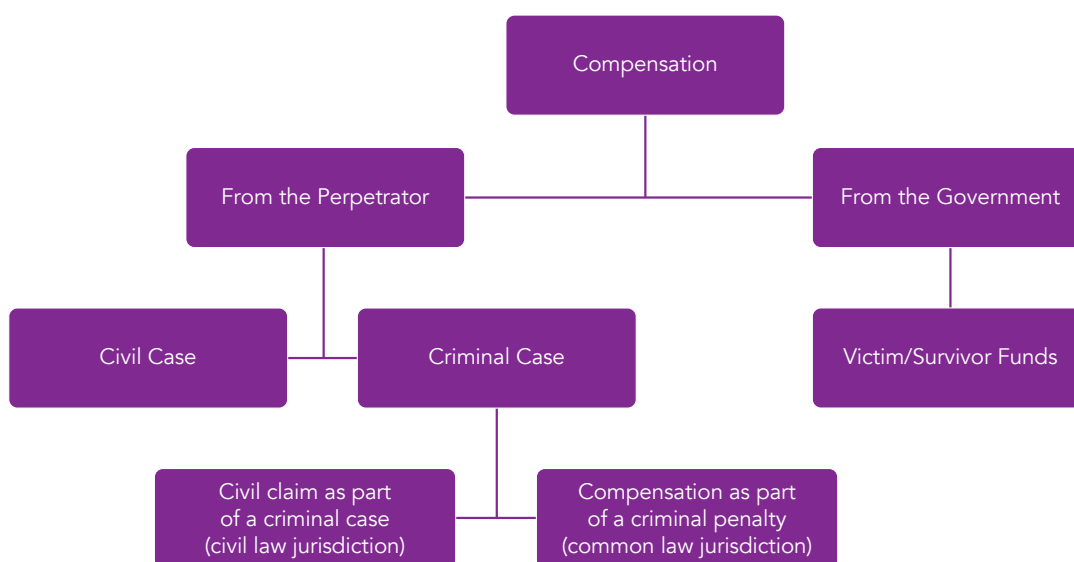
- Flip chart
- Markers
- PowerPoint Presentation 5.2: Restitution
- Projector
- Copies of ETP Case Studies

## The Role of Restitution

Restitution aims to make recipients whole. In the case of child labour, forced labour, and human trafficking, this means trying to put the victim/survivor in the situation they would have been in had they not been subjected to child labour, forced labour, or human trafficking. Victims/survivors are also entitled to adequate compensation under the Revised Trafficking in Persons Act (2021) through criminal court judgments and are often unable to access civil compensation due to a lack of understanding of the process, lack of access to legal assistance, and a lack of the time and resources needed to pursue a civil claim. For those reasons, it is important for the government to have in place specific mechanisms for providing compensation to victims/survivors that can be utilized by agencies assisting victims/survivors and enforced legally, if necessary. Criminal justice officials play an important role in assisting victims/survivors in the compensation process. Judges and prosecutors should ensure victims/survivors receive adequate compensation for their physical, psychological, and financial harm. Potential options for sources of and avenues for receiving compensation include:

- Allowing victims/survivors to sue offenders or others involved in the trafficking in a civil suit, so they may be compensated through civil damages.
- Allowing for victims/survivors to be compensated through criminal damages paid by the offenders.
- Imposing requirements that convicted offenders be ordered to pay compensation or restitution.
- Creating legal provisions for dedicated funds for victims/survivors to claim compensation directly from the government for injuries or damages caused by a criminal offense.

Figure 1: Options for Victim Compensation<sup>10</sup>



<sup>10</sup> *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons*. Organization for Security and Co-operation in Europe (OSCE), 2004, p. 84. <https://www.osce.org/odihr/13967>

## **Considerations for Victims/Survivors**

Restitution plays several roles for victims/survivors. In cases of child labour, forced labour, and human trafficking, victims/survivors may be entitled to withheld wages, medical expenses, and damages. Access to restitution can encourage child labour, forced labour, and human trafficking victims to engage with the justice system, particularly if they are far from home and not permitted to work during the trial process. In many instances, victims/survivors have earned little or no money as a result of child labour, forced labour, and human trafficking and need a source of income, either in the form of employment or restitution. Additionally, victims/survivors may have had to pay high recruitment fees, and to do so, they or their family may have taken on debt that still needs to be paid to a third party.

## **Civil Procedures**

In many jurisdictions, child labour, forced labour, and human trafficking victims/survivors can gain access to compensation, and sometimes damages, through civil cases. Sometimes this may be done through administrative proceedings in a Labour Court to collect back pay and unpaid wages. In civil proceedings, victims/survivors often have to pay their court fees and are not entitled to an attorney, which can make the process expensive and daunting, particularly for victims/survivors who only have a limited understanding of the country's language and/or lack formal education.

## **Criminal Procedures**

There may be several ways that child labour, forced labour, and human trafficking victims/survivors can receive compensation or restitution through a criminal proceeding. In Liberia, child labour, forced labour, and/or human trafficking victims/survivors can receive damages as part of the offender's sentence. Damages typically must either be set or approved by a judge and are determined on a case-by-case basis, with discretion playing an important role. Damages can cover medical costs, psychological support, and pain and suffering. Child labour, forced labour, and human trafficking victims/survivors may also be able to gain back pay/withheld wages as part of the sentencing terms.

Liberian criminal law prioritizes restitution over fines. First, the court cannot sentence a defendant to pay a fine if the payment will prevent him or her from making restitution to the victim/survivor of the offense.<sup>11</sup> Second, if the defendant has made a restitution payment (prior to or at the time of sentencing) or is ordered by the sentencing court to do so, the sentencing court must reduce the amount of maximum fine that can be imposed on the defendant by the restitution amount paid or ordered to be paid by the defendant.<sup>12</sup> However, for certain aggravating human trafficking convictions the maximum fine will not be reduced for payment of restitution. See below for more detail.

In general, Section 50.9 Paragraph 5 of the Penal Law mandates a sentencing court to order restitution to be paid to crime victims/survivors if the defendant has not done so. For example, the defendant shall be ordered by the court to return the wrongfully deprived property to the victim/survivor, or to compensate the victim/survivor for the value of the damaged property or the amount of loss suffered. This is the general restitution provision for crimes without specific restitution guidelines. For example, if a person commits a felony of second degree by exposing children to harmful or hazardous work under Section 16.15 of the Penal Law, the sentencing court shall order a restitution according to Section 50.9 Paragraph 5 of the Penal Law.

However, some crimes, such as economic sabotage and human trafficking, have more specific restitution guidelines. In such cases, the specific guidelines must be followed. For instance, the Revised Trafficking in Persons Act (2021) mandates the court to order the defendant to pay restitution for trafficking victims/survivors. The court may determine the type and amount of restitution as it sees fit. Article I, Section 6 of the Revised Trafficking in Persons Act (2021) provides a list of possible restitution to trafficking victims:

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<sup>11</sup> Penal Law §50.10 Paragraph 1 (Ability to pay).

<sup>12</sup> Penal Law §50.9 Paragraph 3 (Limitation on amount of fine in case of restitution).



- Costs of medical and psychological treatment;
- Costs of physical and occupation therapy and rehabilitation;
- Costs for education, and where applicable costs for loss of education;
- Costs for relocation, repatriation, and reintegration (where appropriate);
- Costs of temporary or permanent citizenship or visas (as appropriate and necessary);
- Costs of necessary transportation, temporary or permanent (where necessary) housing;
- Lost income and benefits and likely losses of the same in futur[e];
- Attorney's fees and other costs such as victim advocate fees;
- Compensation for emotional distress, pain, and suffering;
- Any other loss suffered by the victim;
- Any other costs as may be assessed by the court.

After the court order, the convicted trafficker(s) shall pay restitution to the victim(s) promptly.<sup>13</sup>

Finally, unlike the general requirements set forth in the Penal Law, for certain aggravating human trafficking convictions, the maximum fine will be imposed in addition to satisfying the restitution payment. These aggravating convictions are:<sup>14</sup>

- the convicted person caused the victim to suffer a permanent or life-threatening injury, or be exposed to a life-threatening illness;
- the convicted person caused the victim to become addicted to any drug or medication;
- the convicted person abused power or position of authority, such as being a parent or guardian, or acting in loco parentis, teacher, children's club leader, or any other person who has been entrusted with the care or supervision of the child or others with fiduciary responsibility.

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<sup>13</sup> Revised Trafficking in Persons Act (2021), Article I Section 7.

<sup>14</sup> Revised Trafficking in Persons Act (2021), Article I Sections 5(c), (d).

## **Exercise 5.2.1: Restitution Discussion**

### **Objective:**

- To have participants start thinking about restitution, its different forms, and the benefits for victims/survivors.

### **Time:**

 15 minutes

### **Materials and Preparation:**

- One flip chart and markers for the facilitator

### **Steps:**

- Explain to the participants the objectives of the exercise.
  - 2 minutes
- Ask participants to discuss the following questions, writing the answers on the flip chart
  - What forms can restitution take?
  - What benefits does restitution have for victims/survivors?
- 10 minutes
- Wrap up with key messages below.
  - 3 minutes

### **Key Messages:**

- Restitution can come in different forms and through different means. Restitution may cover things such as medical costs, unpaid wages, and pain and suffering.
- Restitution can help a victim/survivor recover and move on with his or her life. Restitution can also show that the justice system views the victim/survivor as a victim/survivor and someone worthy of support, not as a criminal.
- Restitution will be discussed further in the lesson.

## **Exercise 5.2.2: Restitution and the ETP Case Studies**

### **Objective:**

- To practice determining restitution for victims/survivors. Learn about the benefits that restitution could bring to the Enforcement Training Program (ETP) case study victims/survivors.

### **Time:**



### **Materials and Preparation:**

- Copies of the ETP Case Studies 1–4
- Flip charts for each group
- Markers
- Before the workshop, the facilitator should determine if there are any existing legislation or guidelines for restitution for victims/survivors of child labour, forced labour, and/or human trafficking. If so, copies should be obtained. Handout 5.2.2 identifies a few relevant provisions from the Revised Trafficking in Persons Act (2021) and the Penal Law. The facilitator should feel free to add other relevant laws and guidelines.

### **Steps:**

- Explain to the participants the objectives of the exercise.
  - 5 minutes
- Have participants split into four groups; give each group copies of a different case study and have them answer the following questions:
  - What facts in the case study could be addressed by restitution?
  - What would you recommend for restitution for this victim/survivor?
  - What impacts would the recommended restitution have for the victim/survivor?
- 15 minutes
- Reconvene the groups and have each group present their restitution recommendations. Allow time for discussion and comments.
  - 20 minutes
- Wrap up with Q&A and key messages below.
  - 5 minutes

### **Key Messages:**

- Restitution can cover a variety of costs. Depending on the jurisdiction, this may include medical costs, withheld wages, and possibly damages for pain and suffering.
- Restitution can help a victim/survivor recover and start a new job and/or reestablish him or herself. Restitution can also reassure victims/survivors that they are valued and that what happened to them was wrong.

## HANDOUT 5.2.2: LEGISLATION ON RESTITUTION FOR VICTIMS/SURVIVORS

### Revised Trafficking in Persons Act (2021)

#### ARTICLE 1

##### Section 6: Restitution

Where a defendant is convicted of Trafficking in Persons under this Act, the Court shall order the defendant to pay restitution as the Court will find fit and sufficient to the victim for:

- a. Costs of medical and psychological treatment;
- b. Costs of physical and occupation therapy and rehabilitation;
- c. Costs for education, and where applicable costs for loss of education;
- d. Costs for relocation, repatriation, and reintegration (where appropriate);
- e. Costs of temporary or permanent citizenship or visas (as appropriate and necessary);
- f. Costs of necessary transportation, temporary or permanent (where necessary) housing;
- g. Lost income and benefits and likely losses of the same in futuro;
- h. Attorney's fees and other costs such as victim advocate fees;
- i. Compensation for emotional distress, pain, and suffering;
- j. Any other loss suffered by the victim.
- k. Any other costs as may be assessed by the court.

##### Section 7: Payment or Restitution

Restitution shall be paid to the victim promptly upon the conviction of the defendant, with the proceeds from the property forfeited under Section 3b. The return of the victim to his/her home country or other absence of the victim from the jurisdiction shall not prejudice the victim's right to receive restitution.

### Penal Law — Title 26 — Liberian Code of Laws Revised

#### PART II.

#### CHAPTER 15. OFFENSES AGAINST PROPERTY SUBCHAPTER F. ECONOMIC SABOTAGE

##### § 15.87. Fine and Restitution.

A person tried and convicted under this sub-chapter "F" shall be made to retribute the amount stolen and shall be fined an amount not less than \$10,000.00 or be imprisoned for not less than ten (10) years or both if the amount involved is \$1,000.00. He shall pay a fine of \$5,000.00 or be imprisoned for not less than five (5) years, or both.

#### PART III.

#### THE SENTENCING SYSTEM CHAPTER 50. AUTHORIZED DISPOSITION OF OFFENDERS

##### § 50.9. Authorized fines; restitution.

**1. As to individuals.** Except as otherwise expressly provided, and subject to the limitation contained in paragraph 3, an individual who has been convicted of an offense may be sentenced to pay a fine which does not exceed:



- (a) For a felony of the first or second degree, the commission of which has resulted in gain for the defendant, an amount double the gain realized by the defendant, but if such crime has not resulted in gain for the defendant, only sentence of imprisonment without a fine may be imposed;
- (b) For a felony of the third degree, \$5,000, or double the gain realized by the defendant;
- (c) For a misdemeanor of the first degree, \$1,000, or double the gain realized by the defendant;
- (d) For a misdemeanor of the second degree, \$500, or double the gain realized by the defendant;
- (e) For an infraction, \$500, or double the gain realized by the defendant.

**2. As to corporations.** Except as otherwise expressly provided and subject to the limitation contained in paragraph 3, a corporation which has been convicted of an offense may be sentenced to pay a fine which does not exceed:

- (a) For a felony of the first or second degree, \$10,000, or double the gain realized by the defendant;
- (b) For a felony of the third degree, \$5,000, or double the gain realized by the defendant;
- (c) For a misdemeanor of the second degree, \$1,000, or double the gain realized by the defendant;
- (d) For a misdemeanor of the second degree, \$500.00 or double the gain realized by the defendant;
- (e) For an infraction, \$500, or double the gain realized by the defendant.

**3. Limitation on amount of fine in case of restitution.** If the defendant at the time of sentencing has made restitution, or is directed by order of the court as authorized by paragraph 5 to make restitution to the victim of the crime, the amount of the maximum fine which may be imposed under paragraphs 1 and 2 is decreased to the extent of the value of the property restored or directed to be restored.

**4. Definition of "gain."** As used in this section, the term "gain" means the amount of money or other property taken by the defendant from the victim or the net gain produced by commission of the crime.

**5. Restitution.** Unless restitution has been made prior to sentencing the court shall include in the sentence an order directing the defendant to return the property or pay its value to the person wrongfully deprived thereof, or pay the person whose property was damaged through the intentional or reckless commission of the offense, the amount of loss suffered therefrom.

## **§ 50.10. Imposition of fines.**

**1. Ability to pay.** In determining the amount and the method of payment of a fine, the court shall, insofar as practicable, proportion the fine to the burden that payment will impose in view of the financial resources of the defendant. The court shall not sentence a defendant to pay a fine if payment will prevent him from making restitution to the victim of the offense.

**2. Fine alone.** When any other disposition is authorized by statute, the court shall not sentence an individual to pay a fine only unless, having regard to the nature and circumstances of the offense and the history and character of the defendant, it is of the opinion that the fine alone will suffice for the protection of the public.

**3. Fine in addition to sentence of imprisonment.** The court shall not sentence a defendant to pay a fine in addition to a sentence of imprisonment or probation unless:

- (a) The defendant has derived a pecuniary gain from the crime; or
- (b) The court is of the opinion that a fine is specially adapted to deterrence of the crime involved.

**4. Installment or delayed payments.** When a defendant is sentenced to pay a fine, the court may provide for the payment to be made within a specified period of time, or in specified installments. If no such provision is made a part of the sentence, the fine shall be payable forthwith.

**5. Nonpayment.** When a defendant is sentenced to pay a fine, the court shall not impose at the same time an alternative sentence to be served in the event that the fine is not paid, nor shall the person who does not pay a fine imposed by the court be imprisoned for nonpayment except in accordance with the provisions of Section 50.11(2)



Photo Credit: Kipp Jones, 2006, Liberia

# Lesson 5.3: Plea Bargaining

## Objectives:

- To learn about plea bargaining and its benefits and challenges.

## Time:



1 hour and 15 minutes

## Steps:

- Present PowerPoint Presentation 5.3: Plea Bargaining
  - 30 minutes
- Exercise 5.3.1: Plea Bargaining Discussion
  - 45 minutes

## Supplies:

- Flip chart
- Markers
- PowerPoint Presentation 5.3: Plea Bargaining
- Projector

Plea bargains are also known as plea negotiations. As of 2017, 66 countries used some form of plea bargaining. In a plea bargain, a defendant pleads guilty, often to a lesser crime, with the expectation of a reduced sentence. Using plea bargains can help improve case management and reduce the time before a verdict is reached; however, care should be taken to ensure that there is still access to justice. Anytime a plea bargain is being considered, the following should be taken into account: the strength of the evidence against the accused, the accused's criminal history, and the seriousness of the offence.

## Requirements for a Plea Bargain

Generally, to secure a plea bargain, the following three requirements must be met:

- There is sufficient admissible evidence to sustain the charges related to the plea
- The charges accurately reflect the culpability of the accused
- The charges give the court adequate scope to impose an appropriate penalty

There are some offenses that cannot use plea bargaining, so reviewing proposed charges is an important first step. For example, in Liberia, a defendant cannot plead guilty in a capital case.<sup>15</sup>

## Often during a plea negotiation, several things can be negotiated, including:

- **Charge:** The accused will often plead guilty in exchange for a lesser charge.
- **Sentence:** In some instances, a reduced sentence can be negotiated. Typically, this must be approved by the judge and cannot be negotiated in all jurisdictions or for all crimes. A prosecutor can often agree to request a lesser sentence from the court but cannot guarantee that a reduced sentence will be granted.
- **Facts:** The accused pleads guilty, and certain facts are entered into the record.

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<sup>15</sup> Criminal Procedure Law §16.4.

Plea bargains have to meet certain standards to be valid. These standards help ensure that the accused understands the agreement and what is being gained and lost by not having a trial. Typically, this is accomplished by meeting the following requirements:

- The agreement must be in writing
- The agreement must:
  - Be written in a language that the defendant understands
  - State in full the terms of the agreement
  - Contain all relevant facts including admissions
  - Be signed by the accused or his/her lawyer
  - Be signed by the child labour, forced labour, and human trafficking victim(s)/survivor(s) (if the agreement provides compensation to victims/survivors)

## **Roles and Responsibilities**

**Prosecutors:** When conducting a plea bargain, prosecutors must remember to respect the rights of child labour, forced labour, and human trafficking victims/survivors and the rights of the accused. This can be challenging in instances when the accused does not have the right to an attorney. In those instances, prosecutors must make sure that the accused understands his or her options and can make an informed decision. The prosecutor should make sure that the accused is able to access due process while also being mindful of the need for justice for child labour, forced labour, and human trafficking victims/survivors, including access to compensation. Once the plea is accepted, prosecutors should read the facts in court. The court will ask the accused to admit or deny the facts. Prosecutors should never accept a plea if the facts upon which the plea is agreed to do not conform to the facts of the investigation and the crime charged.

**Accused:** The accused may have to forfeit the proceeds earned from child labour, forced labour, and human trafficking. The accused may also have to forfeit any instrumentalities used to commit child labour, forced labour, and human trafficking, which means any property other than real property or any buildings, fixtures, or improvements. The agreement or court may determine if any of the forfeited assets should be used to compensate victims/survivors. The court must find that the accused is competent and agreed to the plea agreement voluntarily. A plea agreement is binding once the court accepts it. If the agreement was not voluntary or was misrepresented, the accused may apply to the court to set aside the agreement. In Liberia, a defendant can move to withdraw a plea of guilty at any time before a sentence is imposed or imposition of a sentence is suspended.<sup>16</sup>

**Victims:** A plea agreement may provide for compensation or restitution to be paid by the accused to child labour, forced labour, or human trafficking victims. More information about restitution can be found in Lesson 5.2 (Restitution).

**Judges:** In most jurisdictions, judges do not participate in plea negotiations. The judge is typically responsible for confirming the factual basis for the plea, determining that the defendant's agreement was voluntary, and exercising some discretion in sentencing. An important role of the judge is to inform the accused of his or her rights. In Liberia, these rights include:

- Right to plead not guilty
- Right to be presumed innocent until proven guilty
- Right to remain silent and to not testify during proceedings
- Right not to be compelled to give self-incriminating evidence

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<sup>16</sup> Criminal Procedure Law §22.3.



- Right to a full trial (including a jury trial)
- Right to be represented by counsel of his or her choice or to have a legal representative
- Right to examine witnesses called by the prosecution
- Right to call witnesses in support of his or her case

A court needs to inquire whether it is satisfied that the defendant in fact committed the crime charged and whether the defendant made the plea voluntarily and understood the nature of the charge.<sup>17</sup>

The judge must also inform the accused that by accepting the plea agreement, he or she is waiving his or her right to a full trial. Additionally, the judge must inform the accused that by entering into a plea agreement, he or she is waiving the right to appeal, except for the extent or legality of the sentence. The judge may also need to inform the accused that the prosecutor has the right to use statements in the plea agreement against the accused should he or she be prosecuted for perjury or false statements.

If the judge is satisfied with the above inquiries, he or she may enter the judgment of conviction and impose sentence in the open court where the defendant is arraigned or in chambers after the defendant plead guilty in open court.<sup>18</sup> Finally, if a plea of guilty manifest injustice, the judge may set aside the judgment of conviction and permit the defendant to withdraw his or her plea.<sup>19</sup>

## **Arguments for Plea Bargaining**

Plea bargaining has several benefits. Plea bargains increase judicial economy, which benefits the community and public courts. Using plea bargains also removes the uncertainty of trial for prosecutors, victims/survivors, and the accused. Child labour, forced labour, and human trafficking victims/survivors in these cases do not have to wait months or years to learn the outcome of the case and receive compensation. They do not have to remain in shelters during a long trial process and can return to school, work, and their communities more quickly.

Plea bargains reallocate scarce resources, benefiting prosecutors and judges. Prosecutors do not have to use time and office resources to prepare for and prosecute a case. Instead, they can conduct a thorough investigation, often relying on the work done by police and labour inspectors to build an evidence-based argument that leads to a plea agreement with the accused. Plea agreements also reduce the case backlog for judges, prosecutors, and public defenders. In many countries, extensive backlogs mean it can be months or years before a case has a court date, and trials can take a long time to complete. Reducing the case load of judges and prosecutors can reduce the amount of time required to bring a case to trial and provide the opportunity to focus more time and effort on cases that do go to trial.

Plea bargains provide a definitive resolution of the matter for all involved. Defendants know the outcome and do not have to spend months or years waiting for a result. They also know that they will likely be receiving a reduced sentence. Prosecutors know the outcome and do not need to worry about presenting a case during a trial. Victims/survivors can often receive closure by knowing that the child labour, forced labour, or human trafficking offender was found guilty and that a sentence was given. Additionally, for foreign victims/survivors who wish to be repatriated, it is more likely that a decision would be reached before a victim/survivor leaves the country.

## **Arguments Against Plea Bargaining**


There are several arguments against plea bargaining. Some people feel that plea bargains are too soft on criminals, and plea bargains undermine the deterrent effect of criminal penalties. Additionally, there are concerns that plea bargains offer inducements that are likely to produce involuntary guilty pleas. Some defendants may seek to falsely admit guilt.

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17 Criminal Procedure Law §16.4.

18 Criminal Procedure Law §16.5.

19 Criminal Procedure Law §22.3.



Defendants may feel the lengthy wait for a trial — and the possibility of receiving a severe sentence — makes it wise to accept a plea with a lower fine and/or reduced imprisonment; these factors may also lead some defendants to feel it is worth pleading guilty, even if they are innocent of the crime. Having a greater social emphasis on not punishing innocent persons can help reduce this, as can having additional restrictions for plea bargaining.<sup>20</sup>

Plea bargaining can shift power to prosecutors, leaving judges to do little more than ratify the plea deal negotiated by the prosecutor. Some believe that plea bargains are contrary to constitutional principles, ethics, and offend fair trial rights and guarantees.

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20 Givati, Yehonatan, “The Comparative Law and Economics of Plea Bargaining: Theory and Evidence” in *Harvard: John M. Olin Center for Law, Economics, and Business Fellows’ Discussion Paper Series*, July 2011, p. 4. [http://www.law.harvard.edu/programs/olin\\_center/fellows\\_papers/pdf/Givati\\_39.pdf](http://www.law.harvard.edu/programs/olin_center/fellows_papers/pdf/Givati_39.pdf)

# Exercise 5.3.1: Plea Bargaining Discussion

## Objective:

- To discuss the benefits and challenges of plea bargaining and when the use of plea bargains may be appropriate.

## Time:



45 minutes

## Materials and Preparation:

- Handout 5.3.1: *Chapter 16 of the Criminal Procedure Law*
- One flip chart and markers for the facilitator

## Steps:

- Explain to the participants the objectives of the exercise.
  - 5 minutes
- Ask participants to discuss the following questions in a large group. Write key points on the flip chart:
  - What benefits can plea bargains offer? Have you seen any benefits in cases or the legal system?
    - 10 minutes
  - What challenges do plea bargains present? How can they be addressed?
    - 10 minutes
  - Are there any instances where plea bargains could be useful? What guidelines are needed?
    - 15 minutes
- Wrap up with Q&A and key messages below.
  - 5 minutes

## Key Messages:

- Plea bargains can have some benefits, such as reducing case backlogs, reducing prison sentences, and providing all parties and victims/survivors with closure.
- Plea bargains can result in innocent defendants pleading guilty to crimes they did not commit. If plea bargains include jail time, they can lead to an increase in the prison population.
- Regulating plea bargains to reduce case backlogs without negatively impacting the rights of defendants can help alleviate some of these risks.

## **Chapter 16 (Arraignment, Pleas, and Pretrial Motions)** **of the Liberian Criminal Procedure Law**

### **§16.1. Furnishing copy of indictment to person charged.**

A copy of an indictment together with the indorsement thereon required by section 14.8 shall be served on the person therein charged at the time of his arrest, or if he had been arrested or had appeared in court previous to the finding of the indictment, and the charge against him has not been dismissed, such copy shall be served on him as soon as possible after the finding. A defendant shall not be required to plead to an indictment if it has not been seasonably furnished to him. A failure to furnish such copy shall not affect the validity of any subsequent proceedings against the defendant if he pleads to the indictment.

### **§16.2. Arraignment.**

Before any person is tried for the commission of an offense, he shall be called into open court, and the clerk shall read the formal charge to him and call upon him to plead thereto. An entry of the arraignment shall be made of record.

### **§16.3. Irregularity of arraignment.**

No irregularity in the arraignment shall affect the validity of any proceeding in the case if the defendant pleads to the indictment or complaint or proceeds to trial without objecting to such irregularity.

### **§16.4. Pleas.**

A defendant may plead guilty or not guilty, except that in a capital case only a plea of not guilty may be accepted. The court may refuse to accept a plea of guilty in any other case and shall not accept such plea without first (a) making such inquiry as may satisfy it that the defendant in fact committed the crime charged and (b) addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

### **§16.5. Arraignment, judgment, and sentence after plea of guilty.**

If a defendant after indictment desires to enter a plea of guilty, he shall be arraigned immediately in open court even though the court is not then in session. If this plea is accepted, sentence shall be imposed without delay, or immediately on the receipt of a presentence report if such a report is required by law or requested by the judge. No trial is necessary following a plea of guilty. A sentence imposed in chambers after a plea of guilty shall have the same force and effect as though in open court. The clerk shall record the judgment and enter sentence in the manner provided for judgments and sentences pronounced in open court.

### **§16.6. Demurrers, pleas in abatement, and motion to quash abolished.**

Relief formerly secured by demurrers, pleas in abatement, and motions to quash shall henceforth be raised only by motion to dismiss the indictment.



## **§16.7. Motion to dismiss raising defenses and objections before trial.**

### **1. Defenses and objections which may be raised.**

Any defense or objection which is capable of determination without trial of the general issue may be raised before trial by motion to dismiss the indictment.

### **2. Defenses and objections which must be raised.**

Defenses and objections based on defects in the institution of the prosecution or in the indictment other than that it fails to shown jurisdiction in the court over the subject matter or to charge an offense, may be raised only by motion before trial to dismiss. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction to try the offense or the failure of the indictment or information to charge an offense shall be noticed by the court at any stage of the proceeding.

### **3. Time of making motion.**

The motion to dismiss shall be made before plea is entered, but the court may permit it to be made within a reasonable time thereafter.

### **4. Hearing of motion.**

A motion to dismiss made before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue. An issue of fact shall be tried by a jury if a jury trial is required by the Constitution or by statute. All other issues of fact shall be determined at a hearing before the court with or without a jury or on affidavits.

### **5. Effect of determination.**

If a motion is determined adversely to the defendant, he shall be permitted to plead if he has not previously pleaded. A plea previously entered shall stand. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment, it may also order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new indictment. Nothing in this section shall be deemed to affect the provisions of any statute relating to periods of limitations.

## **§16.8. Procedure by defendant on arraignment.**

Upon being arraigned, the defendant shall immediately, unless the court grants him further time, either move to dismiss the indictment or plead thereto. If he moves to dismiss without also pleading, and the motion is withdrawn or overruled, he shall plead as soon as practicable thereafter.

## **§16.9. Trial together of indictments.**

The court may order two or more indictments to be tried together if the offenses and the defendants could have been joined in a single indictment. The procedure shall be the same as if the prosecution were under a single indictment.

Prior legislation: L. 1969-70, CrPL 2: 1609.

## **§16.10. Relief from prejudicial joinder.**

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or by a joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants, or provide whatever other relief justice requires.

# Lesson 5.4: Judicial Ethics

## Objectives:

- Learn about the Bangalore Principles and how to apply them.
- Learn about the Judicial Canons of Liberia and how to apply them.
- Put the ethical principles into practice using a series of scenarios.

## Time:



1 hour and 50 minutes

## Steps:

- Exercise 5.4.1: Judicial Ethics Discussion
  - 15 minutes
- Present PowerPoint Presentation 5.4: Judicial Ethics
  - 20 minutes
- Exercise 5.4.2: Applying Ethics to Daily Practice
  - 1 hour 15 minutes

## Supplies:

- Flip chart
- Markers
- PowerPoint Presentation 5.4: Judicial Ethics
- Projector
- Handout 5.4.2A: Judicial Ethics Scenarios
- Handout 5.4.2B: Judicial Canons of Liberia
- Handout 5.4.2C: Bangalore Principles of Judicial Conduct

Judicial ethics are an integral part of the judicial process. Liberia has its own Judicial Canons which are applied in addition to the guidance provided by the Bangalore Principles of Judicial Conduct.

## The Bangalore Principles

A United Nations-affiliated committee drafted the Bangalore Principles to provide guidance and establish standards for judges. The principles include six core values: independence, impartiality, integrity, propriety, equality, competence and diligence. The United Nations Social and Economic Council (Resolution 2003/26) encouraged countries to create their own judicial ethics codes based on the Bangalore Principles.

**Independence:** It is imperative that judges are able to act independently. Judges need to hear and decide cases without being subject to the influence of anyone, whether a government, interest group, individual, or another judge.<sup>21</sup>

There are three main requirements for judicial independence:

- Security of tenure until the age of retirement. This allows judges to make decisions based on the law and precedent. With tenure, judges do not have to make politically based decisions to either help them be reelected by the public or reappointed by the executive.
- Financial security with the right to a salary and pension, which should not be subject to the arbitrary change by the government in charge.
- Institutional independence for administrative matters. Allowing the judiciary to control their own administrative matters means they are not dependent on another branch of government or subject to their control or influence, even in day-to-day activities.

**Impartiality:** Impartiality is needed both in decisions and in the process of decision-making. Judges should be disqualified from matters if they have bias or prejudice in the matter. This means that if a judge has a personal connection to a case, such as when it involves a friend or family member, the judge should recuse him or herself. Impartiality is needed both as a matter of fact and as a reasonable perception. Even if a judge does not have a personal opinion about a case, if the public would have a reasonable belief that the judge was partial, it would harm the case. For example, if the case involved the school that the judge's child had previously attended, the judge should consider recusal. While the judge may not actually have a personal interest in the case, the public might believe that there was prejudice. A judge may not act under the influence of subjective or objective bias in a case. A judge may not have personal prejudice or bias with regard to a case, and judges must offer sufficient guarantees to exclude any legitimate doubt as to their impartiality.

Judges should not have *ex parte* communications or give the appearance of having *ex parte* communications. *Ex parte* communications occur when a party to a case talks, writes, or communicates in some other form with the judge about issues in the case without the other party's knowledge. Judges should not meet alone with a party to a case, or a likely party to a case — even if the meeting is purely social — as such meetings can give the impression of bias. Judges must disqualify themselves from matters in which they have a conflict of interest. For example, if a forced labour case involves a large company that the judge owns stock in, the judge would have a conflict of interest and would be required to disqualify him or herself. Best efforts should be made to show that the judge can try each case without bias.

**Integrity:** Integrity plays an essential role in the administration of justice. "Justice must not merely be done but must also be seen to be done."<sup>22</sup> It is essential that judges maintain high standards in both public and private life, with a careful respect of the law. Judges should consider the following factors before making a judgment as to whether their act or conduct meets the integrity requirement:

- Whether the act is public or private in nature
- The extent to which the conduct is protected as an individual right
- The degree of discretion that the judge is exercising
- Whether the conduct was specifically harmful or reasonably offensive to others
- The degree of respect or lack of respect to the public
- The degree to which the conduct demonstrates bias, prejudice, or improper influence.

21 *Commentary on the Bangalore Principles of Judicial Conduct*. United Nations Office on Drugs and Crime (UNODC), 2007, p. 27. [https://www.unodc.org/res/ji/import/international\\_standards/commentary\\_on\\_the\\_bangalore\\_principles\\_of\\_judicial\\_conduct/bangalore\\_principles\\_english.pdf](https://www.unodc.org/res/ji/import/international_standards/commentary_on_the_bangalore_principles_of_judicial_conduct/bangalore_principles_english.pdf)

22 Bangalore Principles of Judicial Conduct. United Nations Social and Economic Council (Resolution 2003/26), Principle 3.2 2002.

**Propriety:** Judges are expected to meet a higher standard than the general public, and to do so, they must act with propriety at all times. This is because judges are subject to public scrutiny. The following guidance on maintaining propriety has been suggested by commentary on the propriety rule of the Bangalore Principles:<sup>23</sup>

- Judges should live an exemplary life. In doing so, they can demonstrate that judges can meet the high standards needed to administer justice.
- Use discretion and caution when socializing.
- Judges should avoid situations that may cast suspicion on their propriety. Where a judge's propriety is in question, the public can lose trust in the fairness of the justice system.
- Judges should recuse themselves from cases involving their friends or family. The risk of bias, real or perceived, is too high in these types of cases.
- Members of the legal profession should not be permitted to use a judge's personal phone or residence to contact clients. Allowing such activities can be perceived as favoring one side in a case. Additionally, it may be seen as conducting proceedings outside of the court and away from the public.
- Refrain from public controversies and political activities. Engaging in these types of activities can give the appearance of bias and could limit a judge's ability to hear future cases in a way that appears fair to the public.
- Judges should be cautious and exhibit restraint when providing references, character testimony, or in publications.
- Confidential information should not be disclosed. Disclosing information about child labour, forced labour, or human trafficking victims/survivors can be traumatizing for victims/survivors and put them at risk. Additionally, disclosing confidential information undermines the authority and integrity of the court.
- Gifts should not be accepted. While most gifts are well-intended gestures from friends and family, gifts can also give the impression of trying to gain favor.

**Equality:** Equal treatment to all is an essential part of justice. To ensure equal treatment, judges should:

- Not make derogatory comments. This should be applied in the court at all times and should be upheld in all aspects of a judge's life.
- Ensure court staff complies with court standards and not engage in prejudicial behavior and treat all parties before the court equally and fairly.
- Prevent lawyers from engaging in racist or sexist behavior. Permitting this behavior can give the impression that the court approves of racism or sexism.
- Set the tone for a fair trial by showing all parties equal dignity and respect; this is particularly important for child labour, forced labour, and human trafficking victims, and other vulnerable individuals.

**Competence and Diligence:** A judge's judicial duties must always come first. Judges must make sure that they devote sufficient time and effort to their judicial duties. Judges also need to be aware of the latest developments in international law and maintain decorum during all proceedings. Judicial duties should be performed with legal knowledge, skill, thoroughness, and preparation. This may require judges to research topics, legislation, and case law to hear a case on an unfamiliar topic or aspect of law competently.

The law should be applied evenly to all people, without the abuse of process. This equality should apply whether the person is young or old, a victim/survivor or accused, or any other distinction. The judiciary is responsible for training judges and developing a judicial training curriculum. Training plays an important role in judges deciding cases effectively and can cover new legislation, best practices, and other topics deemed necessary by the judiciary. Judges should be punctual and transparent during trial. Decisions should be made in a timely manner. The order and decorum of the court should be maintained throughout all trials.

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23 *Commentary on the Bangalore Principles of Judicial Conduct*. United Nations Office on Drugs and Crime (UNODC), 2007, pp. 85-119. [https://www.unodc.org/documents/nigeria/publications/Otherpublications/Commentry\\_on\\_the\\_Bangalore\\_principles\\_of\\_Judicial\\_Conduct.pdf](https://www.unodc.org/documents/nigeria/publications/Otherpublications/Commentry_on_the_Bangalore_principles_of_Judicial_Conduct.pdf)



## Judicial Canons of Liberia

The Judicial Canons for the Governance of the Conduct of Judges<sup>24</sup> are one of the court rules of the Liberian Judiciary. They contain forty judicial canons that govern a broad range of Liberian judges' conduct both within and outside the court. Many of these canons exemplify the Liberian courts' implementation of the six core values of the Bangalore Principles. The table below samples some of these canons by the core values of the Bangalore Principles. Violation of the Judicial Canons is subject to a penalty of "either fine, suspension, impeachment and/or prosecution in a court of law according to the gravity of the violation."<sup>25</sup>

Bangalore Principles	Judicial Canons of Liberia
Value 1 — Independence	<p><b>Judicial Canon Six: JUDGE AS GOVERNMENT PAID OFFICIAL</b></p> <p>The judge is a government paid official and must be paid adequately; he holds an exalted position which prevents him from engaging in any business pursuit, therefore he must be provided with the necessities of life and with every means by which he will be able to perform his judicial duties effectively, efficiently, and speedily. The judge must be encouraged and given the incentive to live a decent and dignified life that would prevent financial and domestic worries and enable him to repel temptation which is susceptible to human life. As priest of justice, a judge should not be given the cause to be corrupted in the performance of his judicial duties so as to be justified for any disciplinary action taken against him if found deficient in those qualities.</p> <p><b>Judicial Canon Sixteen: INDEPENDENCE</b></p> <p>A judge should not be swayed away by partisan demands, public clamor, or consideration of personal popularity or notoriety, nor be apprehensive of unjust criticisms.</p>
Value 2 — Impartiality	<p><b>Judicial Canon Ten: ESSENTIAL CONDUCT OF A JUDGE</b></p> <p>A judge should be temperate, attentive, impartial and since he is to administer the law, interpret it and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts.</p> <p><b>Judicial Canon Twenty-Four: EXP PARTE COMMUNICATIONS</b></p> <p>A judge should not permit private interviews, arguments or communications designed to influence his judicial action, where interests to be affected thereby are not represented before him, except in cases where provision is made by law for <i>ex parte</i> application.</p> <p><b>Judicial Canon Twenty-Eight: SELF-INTEREST</b></p> <p>A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court for which he is assigned, or is a resident, he need not resign his judgeship on that account but he should, of course, refrain from any judicial act in such a controversy.</p>

24 *Judiciary Canons of the Republic of Liberia*. The Judiciary of the Republic of Liberia. <http://judiciary.gov.lr/judiciary-cannons-of-the-republic-of-liberia/>

25 Canon Thirty-Nine of the Judicial Canons of Liberia

Bangalore Principles	Judicial Canons of Libera
Value 3 — Integrity	<p><b>Judicial Canon Seven: PUBLIC BEHAVIOR</b></p> <p>A judge should conduct himself in a decent, and honourable manner in the society. A judge shall refrain from ungentlemanly acts such as drunkenness, abuse of drugs and other substance. Loud and riotous behavior and the conviction of a non excusable offense.</p> <p><b>Judicial Canon Twenty: COURTESY AND CIVILITY</b></p> <p>A judge should require, and so far as his power extends, enforce on part of clerks, court officers and counsel, civility and courtesy to the court and jurors, witnesses, litigants and others having business in court.</p>
Value 4 — Propriety	<p><b>Judicial Canon Eleven: AVOIDANCE OF IMPROPRIETY</b></p> <p>It is improper for a judge to accept a loan from a lawyer even a mortgage having no investment interest. It is also improper for a judge to conduct a newspaper column or comment on current news items and matters of general interest. It is improper for him to permit live broadcast, electronic recordings or the taking of photographs of court proceedings.</p> <p><b>Judicial Canon Twelve: GIFTS AND FAVOUR</b></p> <p>A judge should not accept any presents or favour from litigants, or from lawyers practicing before him or from others whose interests are likely to be submitted to him for judgment.</p> <p><b>Judicial Canon Thirty-Five: ABUSE OF DISCRETION</b></p> <p>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.</p>
Value 5 — Equality	<p><b>Judicial Canon Eight: PUBLIC INTEREST</b></p> <p>Courts exist to promote justice thus to serve the public interest. Theirs is the administration of justice which they must do with speed and care. Every judge should at all times be alert in his rulings and in the conduct of the business of the court, so far as he can.</p> <p><b>Judicial Canon Nine: CONSTITUTIONAL OBLIGATION</b></p> <p>It is the duty of all judges in the Republic to uphold and support the Constitution and the laws of the land, in so doing they, as custodian of the Constitution, should fearlessly observe and apply fundamental rights and guarantees.</p>
Value 6 — Competence and Diligence	<p><b>Judicial Canon Fourteen: INDUSTRY</b></p> <p>A judge should exhibit an industry and application commensurate with the duties imposed upon him to administer, interpret and apply the law.</p> <p><b>Judicial Canon Fifteen: PROMPTNESS</b></p> <p>A judge should be prompt in the performance of his judicial duties, recognizing that the time of litigants, jurors and lawyers is of value and habitual lack of punctuality on his part justifies dissatisfaction in his administration of the business of the court.</p>

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## **Considerations for Online Activities**

Many interactions now occur online. Judges need to be careful what they communicate, post, or “like,” as often online activity is public. The first consideration that should be made before posting is to determine if the activity readily identifies the judge with the court system. Next, judges should determine whether the activity will reveal information about a case or confidential court information. Judges should not post information that could reflect poorly on the court or express an opinion about a controversial topic that could come before the court, as having expressed an opinion publicly could be used to demonstrate bias.

Before posting a picture, comment, or writing a post, judges should consider if they will detract from the dignity of the court or the judicial process. The ultimate question a judge should ask before making a post is whether he or she would be comfortable with the post becoming front-page news.

## Exercise 5.4.1: Judicial Ethics Discussion

### Objective:

- To begin discussing judicial ethics and start to consider what role ethical responsibilities play in and out of the courtroom.

### Time:



15 minutes

### Materials and Preparation:

- One flip chart and markers for the facilitator.

### Steps:

- Explain to the participants the objectives of the exercise.
  - 2 minutes
- Ask participants to discuss the following questions in a large group. Write key points on the flip chart:
  - What role do judicial ethics play?
  - What are the benefits of having rules for judicial ethics?
  - What are the challenges of having rules for judicial ethics?
- 10 minutes
- Wrap up with key messages below.
  - 3 minutes

### Key Messages:

- Judicial ethics help ensure the judiciary is seen as impartial and having integrity.
- Having a code of judicial ethics makes it easier for judges to know how to ensure that their conduct helps promote public trust in the judicial system.

# Exercise 5.4.2: Applying Ethics to Everyday Practice

## Objective:

- Practice applying the Judicial Canons of Liberia and the Bangalore Principles to everyday scenarios.

## Time:



1 hour and 15 minutes

## Materials and Preparation:

- Relevant local legislation and sentencing guidelines
- One flip chart for each group and one for the facilitator
- Markers
- If there are local judicial ethics guidelines, copies of the guidelines should be obtained for participants.
- Facilitator should print copies of the scenarios in Handout 5.4.2a: *Judicial Ethics Scenarios*; 5.4.2b: *Judicial Canons of Liberia*; and Handout 5.4.2c: *Bangalore Principles of Judicial Conduct* to give to groups to guide group discussions
- Facilitator should prepare one flip chart in advance that lists the following questions:
  - What decision did your group feel was appropriate?
  - What factors did the group consider when making the determination?
  - Which Bangalore Principle and/or Judicial Canons of Liberia did you rely on in making your decision?

## Steps:

- Explain to the participants the objectives of the exercise.
  - 5 minutes
- Ask participants to form small groups of 4–5 people. Instruct the groups to review the scenarios assigned to their group. Each group should determine which action they feel is appropriate and consistent with the Bangalore Principles of Judicial Ethics and the Judicial Canons of Liberia. The groups should then answer the questions on the flip chart at the front of the room by recording them either on a sheet of flip chart paper or on another sheet of paper.
  - 40 minutes
- Reconvene participants and ask each group to share their answers to the questions. Encourage comment and questions.
  - 25 minutes
- Wrap up with Q&A and key messages below.
  - 5 minutes

## Key Messages:

- Because of the responsibility judges have for ensuring that justice is properly rendered, judges' actions are under more scrutiny than those of most other people. Judges have the privilege of serving as role models.
- In making choices both in and out of court, judges can look to the Judicial Canons of Liberia and the Bangalore Principles.
- When in doubt, ask if the comment or action would be embarrassing if it became front page news.



## HANDOUT 5.4.2A: JUDICIAL ETHICS SCENARIOS

**Scenario 1:** A judge issued a verdict after a long trial. Immediately after the verdict was issued, the plaintiff, who won the case, approached the bench and thanked the judge for her professionalism during the trial. The plaintiff also presented the judge with an expensive bracelet at this time. The judge did not want to be rude and accepted the bracelet, which she immediately gave to her clerk as a gift once she reached her chambers. Can her clerk take the gift?

**Scenario 2:** A judge is presiding over a contract dispute. The defense attorney requests that the judge recuse himself because the plaintiff is a brother-in-law of the judge. The judge knows that his brother-in-law has a weak case and that he will rule against his brother-in-law, so the judge decides to hear the case. At the end of the trial, the judge rules against his brother-in-law. Is this OK?

**Scenario 3:** A judge is presiding over a fraud case on appeal. The case began as an investigation the judge worked on while she served as a prosecutor. Can the judge hear the case?

**Scenario 4:** A judge is at a birthday party and runs into the defense attorney in a case he is presiding over. The defense attorney asks the judge how the case is looking and when a judgment will be issued. The judge does not say anything about the merits of the case but tells the defense attorney that a judgment will be issued soon. Is this OK?

**Scenario 5:** Judge Smith has been a judge for 15 years. He has fallen behind in his cases in the past few years and regularly adjourns court at 1 p.m. Some of the cases on his docket have been waiting to be heard for over two years. He has said rude things to victims and attorneys in court, and there are rumors that he drinks heavily and gambles. An attorney who has been waiting for nearly two years for a case to be heard became frustrated and complained to Judge Frank about the problem. What ethical issues does Judge Smith have?

**Scenario 6:** During the lead-up to the presidential election, Judge Jones has been careful not to express political views or endorse a candidate. His wife is planning to hold a lunch fundraiser for a candidate, which will be held at Judge Jones' residence. Judge Jones will not be attending the fundraiser, and none of his money will be used to pay for the event. Can Judge Jones' wife hold the lunch fundraiser at his residence?

**Scenario 7:** At the wedding of Judge Momo's daughter, a card containing money and addressed to Judge Momo is left with the other gifts. The card is signed by the defense attorney in a case before Judge Momo. Can Judge Momo accept the gift?

**Scenario 8:** A judge regularly uses his Facebook account to stay in touch with friends and family. The judge has been assigned a case that has received a lot of press, and the public is monitoring it closely. Family members and friends are posting on the judge's page asking about the case. Can the judge respond on her Facebook page?

**Scenario 9:** A judge went on a vacation with her husband. On the trip, they went to a casino. She wants to post photos from the trip, including one of her and her husband in front of a slot machine. Can the judge post the photos?

## HANDOUT 5.4.2A KEY: JUDICIAL ETHICS SCENARIOS

### Scenario 1: No

#### Bangalore Principles

##### Value 1 — Independence

“Judicial independence is a pre-requisite 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.”

##### Value 4 — Propriety

**4.14** A judge and members of the judge’s family, shall neither ask for, nor accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

## JUDICIAL CANONS OF LIBERIA

##### Canon 16 — Independence

A judge should not be swayed away by partisan demands, public clamor, or consideration of personal popularity or notoriety, nor be apprehensive of unjust criticisms.

##### Canon 12 — Gifts and Favour

A judge should not accept any presents or favour from litigants, or from lawyers practicing before him or from others whose interests are likely to be submitted to him for judgment.

### Scenario 2: No

#### Bangalore Principles

##### Value 2 — Impartiality

**2.5** A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where:

**2.5.3** the judge, or a member of the judge’s family, has an economic interest in the outcome of the matter in controversy: Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

##### Value 4 — Propriety

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

**4.4** A judge shall not participate in the determination of a case in which any member of the judge’s family represents a litigant or is associated in any manner with the case.

## JUDICIAL CANONS OF LIBERIA

### Canon 28 — Self-Interest

A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court for which he is assigned, or is a resident, he need not resign his judgeship on that account but he should, of course, refrain from any judicial act in such a controversy.

### Scenario 3: No

#### Bangalore Principles

#### Value 2 — Impartiality

**2.5** A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where:

**2.5.1** the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

**2.5.2** the judge previously served as a lawyer or was a material witness in the matter in controversy;

## JUDICIAL CANONS OF LIBERIA

### Canon 10 — Essential Conduct of a Judge

A judge should be temperate, attentive, impartial and since he is to administer the law, interpret it and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts.

### Canon 38 — A Summary of Judicial Obligation

In every particular case a judge's conduct should always be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor regardless of public praise, and indifferent to private, political or partisan influence; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow another affairs or his private interest to interfere with the prompt and proper performance of his judicial duties nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

### Scenario 4: No

#### Bangalore Principles

#### Value 2 — Impartiality

**2.4** A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

#### Value 4 — Propriety

**4.3** A judge shall, in his or her personal relations with individual members of the legal profession who practice regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favoritism or partiality.

## JUDICIAL CANONS OF LIBERIA

### Canon 24 — EXP ARTE COMMUNICATIONS

A judge should not permit private interviews, arguments or communications designed to influence his judicial action, where interests to be affected thereby are not represented before him, except in cases where provision is made by law for ex parte application.

### Canon 29 — SOCIAL RELATIONS

It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion, it is desirable that, so far as reasonable attention to the completion of his work will permit, he continues to mingle in social intercourse, and that he should not discontinue his interest in or appearance at meeting of members of the Bar. He should, however, be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships, constitute an element influencing his judicial conduct.

## Scenario 5:

### Bangalore Principles

#### Value 3 — Integrity

- 3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2 The behavior and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

#### Value 6 — Competence and Diligence

- 6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
- 6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

## JUDICIAL CANONS OF LIBERIA

### Canon 7 — Public Behavior

A judge should conduct himself in a decent, and honourable manner in the society. A judge shall refrain from ungentlemanly acts such as drunkenness, abuse of drugs and other substance. Loud and riotous behavior and the conviction of a non excusable offense.

### Canon 14 — Industry

A judge should exhibit an industry and application commensurate with the duties imposed upon him to administer, interpret and apply the law.

### Canon 20 — Courtesy and Civility

A judge should require, and so far as his power extends, enforce on part of clerks, court officers and counsel, civility and courtesy to the court and jurors, witnesses, litigants and others having business in court.

## **Canon 22 — Interference in Conduct of Trial**

Conversation between the judge and counsel in court is often necessary; but the judge should be studious to avoid controversies which are to obscure the merits of the dispute between litigants, or witnesses; he should avoid a controversial manner or tone. A judge should avoid interruptions of counsel in their argument except to clarify his mind as to their position and he should not be tempted to unnecessary display of learning of a premature judgment.

### **Scenario 6: No**

#### **Bangalore Principles**

##### **Value 1 — Independence**

**1.3** A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

##### **Value 2 — Impartiality**

**2.2** A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

##### **Value 4 — Propriety**

**4.9** A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.

## **JUDICIAL CANONS OF LIBERIA**

### **Canon 37 — Partisan Politics**

While a judge is entitled to entertain his personal view of political questions, and while not required to surrender his rights or opinion as a citizen it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes an active member of a political party and a promoter of its interest as against, another especially those of our judges of the highest courts who by constitutional command are empowered to review and determine electoral issues under the multiparty system introduced by the 1986 Constitution. Candidates for political office should neither accept nor retain a place on any party committee nor act as a party leader or generally engage in party activities. A judge should not appear at political meetings and indicate support of candidates for political office (nor should he permit his wife or her husband to give political teas.)

### **Scenario 7: No**

#### **Bangalore Principles**

##### **Value 1 — Independence**

**1.2** A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.

##### **Value 2 — Impartiality**

**2.2** A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.



**2.3** A judge shall, so far as is reasonable, so conduct himself or herself as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

#### **Value 4 — Propriety**

**4.14** A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

### **JUDICIAL CANONS OF LIBERIA**

#### **Canon 12 — Gifts and Favour**

A judge should not accept any presents or favour from litigants, or from lawyers practicing before him or from others whose interests are likely to be submitted to him for judgment.

#### **Canon 29 — Social Relations**

It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion, it is desirable that, so far as reasonable attention to the completion of his work will permit, he continues to mingle in social intercourse, and that he should not discontinue his interest in or appearance at meeting of members of the Bar. He should, however, be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships, constitute an element influencing his judicial conduct.

### **Scenario 8: No**

#### **Bangalore Principles**

#### **Value 2 — Impartiality**

**2.4** A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

### **JUDICIAL CANONS OF LIBERIA**

#### **Canon 11 — Avoidance of Impropriety**

It is improper for a judge to accept a loan from a lawyer even a mortgage having no investment interest. It is also improper for a judge to conduct a newspaper column or comment on current news items and matters of general interest. It is improper for him to permit live broadcast, electronic recordings or the taking of photographs of court proceedings.

### **Scenario 9: No**

#### **Bangalore Principles**

#### **Value 2 — Impartiality**

**2.2** A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

#### **Value 3 — Integrity**

**3.1** A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

## **Value 4 — Propriety**

- 4.1** A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2** As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

## **JUDICIAL CANONS OF LIBERIA**

### **Canon 38 — A Summary of Judicial Obligation**

In every particular case a judge's conduct should always be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor regardless of public praise, and indifferent to private, political or partisan influence; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow another affairs or his private interest to interfere with the prompt and proper performance of his judicial duties nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

## HANDOUT 5.4.2B: JUDICIAL CANONS OF LIBERIA

### JUDICIAL CANON ONE:

#### ADDITIONAL QUALIFICATION FOR APPOINTMENT TO THE JUDGESHIP

In addition to the Constitutional and Statutory qualification for appointment to the judgeship, any lawyer who is selected for appointment to serve as judge of the court of law shall have knowledge of the law and shall have successfully completed the Bar examination and shall have integrity. No person should be selected for appointment who does not meet these requirements.

### JUDICIAL CANON TWO:

#### SUPREME COURT AS HEAD OF THE JUDICIARY

The Supreme Court is the Head of the Judiciary Branch of the Government of the Republic of Liberia, its Administrative head and spokesperson is the Chief Justice who shall preside over the business of the Court and other ordinary meetings of the Judiciary. In the Supreme Court Chambers, there shall be arranged in order of seniority, five (5) special seats of honour. The seat of honour placed in the center of the row is specifically reserved for the Chief Justice. On the right and left sides of the Chief Justice there shall be placed two seats of honour for Associate Justices arranged in their order of seniority. The seat of honour on the immediate right is specifically reserved for the senior Associate Justice. The seat of honour on the immediate left side of the Chief Justice is specifically reserved for the Associate Justice next in rank. The seat of honour on the extreme right is specifically reserved for the Associate Justice next in rank. The seat of honour on the extreme left is specifically reserved for the Associate Justice last in rank. To occupy any of the five (5) seats of honour so arranged on the row for the first time, the Chief Justice and the four Associate Justices must be commissioned as and ceremoniously seated during a ceremony planned for the purpose and no one shall occupy any of the seats of honour unless he is commissioned and ceremoniously seated to enable him to participate in the deliberations of the Court.

Any seat of honour which is made vacant by reason of death, resignation or impeachment from office of a Justice of the Supreme Court, shall remain vacant until the vacancy is filled by appointment and such appointee is commissioned and ceremoniously seated.

In the adjudication process, the Chief Justice and the Associate Justices shall have equal votes to reach a decision. In case of tied votes, the Chief Justice who, as a matter of course, is the last vote, shall cast the decisive vote and the votes of the majority sitting and voting shall be binding on the court.

### JUDICIAL CANON THREE: CLASSIFICATION OF JUDGES INTO CATEGORIES

Judges of the courts of Law in Liberia shall be classified into categories, as follows:

Category	I:	The Chief Justice of the Supreme Court
Category	I-A:	All Associate Justices of the Supreme Court
Category	II:	All Circuit Judges of the Republic of Liberia
Category	II-A:	All Judges of specialized courts
Category	III:	All Judges of the Provisional Monthly and Probate Courts within the Statutory Districts
Category	III-A:	All Juvenile and Traffic Courts Judges, and Stipendiary Magistrates who are lawyers
Category	III-B:	All Associate Magistrates

Judges of the courts of Liberia shall rank according to their categories and the scale of their salaries and benefits shall be arranged accordingly.

#### **JUDICIAL CANON FOUR: PRACTICE OF LAW**

A judge shall not engage in the practice of law directly or indirectly. Upon his appointment, a judge who was proprietor of a law firm or engaged in the practice of law associating with a law firm, shall resign publicly from the firm in the interest of fair play. A judge is practicing law indirectly when he does not publicly resign but leaves his/her wife, husband, son, daughter or partners in the firm or a brother lawyer to run the firm and he sits in the background. He shall not solicit prospective clients for any lawyer or law firm for reward or hope of reward. In the trial of a case, a judge presiding shall not behave in any manner as would suggest that he is counsel for one of the parties.

#### **JUDICIAL CANON FIVE: THE COURT AS LAST PLACE OF HOPE**

The Court is the last place of hope for man on earth and therefore the judge therein presiding must live above reproach; he shall not receive or demand fees for approving a bond or signing an order; nor raise unreasonable technicalities in the hope of receiving prerequisites before approving the bond or order duly present.

#### **JUDICIAL CANON SIX: JUDGE AS GOVERNMENT PAID OFFICIAL**

The judge is a government paid official and must be paid adequately; he holds an exalted position which prevents him from engaging in any business pursuit, therefore he must be provided with the necessities of life and with every means by which he will be able to perform his judicial duties effectively, efficiently, and speedily. The judge must be encouraged and given the incentive to live a decent and dignified life that would prevent financial and domestic worries and enable him to repel temptation which is susceptible to human life. As priest of justice, a judge should not be given the cause to be corrupted in the performance of his judicial duties so as to be justified for any disciplinary action taken against him if found deficient in those qualities.

#### **JUDICIAL CANON SEVEN: PUBLIC BEHAVIOR**

A judge should conduct himself in a decent, and honourable manner in the society. A judge shall refrain from ungentlemanly acts such as drunkenness, abuse of drugs and other substance. Loud and riotous behavior and the conviction of a non excusable offense.

#### **JUDICIAL CANON EIGHT: PUBLIC INTEREST**

Courts exist to promote justice thus to serve the public interest. Theirs is the administration of justice which they must do with speed and care. Every judge should at all times be alert in his rulings and in the conduct of the business of the court, so far as he can.

#### **JUDICIAL CANON NINE: CONSTITUTIONAL OBLIGATION**

It is the duty of all judges in the Republic to uphold and support the Constitution and the laws of the land, in so doing they, as custodian of the Constitution, should fearlessly observe and apply fundamental rights and guarantees.

#### **JUDICIAL CANON TEN: ESSENTIAL CONDUCT OF A JUDGE**

A judge should be temperate, attentive, impartial and since he is to administer the law, interpret it and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts.

#### **JUDICIAL CANON ELEVEN: AVOIDANCE OF IMPROPRIETY**

It is improper for a judge to accept a loan from a lawyer even a mortgage having no investment interest. It is also improper for a judge to conduct a newspaper column or comment on current news items and matters of general interest. It is improper for him to permit live broadcast, electronic recordings or the taking of photographs of court proceedings.

## **JUDICIAL CANON TWELVE: GIFTS AND FAVOUR**

A judge should not accept any presents or favour from litigants, or from lawyers practicing before him or from others whose interests are likely to be submitted to him for judgment.

## **JUDICIAL CANON THIRTEEN: INCONSISTENT OBLIGATION**

A judge should not accept inconsistent duties, nor incur obligation, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions.

## **JUDICIAL CANON FOURTEEN: INDUSTRY**

A judge should exhibit an industry and application commensurate with the duties imposed upon him to administer, interpret and apply the law.

## **JUDICIAL CANON FIFTEEN: PROMPTNESS**

A judge should be prompt in the performance of his judicial duties, recognizing that the time of litigants, jurors and lawyers is of value and habitual lack of punctuality on his part justifies dissatisfaction in his administration of the business of the court.

## **JUDICIAL CANON SIXTEEN: INDEPENDENCE**

A judge should not be swayed away by partisan demands, public clamor, or consideration of personal popularity or notoriety, nor be apprehensive of unjust criticisms.

## **JUDICIAL CANON SEVENTEEN: CONTINUANCES**

Delay in the administration of justice is a common cause of complaint of "justice delayed is justice denied" in this jurisdiction; counsel are frequently responsible for this delay. A judge, without being arbitrary or forcing cases unreasonable or unjustly to trial when unprepared to the detriment of parties, may well endeavor to hold counsel to a proper appreciation of their duties to the public interest, to their own clients, and to the adverse party and his counsel, so as to enforce due diligence in the despatch of the business before the court.

## **JUDICIAL CANON EIGHTEEN: COURTS ORGANIZATION**

A judge should organize the court with a view to the prompt and convenient dispatch of its business and he should not tolerate, abuse and neglect by clerks, and other assistants who are sometimes prone to presume too much upon his good nature acquiescence by reason of friendly association with him. It is desirable too, to cooperate with other judges of the same court coming in jurisdiction, and with judges of other courts as members of a single judicial system, to promote the more satisfactory administration of justice.

## **JUDICIAL CANON NINETEEN: CONSIDERATION FOR JURORS AND OTHERS**

A judge should be considerate of jurors, witnesses and others in attendance upon the court.

## **JUDICIAL CANON TWENTY: COURTESY AND CIVILITY**

A judge should require, and so far as his power extends, enforce on part of clerks, court officers and counsel, civility and courtesy to the court and jurors, witnesses, litigants and others having business in court.



## **JUDICIAL CANON TWENTY-ONE: UNPROFESSIONAL CONDUCT OF LAWYER**

A judge should utilize his authority to criticize and promptly correct unprofessional conduct of attorneys and counsellors brought to his attention; and, if adverse comment is not a sufficient corrective measure, he should send the matter to the Grievance and Ethical Committee or to other disciplinary authorities for appropriate action.

## **JUDICIAL CANON TWENTY-TWO: INTERFERENCE IN CONDUCT OF TRIAL**

Conversation between the judge and counsel in court is often necessary; but the judge should be studious to avoid controversies which are to obscure the merits of the dispute between litigants, or witnesses; he should avoid a controversial manner or tone. A judge should avoid interruptions of counsel in their argument except to clarify his mind as to their position and he should not be tempted to unnecessary display of learning of a premature judgment.

## **JUDICIAL CANON TWENTY-THREE: EX PARTE APPLICATION**

A judge should discourage *ex parte* hearing of applications for injunction and receiverships where the Order may work detriment to absent parties; he should act upon such *ex parte* applications only where the necessity for quick action is clearly shown, if this be demonstrated, then he should endeavor to counteract the effect of the absence of opposing counsel by a scrupulous cross-examination as to the facts and the principles of law on which the application is based, granting relief only when satisfied that the laws permit it and the emergency demands it. He should remember that an injunction is a limitation upon the freedom of action of defendant and should not be granted lightly or unadvisedly. One applying for such relief must sustain the burden of showing clearly its necessity and this burden is increased in the absence of the party whose freedom of action is sought to be restrained even though only temporarily.

## **JUDICIAL CANON TWENTY-FOUR: EX PARTE COMMUNICATIONS**

A judge should not permit private interviews, arguments or communications designed to influence his judicial action, where interests to be affected thereby are not represented before him, except in cases where provision is made by law for *ex parte* application.

## **JUDICIAL CANON TWENTY-FIVE: INFLUENCE OF DECISION UPON THE DEVELOPMENT OF THE LAW**

A judge should be mindful that his duty is the application of general law to particular instances, that our government is that of law and not of men, and that he violates his duty as an administrator of justice under such system if he seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may become precedent unsettling accepted principle and may have detrimental consequences beyond the immediate controversy. He should administer his office with due regard to the integrity of the system of the law itself, remembering that he is not a depository of arbitrary power, but a judge under the sanction of law.

## **JUDICIAL CANON TWENTY-SIX: IDIOSYNCRACIES AND INCONSISTENCIES**

Justice should not be molded by individual idiosyncrasies of those who administer it. A judge should adopt the usual method of doing justice and not seek to be extreme or particular in his judgments, or spectacular or sensational in the conduct of the court. Though vested with discretion in the imposition of mild or severe sentences he should not compel persons brought before him to submit to some humiliating act or discipline of his devising, without authority of law, because he thinks it will have a beneficial corrective influence. In imposing sentence, the judge should endeavor to conform to reasonable standard of punishment and not seek popularity or publicity either by exceptional severity or undue leniency.

## **JUDICIAL CANON TWENTY-SEVEN: LEGISLATION**

A judge has exceptional opportunity to observe the operation of statutes, especially those relating to practice and to ascertain whether they tend to impede the just disposition of controversies, and he may well contribute to the public interest by advising those having authority to remedy defects or procedure, as the result of his observation and experience.

## **JUDICIAL CANON TWENTY-EIGHT: SELF-INTEREST**

A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court for which he is assigned, or is a resident, he need not resign his judgeship on that account but he should, of course, refrain from any judicial act in such a controversy.

## **JUDICIAL CANON TWENTY-NINE: SOCIAL RELATIONS**

It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion, it is desirable that, so far as reasonable attention to the completion of his work will permit, he continues to mingle in social intercourse, and that he should not discontinue his interest in or appearance at meeting of members of the Bar. He should, however, be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships, constitute an element influencing his judicial conduct.

## **JUDICIAL CANON THIRTY: EXECUTORSHIP AND TRUSTEESHIP**

While a judge is not disqualified from holding executorship or trusteeship, he should not accept or continue to hold any fiduciary or other position if the holding of it would interfere or seem to interfere with the proper performance of his judicial duties, or if the business interests of those represented require investments in enterprises that are apt to come before him judicially, or to be involved in questions of law to be determined by him.

## **JUDICIAL CANON THIRTY-ONE: BUSINESS PROMOTION AND SOLICITATION FOR CHARITY**

A judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success or private business therefore, enter into such private business ventures, or to charitable enterprises. He should not therefore, enter into such private business or pursue such a course of conduct, as would justify such suspicion, nor use the power of his office the influence of his name to promote the business interest of others; he should not solicit for charities nor should he enter into any business relation which would in the normal course of events, reasonably bring his personal interest into conflict with the impartial performance of his official duties.

## **JUDICIAL CANON THIRTY-TWO: CONDUCT OF COURT PROCEEDING**

Proceedings in court should be so conducted as to reflect the importance and seriousness of the inquiry to ascertain the truth. The oath should be administered to witnesses in a manner calculated to impress them with the importance and solemnity of their promise to adhere to the truth. Each witness should be sworn separately and impressively at the bar of the court and the clerk should be required to make a formal record of the administration of the oath, including the name of the witness.

## **JUDICIAL CANON THIRTY-THREE: BRIEF**

While the conditions under which briefs of arguments are to be received are largely matters of rules of court or practice, a judge should not permit the contents of such briefs presented to him to be concealed from opposing counsel. Ordinarily, all communications of counsel to the judge intended or calculated to influence his action should be made known to opposing counsel.

## **JUDICIAL CANON THIRTY-FOUR: JUDICIAL OPINIONS**

In disposing of controversial cases, a judge should indicate the reasons for his action in an opinion showing that he had disregarded or overlooked serious arguments of counsel. He thus shows his full understanding of the case, avoid the suspicion of arbitrary conclusion, promotes confidence in his intellectual integrity and contribute useful precedent to the growth of the law.

It is desirable that courts of appeals in reversing cases and granting new trials should so indicate their views on questions of law argued before them and necessarily arising in the controversy that upon the new trial counsel may be aided to avoid the repetition of erroneous positions of law and shall not be left in doubt by the failure of the court to decide such question.

It is of high importance that judges constituting a court of last resort should use effort and self-restraint to promote solidarity of conclusion and the consequent influence of judicial decision. A judge should not yield to pride of opinion or value more highly his individual reputation than that of the court to which he should be loyal. Except in the case of conscientious difference of opinion on fundamental principle, dissenting opinions should be discouraged in courts of last resort.

## **JUDICIAL CANON THIRTY-FIVE: ABUSE OF DISCRETION**

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.

## **JUDICIAL CANON THIRTY-SIX: REVIEW**

In order that a litigant may secure the full benefit of the right of review accorded to him by law, a trial judge should scrupulously grant to the defeated party opportunity to present the question arising upon the trial exactly as they arose, were presented, and decided, by full and fair bill of exceptions or otherwise; any failure in this regard on the part of the judge is peculiarly worthy of condemnation because the wrong done may be irremediable.

## **JUDICIAL CANON THIRTY-SEVEN: PARTISAN POLITICS**

While a judge is entitled to entertain his personal view of political questions, and while not required to surrender his rights or opinion as a citizen it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes an active member of a political party and a promoter of its interest as against, another especially those of our judges of the highest courts who by constitutional command are empowered to review and determine electoral issues under the multiparty system introduced by the 1986 Constitution. Candidates for political office should neither accept nor retain a place on any party committee nor act as a party leader or generally engage in party activities. A judge should not appear at political meetings and indicate support of candidates for political office (nor should he permit his wife or her husband to give political teas.)

Articles 77 through 84 of the Liberian Constitution confer on the Supreme Court of Liberia the power to review and finally determine electoral issues and disputes under the Multi-party System; such issues as protest against membership in political parties, denial of registration of political parties, elections contest, appeals from violations of elections law, etc. It would therefore be embarrassing to the Justices of the Honourable Supreme Court of Liberia upon a review and determination of issues involving political parties if they are members of any political parties if they are member of any political party. It is therefore important that while a Justice of the Supreme Court of Liberia is entitled to entertain his personal view of political matters, and while he is not required by the Statute Laws to surrender his rights as citizen, it would however be in his best interest and for the public good, that upon his appointment to that bench of honour even as a Judge, Magistrate or Justice of the Peace, that he publicly resign his political affiliation whatever political party of which he was a member prior to his elevation.

## **JUDICIAL CANON THIRTY-EIGHT: A SUMMARY OF JUDICIAL OBLIGATION**

In every particular case a judge's conduct should always be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor regardless of public praise, and indifferent to private, political or partisan influence; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow another affairs or his private interest to interfere with the prompt and proper performance of his judicial duties nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

## **JUDICIAL CANON THIRTY-NINE: PENALTY**

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.

## **JUDICIAL CANON FORTY: JUDICIAL INQUIRY COMMISSION**

An Associate Justice, two Judges of Court of Record, the President of the Liberian National Bar Association and the Chairman of the Grievance and Ethics Committee of the Supreme Court shall constitute a Judicial Inquiry Commission with the exclusive power and authority to receive and investigate complaint against Judges of Courts of record and non-record in the Republic of Liberia for violation of any provision of the Judicial Canons.

The Chief Justice shall appoint members of the Commission and the Associate Justice shall be the Chairman of the Commission and the Chairman of the Grievance and Ethics Committee shall serve as Secretary to the Commission.

The Chief Justice and two Associate Justices appointed by the Chief Justice shall constitute the Commission whenever an Associate Justice of the Supreme Court is involved.

## HANDOUT 5.4.2C: BANGALORE PRINCIPLES OF JUDICIAL CONDUCT

### VALUE 1: INDEPENDENCE

*Principle:* Judicial independence is a pre-requisite 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.

*Application:*

- 1.1** A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- 1.2** A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.
- 1.3** A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
- 1.4** In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
- 1.5** A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 1.6** A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

### VALUE 2: IMPARTIALITY

*Principle:* Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

*Application:*

- 2.1** A judge shall perform his or her judicial duties without favor, bias or prejudice.
- 2.2** A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.
- 2.3** A judge shall, so far as is reasonable, so conduct himself or herself as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
- 2.4** A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.
- 2.5** A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where
  - 2.5.1** the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
  - 2.5.2** the judge previously served as a lawyer or was a material witness in the matter in controversy; or
  - 2.5.3** the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy: Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.



### VALUE 3: INTEGRITY

*Principle:* Integrity is essential to the proper discharge of the judicial office.

*Application:*

- 3.1** A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2** The behavior and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

### VALUE 4: PROPRIETY

*Principle:* Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

*Application:*

- 4.1** A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2** As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 4.3** A judge shall, in his or her personal relations with individual members of the legal profession who practice regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favoritism or partiality.
- 4.4** A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- 4.5** A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
- 4.6** A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- 4.7** A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.
- 4.8** A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
- 4.9** A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
- 4.10** Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
- 4.11** Subject to the proper performance of judicial duties, a judge may:
  - 4.11.1** write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
  - 4.11.2** appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
  - 4.11.3** serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or
  - 4.11.4** engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

- 4.12** A judge shall not practice law whilst the holder of judicial office.
- 4.13** A judge may form or join associations of judges or participate in other organizations representing the interests of judges.
- 4.14** A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.
- 4.15** A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
- 4.16** Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

## **VALUE 5: EQUALITY**

*Principle:* Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

*Application:*


- 5.1** A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, color, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").
- 5.2** A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 5.3** A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.
- 5.4** A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.
- 5.5** A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

## **VALUE 6: COMPETENCE AND DILIGENCE**

*Principle:* Competence and diligence are pre-requisites to the due performance of judicial office.

*Application:*

- 6.1** The judicial duties of a judge take precedence over all other activities.
- 6.2** A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
- 6.3** A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
- 6.4** A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.

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- 6.5** A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
  - 6.6** A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
  - 6.7** A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

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