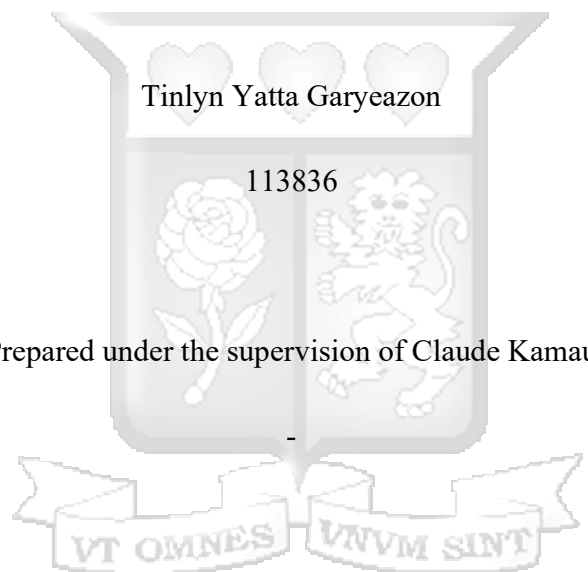


Investigating Constitutionalism and Judicial Independence in Liberia

Submitted in partial fulfillment of the requirements of the Bachelor of Laws Degree, Strathmore
University Law School

By



Prepared under the supervision of Claude Kamau

February 2025

11,744 words (excluding footnotes and bibliography)


DECLARATION

I, Tinlyn Yatta Garyeazon, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed:  _____

Date: 14th March 2025

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed:  _____

Supervisor's Name: **Claude Kamau**

Date: 14th March 2025

ACKNOWLEDGMENTS

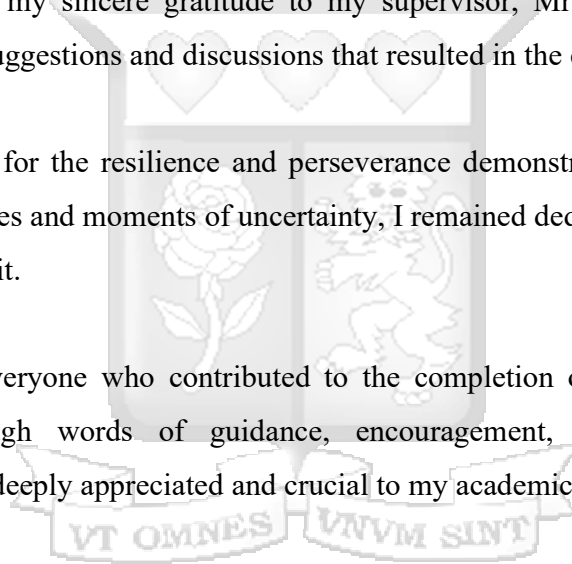
I am deeply grateful to God for his guidance and presence throughout this dissertation. His grace has given me the courage and determination to persevere.

To my parents, your boundless love, encouragement, and sacrifices have been my greatest source of inspiration. Your unwavering belief in me has driven my academic pursuits, and I am profoundly grateful for your endless support and prayers.

I would like to express my sincere gratitude to my supervisor, Mr. Claude Kamau, for his intellectual inspiration, suggestions and discussions that resulted in the completion of this study.

I also appreciate myself for the resilience and perseverance demonstrated during this journey. Despite countless obstacles and moments of uncertainty, I remained dedicated and focused on the significance of this pursuit.

Finally, thank you to everyone who contributed to the completion of this dissertation. Your support, whether through words of guidance, encouragement, practical assistance, or understanding, has been deeply appreciated and crucial to my academic achievement.



LIST OF LEGAL INSTRUMENTS

The African Charter on Human and Peoples' Rights

Constitution of Liberia 1847

Constitution of Liberia 1986

Judicial Canon Six of the Judicial Canons of the Republic of Liberia

Judiciary Law of the Republic of Liberia

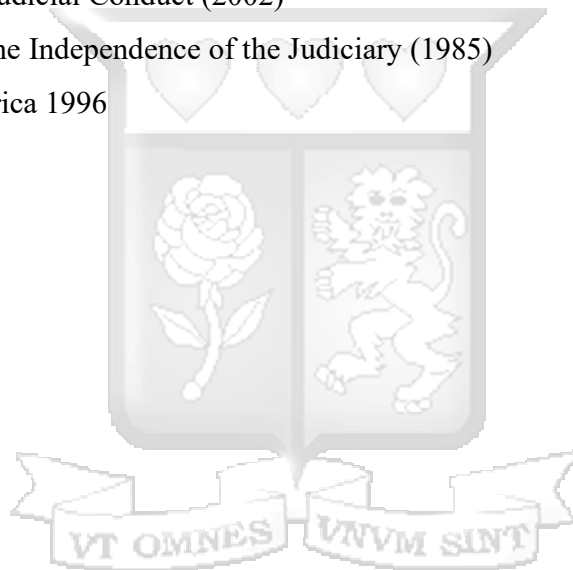
Senior Courts Act 1981

The Judiciary Law of Liberia (Title 17 of the Liberian Code of Laws Revised)

Bangalore Principles of Judicial Conduct (2002)

UN Basic Principles on the Independence of the Judiciary (1985)

Constitution of South Africa 1996



List of Cases

Counselor Kabineh Muhammad Ja'neh v Republic of Liberia & Anor.

Judges and Magistrates Association of Zimbabwe & Others v. Minister of Justice, Legal and Parliamentary Affairs & Others (2001).

Marbury v. Madison (1803), The Supreme Court of the United States.

Apollo Mboya v. Attorney General & 2 others

Oba Lamidi Adeyemi (Alaafin of Oyo) and others v. Attorney General, Oyo State and Others, Aniagolu JSC

Bradley v. Fisher

Harris v Minister of the Interior (1952), Appellate division of the Supreme Court OF South Africa

Economic Freedom Fighters v. Speaker of the National Assembly and Others (2016)

R v Sussex Justices, ex parte McCarthy, ([1924] 1 KB 256, [1923].

Justice Alliance of South Africa v. President of the Republic of South Africa

Subhash Sharma v. Union of India

LIST OF ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
CCJ	Community Court of Justice
COL	Constitution of Liberia
Cllr	Counselor/Counselor-at-Law
ECOWAS	Economic Community of West African States
JSC	Judicial Service Commission
USA	United States of America
WJP	World Justice Project
Art	Article



ABSTRACT

Judicial independence is the foundation of democratic governance and the rule of law. The Liberian Constitution provides structural safeguards for judicial independence, notably in Articles 71, 72, and 73, which address tenure, remuneration, and immunity. However, these safeguards are undermined by Articles 54 and 34(d), which grant the executive and legislative branches control over judicial appointments and budget allocations.

This paper examines the extent to which these provisions compromise judicial autonomy and impartiality in Liberia. The research employs a doctrinal legal analysis, reviewing constitutional provisions, case law, and comparative frameworks from other jurisdictions. Additionally, institutional theory and the theory of good governance are applied to assess the impact of political interference on the judiciary's effectiveness.

Findings reveal that executive and legislative influence over judicial appointments and budgets creates vulnerabilities to political interference, eroding public trust in the judiciary. The lack of transparent and merit-based appointment processes further weakens judicial impartiality, while financial dependence on the legislature limits operational autonomy. These structural compromise the judiciary's role as an independent arbiter of justice.

With the use of comparative analysis, this study provides actionable recommendations for enhancing judicial independence in Liberia, ensuring fair governance and safeguarding human rights.

This study underscores the urgent need for constitutional and institutional reforms to safeguard judicial autonomy in Liberia.

TABLE OF CONTENTS

DECLARATION	ii
ACKNOWLEDGMENTS	iii
LIST OF LEGAL INSTRUMENTS.....	iv
List of Cases.....	v
LIST OF ABBREVIATIONS.....	vi
ABSTRACT.....	vii
CHAPTER 1. INTRODUCTION	1
1.1 Background	1
1.2 Problem Statement	3
1.3 Purpose of the study or general aims	3
1.4 Research Objectives	3
1.5 Research Question.....	4
1.6 Hypothesis.....	4
1.7 Justification	4
1.8 Theoretical Framework: Good Governance, Institutional Theory	5
1.9 LITERATURE REVIEW.....	6
1.9.1 Separation of Powers.....	6
1.9.2 Judicial Independence	9
1.10 Methodology	13
1.11 Chapter Breakdown.....	14
CHAPTER 2: INADEQUACY OF ARTICLES 71, 72, AND 73 FOR JUDICIAL INDEPENDENCE	16
2.1 Introduction	16
2.2 Concept of Judicial Independence.....	16
2.3 Constitutional Provisions and Judicial Independence	17
2.2.1 Article 54	18
2.2.2 Article 71	19
2.2.3 Article 72	20
2.2.4 Article 73	20
2.2.5 Article 34(d)	21

2.4 Empirical evidence.....	22
2.4.1 Case one.....	22
2.4.2 Case two	24
2.5 Conclusion.....	25
CHAPTER 3: EXECUTIVE AND JUDICIARY OVERREACH AND JUDICIAL INDEPENDENCE	26
3.1 Introduction	26
3.2 Political Dominance and Its Implications on Judicial Independence.....	26
3.3 Political dominance and judicial independence in interaction: Liberia context.....	28
3.3.1 Executive and Legislative overreach	29
3.3.2 Theoretical framework and analysis.....	31
3.4 Conclusion.....	32
CHAPTER 4: REFORMS TO ADDRESS INSUFFICIENCIES IN ARTICLES 54, 71, 73, AND 72	33
4.1 Introduction	33
4.2 The Problem: Judicial Independence in Liberia.....	33
4.3 Why Compare South Africa and Liberia?.....	33
4.4 The State of Law: Judicial Independence in South Africa.....	34
4.5 Comparative Analysis: Lessons from South Africa.....	35
4.6 Applicability to Liberia	37
4.6.1 Institutional Feasibility.....	37
4.6.2 Social political landscape	37
4.6.3 JSC	38
4.6.4 Building Public Trust	40
4.6.5 Resource Constraints.....	41
4.6.6 Context-Sensitive Reforms	41
4.7 Conclusion.....	41
CHAPTER 5: FINDINGS, RECOMMENDATIONS, AND CONCLUSION	42
5.1 Introduction	42
5.2 Findings.....	42
5.3 Recommendations	43

5.4 Conclusion..... 44

5.4.1 OBSTACLES 45

5.4.2 ENABLING FACTORS..... 45



CHAPTER 1. INTRODUCTION

1.1 Background

Judicial independence is fundamental to constitutional governance and the rule of law¹, ensuring that courts operate autonomously to uphold human rights, enforce legal norms, and maintain democratic principles². In Liberia, Article 3 of the Constitution creates three separate branches of government prohibiting interference from any of the branches³- establishing a framework for judicial autonomy. However, political interference undermines the judiciary's ability to function independently and effectively⁴.

Historically, the judiciary in Liberia has struggled to assert its independence against an overpowering executive and legislature⁵. Political regimes have often manipulated judicial appointments, tenure, and finances to maintain control over the courts⁶. Notable instances include

¹ Mutua M, 'Justice Under Siege: The Rule of Law and Judicial Subsistence in Kenya' Buffalo Law, 2001, 96 https://digitalcommons.law.buffalo.edu/journal_articles/569 on March 27, 2024. Also see, Aristotle, chapter 14 in Aristotle (ed), 2ed, Politics Book IV. Hamilton A, Madison J, Federalist paper 51 in James and Alexander (ed) 17th ed, The federalist papers, New American Library, Penguin Group (USA), Chicago.(2005) <https://guides.loc.gov/federalist-papers/text-51-60> .

² Steiner H and Alston P, *International Human Rights In Context: Law, Politics, Morals*, 3rd ed, Oxford University Press, New York, 1996, 711-712.

³ *Constitution of Liberia* (1986).

⁴ Art 54 of the constitution of Liberia gives the President the power to appoint the chief justices and judges of the subordinate court with oversight of the Legislature. Article 34 gives the Legislature the power to approve the judiciary's budget. Also see Independent National Commission of Human Rights, *Liberia Human Rights Situation Report*, 2017, 19, 20.

⁵ Africa Report Nr. 107, Liberia: Resurrecting the Justice System, 2006, 19.

Also see, Stephen Ellis, *The Mask of Anarchy: The destruction of Liberia and the religious dimension of an African civil war* (C. Hurst & Co., London, 1999), pp. 80-7. Ellis delves into the civil war period, analyzing how the judiciary was neglected and even dismantled during Liberia's protracted conflicts, with focus on the resulting long-term challenges to legal and judicial reforms.

⁶ Africa Report, Nr. 107: Liberia - Resurrecting the Justice System, 2006, 19-20.

the dismissal of judges under politically motivated pretexts, such as the use of Joint Resolutions during the mid-20th century⁷, and the controversial impeachment of Justice Kabineh Muhammad Ja'neh in 2019⁸. These events highlight a troubling pattern where judicial decisions, particularly those perceived as unfavorable to the government, lead to retaliation against judges⁹.

Judiciary's vulnerability to external influences is not merely a failure of the system but rather a reflection of its design. Although Article 3 of the Liberian Constitution establishes a separate judiciary as part of the doctrine of separation of powers, judiciary's autonomy is limited by Article 34(d), the Judiciary Law, and Article 54. This structural limitation allows for significant presidential influence over judicial appointments and decisions, thereby enabling the system to function as intended, albeit with compromised impartiality.

This constitutional framework has historically contributed to the judiciary being perceived as the "weakest link" in Liberia's governance structure, with recent studies confirming the ongoing challenges to its independence and effectiveness¹⁰.

Also see Barbu J, *The Rule of Law and Judicial Independence in Liberia: Challenges and Prospects*", *Liberia Law Journal* (2013). Barbu provides a detailed account of how political actors have often undermined the judiciary and how judicial independence remains a challenge in Liberia's evolving political landscape.

⁷ The justices removed by J.R. include A.J. Woods in 1913, T. McCant Stewart in 1914, James N.F. Russ in 1928, O. Natty Davis in 1956, Lewis K. Free in 1966, Joseph Findley in 1967, Stephen B. Dunbar in 1967, and Joseph Kennedy in 1967. See *Africa Report*, Nr. 107: *Liberia - Resurrecting the Justice System*, 2006, 19.

⁸ *Counselor Kabineh Muhammad Ja'neh v republic of Liberia & Anor*, ECOWAS Judgment No ECW/CCJ/JUD/13/21, (2021).

⁹ Early Tubman attorney general C.A. Cassell was disbarred in 1961 for saying at an international conference that the judiciary was the weakest branch of government and was influenced by the administration. In his address CA Cassell stated that the judicial branch's inadequacy is highlighted by the legislative and executive branches' inability to consistently uphold and implement court rulings.

The Cassell Case Contempt in Liberia, 1961. Due to Mr. Cassell's presentation at the African Conference on the Rule of Law in Lagos in January 1961, the Court ruled that he had committed contempt. Cassell submitted a report in Lagos that included some negative views on the nation's judicial system.

¹⁰ World Justice Project, *Rule of Law Index* 2019, 6 and 97. Note: According to the World Justice Project and other indices, Liberia ranks poorly in judicial independence, with reports of corruption, jury tampering, and unethical conduct widespread.

Drawing on constitutional principles, historical case studies, and comparative African jurisprudence, this paper explores the structural and procedural deficiencies undermining judicial independence in Liberia. It argues that the judiciary must be insulated from political and financial pressures to fulfill its mandate of upholding the rule of law.

1.2 Problem Statement

Although Article 3 of the Liberian Constitution provides for an independent judiciary, and Articles 71, 72, and 73 establish structural safeguards addressing tenure, remuneration, and immunity to ensure judicial independence, these provisions are undermined by Articles 54 and 34(d). Article 54 grants the President discretionary power to appoint judges, while Article 34(d) places the setting and approval of the judiciary's budget under legislative control.

Given the influence of human bias, literature suggests that such a framework, where one branch of government hires and pays another, inherently compromises judicial independence. The dependence on the executive and legislature for appointments and financial resources creates vulnerabilities to political interference, undermining the impartiality of the judiciary. This systemic imbalance erodes public confidence in the judicial system and raises critical concerns about its ability to function as an autonomous and unbiased arbiter of justice.

1.3 Purpose of the study or general aims

The purpose of this study is to strengthen judicial independence in Liberia so as to ensure fair governance and the protection of human rights.

1.4 Research Objectives

1. To evaluate the adequacy of the judicial independence provisions (art 3, 71, 72 and 73) given the influence of art 54 and 34(d).
2. To identify and analyze how political interference compromises the impartiality and autonomy of judicial independence in Liberia.
3. To propose reforms or mechanisms aimed at strengthening judicial independence in Liberia.

1.5 Research Question

1. Whether articles 71, 73, and 72 are adequate insofar as upholding judicial independence in the context of art 54 and 34(d)?
2. Does executive and legislative control over judicial appointments and budgets affects judicial autonomy in Liberia?
3. Whether reforms and mechanisms can be implemented to strengthen judicial independence in Liberia by addressing the influence of political interference?

1.6 Hypothesis

The judicial system in Liberia is interfered with which impedes the dispensation of justice. I hypothesize the following:

1. Articles 71, 73, and 72 of the Liberian Constitution is insufficient in upholding judicial independence given art 54 and 34(d).
2. The lack of judicial autonomy is directly proportional to the influence and control exerted by the executive and legislative branches over judicial appointments and budgets.
3. Reforms such as establishing a Judicial Service Commission and ensuring stricter mechanisms for judicial appointments and financial autonomy are directly proportional to strengthening judicial independence in Liberia.

1.7 Justification

This study aims to highlight the urgency of strengthening judicial independence in Liberia by critically examining of the Liberian Constitution. It provides actionable recommendations tailored to Liberia's unique political, economic, and social conditions, focusing on creating a more independent, transparent, and accountable judiciary essential for safeguarding human rights and promoting good governance.

The research integrates key theoretical frameworks, including institutional theory and good governance, to offer a comprehensive understanding of judicial independence. By bridging the gap between theoretical insights and practical reforms, the study contributes to the academic and policy discourse on constitutionalism and judicial independence in Liberia.

Its findings will serve as a resource for researchers, policymakers, and government officials, offering a framework for addressing judicial inadequacies and enhancing the independence of Liberia's judiciary.

1.8 Theoretical Framework: Good Governance, Institutional Theory

This study shall be grounded on the following theories: Good governance Theory, Institutional Theory.

Good governance: UNDP¹¹ defines governance as the use of administrative, political, and economic power to manage the nation's affairs. Good governance has seven attributes. Transparency, responsiveness, effectiveness, consensus-building, accountability, efficiency, equity, inclusivity, and adherence to the law characterize it. It responds to societal demands both present and in the future¹². It offers a pathway to address public insecurity, corruption, inequality, and service failures, serving as a beacon of hope for better societal outcomes¹³.

This paper appeals to this theory as it evaluates governance outcomes, such as public trust in the judiciary and transparency in judicial appointments or dismissals, as proxies for judicial independence. This author uses this theory to measure "strengthening judicial independence" by governance indicators such as transparency in appointments (via Judicial Service Commission), accountability mechanisms, and financial security for judges.

Institutional theory: Douglass North in his paper¹⁴ defines institutions as any kind of restriction that human beings create to influence how they interact with one another.

¹¹ UNDP policy paper, Governance for sustainable human development, 1997.

¹² United Nations Economic and Social Commission for Asia and the Pacific, What is Good Governance?, <https://www.unescap.org/sites/default/files/good-governance.pdf>

¹³ Grindle M, 'Good Governance: The Inflation of an Idea' Harvard University CID Working Paper No. 202, 2010, 1 - <https://www.hks.harvard.edu/sites/default/files/centers/cid/files/publications/faculty-working-papers/202.pdf> on 11 November 2024.

¹⁴ Douglass N, *Institutions, Institutional Change and Economic*, 3rd ed, Cambridge university press, Cambridge, 1990, 83.

This theory examines how structures, rules, norms, and routines become established as authoritative guidelines for social behavior within organizations and institutions¹⁵. It emphasizes the role of institutional environments in shaping organizational behavior, decisions, and outcomes¹⁶. In relation to this paper, it is particularly relevant for analyzing how institutional frameworks either uphold or undermine practices like judicial independence.

This author appeals to this paper so as to analyze how institutional weaknesses, such as political interference or lack of accountability mechanisms, undermine the intended independence of the judiciary. With the use of the Institutional Theory, this author shall define the "adequacy" of constitutional provisions in terms of their design (rules, norms) and how well these are enforced. Measure "political interference" as deviations from institutional rules, such as appointments without merit, arbitrary dismissals, or legislative amending and approving the judiciary budget.

1.9 LITERATURE REVIEW

1.9.1 Separation of Powers

Separation of powers origins are evident in Aristotle's *Politics*, a work written in the fourth century B.C. that describes the three departments of government: the general assembly, public officials, and the court¹⁷. In his treatise Aristotle identified three "true" types of government. He classified them based on the number of people in charge - one, a few, or many¹⁸. These three types of governance are, in order, constitutional, aristocratic, and monarchical¹⁹. He argues that Constitutions come in various forms, each requiring the good lawgiver to consider three factors when determining what works best for each constitution; whether these components are harmonious, the constitution must also be harmonious, and the reason why a particular constitution

¹⁵ March J, Olsen J, 'The New Institutionalism: Organizational Factors in Political Life' 78(3) *American Political Science Review*, 1984, 734-749

¹⁶ March J, Olsen J, 'The New Institutionalism: Organizational Factors in Political Life' 78(3) *American Political Science Review*, 1984, 734-749

¹⁷ Aristotle, chapter 14 in Aristotle (ed), 2ed, *Politics Book IV*.

¹⁸ Aristotle, chapter 14 in Aristotle (ed), 2ed, *Politics Book IV*.

¹⁹ Aristotle, chapter 14 in Aristotle (ed), 2ed, *Politics Book IV*.

is better than another is because each of these components must be better than the other.²⁰. Among these three factors are: first, the body responsible for deliberating on common interests; second, matters related to magistracies, including their composition, responsibilities, and method of election; and third, the judiciary's structure and function²¹. There would be no liberty if the executive, legislative, and judicial branches were united since all three branches would be controlled by the same individual²².

The 18th century saw the emergence of contemporary conceptions of the separation of powers as a result of a strong focus on preventing the abuse of power in a way that would significantly restrict people's freedoms²³. This concept was developed by Montesquieu, who contended that it was essential to make a distinction between the legislative, which created laws, the executive, which carried them out, and the judicial, which decided cases involving the laws²⁴. In giving expression to the central meaning for the separation of powers, Montesquieu stated that political liberty exists only in moderate governments, and even then, it is not guaranteed. Power tends to be abused, as experience shows, so to prevent this, power must be balanced by other powers²⁵.

To this day, theorists maintain that the separation of powers is fundamental to constitutionalism and serves as a universal benchmark for constitutional government²⁶.

A key development in the concept of separation of powers was the introduction of "checks and balances," ensuring that each branch not only had distinct tasks but also the necessary powers to prevent the others from exceeding their authority²⁷.

²⁰ Aristotle, chapter 14 in Aristotle (ed), 2ed, Politics Book IV.

²¹ Aristotle, chapter 14 in Aristotle (ed), 2ed, Politics Book IV.

²² Encyclopedia Britannica, 15th ed.

²³ Landau D and Bilchitz D, 'The evolution of the separation of powers in the global south and global north', 2nd ed, Edward Elgar Publishing Limited, United Kingdom, 2018, 1-2.

²⁴ Louis C, *Baron de Montesquieu, The Spirit of the Laws* (1748) Book XI Chap IV, in *The Complete Works of M. De Montesquieu*, 1777.

²⁵ Louis C, *Baron de Montesquieu, The Spirit of the Laws* (1748) Book XI Chap IV, in *The Complete Works of M. De Montesquieu*, 1777.

²⁶ Vile M, *Constitutionalism and the Separation of Powers*, 2nd ed, Oxford University Press, Oxford, 1967, 97.

²⁷ The Federalist No. 51 (James Madison).

However, despite being a fundamental aspect of constitutional democracies, the separation of powers faces significant criticism today. One common concern is the perceived rigidity of the separation requirement²⁸.

In Carolan's work, she cites a commentary stating that if powers were completely separated, with each branch exercising only its own discrete set of powers, the nation would be ungovernable²⁹. This raises the question: whether the concept of separation of powers, which aims at enhancing the independence of the three branches, contradicts a system of checks and balances? Considering that checks and balances entail mutual supervision and some level of interference among the branches.³⁰

Numerous theorists contend that the separation of powers is plagued by ambiguity and uncertainty³¹. They argue that the concepts of the three branches' powers have not demonstrated precise definability³². Moreover, there is significant contention on the merit that underpin the doctrine³³.

²⁸ Carolan E, *The New Separation of Powers: A Theory of the Modern State*, 1st ed, Oxford University Press, Oxford, 2009, 18.

²⁹ Carolan E, *The New Separation of Powers: A Theory of the Modern State*, 1st ed, Oxford University Press, Oxford, 2009, 20.

³⁰ Mollers C, 'Three Branches: A Comparative Model of Separation Of Powers (Oxford Constitutional Theory)', 2nd ed, Oxford University Press, Oxford, 2015, 110.

³¹ Vermeule A, 'Optimal Abuse of Power' 673 (109) *Northwestern University Law Review*, 2015, 680.

³² Carolan E, *The New Separation of Powers: A Theory of the Modern State*, 1st ed, Oxford University Press, Oxford, 2009, 20.

³³ Gwyn W, '*The Meaning of the Separation of Powers: An Analysis of the Doctrine from its Origin to the Adoption of the United States Constitution*', 2nd ed, Tulane University, New Orleans, 1965, 127.

Maurice Vile's influential concept of the "pure doctrine of the separation of powers" advocates for a government divided into three branches: legislative, executive, and judiciary. Each branch should exclusively perform its own functions without interference from the others, and individuals should belong to only one branch at a time. This system ensures that each branch can check the others, preventing any single entity from dominating the government.

For many, the main goal of the division of powers is to limit the misuse of power, partly by preventing it from becoming concentrated in the hands of one person or organization. It is on this spectrum this author falls.

While Montesquieu's theory of separation of powers and Madison's emphasis on checks and balances remain foundational, their practical implementation in contemporary governance is context-dependent and often fraught with challenges in fragile democracies like Liberia. Montesquieu's framework assumes a balance of power, yet in contexts like Liberia, the executive often wields disproportionate influence, undermining the judiciary's independence. This raises questions about the adequacy of constitutional mechanisms in safeguarding judicial independence. Are constitutional mechanisms in Liberia, chapter VII, adequate to uphold the separation of powers in practice? Furthermore, the rigidity criticized in contemporary views of separation of powers highlights the need for flexible frameworks tailored to fragile and emerging democracies. Existing literature does not sufficiently explore how these principles can be tailored to systems with historical political instability or weak institutional checks, such as Liberia's.

1.9.2 Judicial Independence

In their article, Klerman and Mahoney defines a fully independent judiciary as one where judges have tenure during good behavior, receive a salary shielding them from government or private pressure, possess enough prestige to resist promotion allure, operate under a system of perquisites resistant to government manipulation, and are subject to jurisdiction rules resistant to executive and legislative interference, among other criteria³⁴.

According to Feld and Voigt, the concept of judicial independence is the extent to which judges exercise discretion vis-a-vis representatives of other government branches³⁵. In exercising their

³⁴ Klerman D and Mahoney P, 'The Value of Judicial Independence: Evidence from Eighteenth Century England' 7(1) *American Law and Economics Review*, 2005, 2-3.

³⁵ Feld L and Voigt S, 'Economic Growth and Judicial Independence: Cross Country Evidence Using a New Set of Indicators' Center for Economic Studies, CESifo Working Papers No. 906, 2003, 3, -<<http://ssrn.com/abstract=395403>> on April 12, 2024.

judicial duties, judges are bound only by the law not by personal desires, peer pressure, public demands, political belief, or the influence of any external group³⁶.

Madison argues in the Federalist Papers that judicial independence is essential to protect the Constitution and individual rights from the influence of transient public passions and the manipulations of ambitious individuals³⁷. These influences, although often temporary, can lead to dangerous changes in government and serious oppression of minority groups³⁸.

He asserts that although he trusts that supporters of the proposed Constitution will not agree with its opponents³⁹ In ascertaining the basic principle of republican government, which acknowledges the right of the people to amend or repeal the Constitution when it conflicts with their happiness, this does not imply that representatives should violate constitutional provisions based on a temporary majority inclination. Nor does it mean that courts should tolerate such violations any more than they would tolerate infractions stemming solely from the machinations of the representative body⁴⁰.

The independence of judges is crucial not only to prevent constitutional infractions but also to safeguard against occasional societal ill humors that harm the private rights of specific citizen groups through unjust laws⁴¹. The judiciary's firmness is vital in mitigating and limiting the impact of such laws. Furthermore, liberty has nothing to fear from the judiciary alone but would be at risk

³⁶ Klerman D and Mahoney P, 'The Value of Judicial Independence: Evidence from Eighteenth Century England' 7(1) *American Law and Economics Review*, 2005, 2-3.

³⁷ Hamilton A, Madison J, Federalist paper 51 in James and Alexander (ed) 17th ed, *The federalist papers*, New American Library, Penguin Group (USA), Chicago.(2005) <https://guides.loc.gov/federalist-papers/text-51-60> .

³⁸ Hamilton A, Madison J, Federalist paper 71-81 in James and Alexander (ed) 17th ed, *The federalist papers*, New American Library, Penguin Group (USA), Chicago.(2005) <https://guides.loc.gov/federalist-papers/text-51-60> .

³⁹ Hamilton A, Madison J, Federalist paper 51 in James and Alexander (ed) 17th ed, *The federalist papers*, New American Library, Penguin Group (USA), Chicago.(2005), also see *The Federalist paper 71-80* - <https://guides.loc.gov/federalist-papers/text-51-60> >

⁴⁰ Hamilton A, Madison J, Federalist paper 71-81 in James and Alexander (ed) 17th ed, *The federalist papers*, New American Library, Penguin Group (USA), Chicago.(2005) <https://guides.loc.gov/federalist-papers/text-51-60> .

⁴¹ African Commission on Human and Peoples' Rights, *The Independence of the Judiciary through the eyes of the African Commission on Human and Peoples' Rights*, 28-29 July 2010, 2.

if it merged with the other branches. A nominal separation is insufficient if the judiciary depends on the other branches, given its natural vulnerability to being overpowered or influenced by them⁴². Therefore, permanency in office is essential for judicial firmness and independence, making it a cornerstone of public justice and security.

This straightforward perspective leads to several important conclusions. It clearly shows that the judiciary is, by far, the weakest of the three branches of government, incapable of successfully attacking either of the other two⁴³. Thus, great caution must be used to assist it in fending off their attacks. While courts may occasionally commit individual injustices, the general liberty of the people is never threatened as long as the judiciary remains distinct from the other two branches.

A landmark moment is when the United State (hereafter known as US) in the case of *Marbury v Madison*⁴⁴, solidified the role of the judiciary as an autonomous arm of government with the authority to check the powers of the legislative and executive branches. This ensures that no single branch can exceed its constitutionally granted powers without judicial oversight.

This case also underscored checks and balances inherent in the U.S. Constitution. By asserting its right to judicial review, the Supreme Court positioned itself as an oversight on the other two branches, stopping them from passing laws or acting in ways that are unconstitutional⁴⁵.

In the Kenyan case of *Apollo Mboya v. Attorney General & 2 others*, the judge declared that by removing elected officials' ultimate jurisdiction over the interpreting of the law, the idea of judicial supremacy reduces the likelihood that basic legal protections will be jeopardized by the whims of the moment. The goal of shielding judges from political influence is the same⁴⁶.

⁴² Hamilton A, Madison J, Federalist paper 51 in James and Alexander (ed) 17th ed, The federalist papers, New American Library, Penguin Group (USA), Chicago.(2005), also see The Federalist paper 71-80 - <<https://guides.loc.gov/federalist-papers/text-51-60> >

⁴³ Hamilton A, Madison J, Federalist paper 51 in James and Alexander (ed) 17th ed, The federalist papers, New American Library, Penguin Group (USA), Chicago.(2005), also see The Federalist paper 71-80 - <<https://guides.loc.gov/federalist-papers/text-51-60> >

⁴⁴ *Marbury v Madison* (1803), The Supreme Court of the United States.

⁴⁵ *Marbury v Madison* (1803), The Supreme Court of the United States.

⁴⁶ *Apollo Mboya v Attorney General & 2 others* (2018) eKLR.

Another important starting point for this principle is articulated in the Nigerian Supreme Court case *Oba Lamidi Adeyemi (Alaafin of Oyo) and others v. Attorney General, Oyo State and Others*, *Aniagolu JSC* was involved. He maintained that the seizure of judicial authority is frequently the first step towards the establishment of dictatorships, hence the jurisdiction of the courts must be fiercely preserved. Many dictators resist the procedural and structural safeguards that courts employ to enhance the rule of law and protect individual rights. Therefore, courts must insist on strict adherence to the Constitution and curb the establishment of 'Kangaroo courts' under various guises and pretenses of judicial regularity⁴⁷.

Judges are, at the very least, responsible to the law. The development of the rule of law is inherently linked to this acknowledgment i) The judiciary can only fulfill its democratic role as the protector of the social contract; ii) when it is independent and endowed with authority; iii) Thus, it is the duty of the three branches of government to uphold this independence and authority.

This idea led to the provision in medieval statutes that forbade the monarch from communicating with a judge regarding any matter in dispute before that judge⁴⁸.

In his paper, Martin Shapiro contends that judges have the primary role of resolving disputes, and independence is crucial for fulfilling this mission. However, judges not only resolve disputes but also interpret and apply the law in judicial courts. In the process of settling disputes, judges inevitably interpret the law, thereby shaping it. Since judges contribute to the development of the law through their interpretations, absolute independence may not be appropriate⁴⁹. They must be accountable to someone, at least according to any political theory currently at play in the politically developed world⁵⁰.

⁴⁷ *Oba Lamidi Adeyemi (Alaafin of Oyo) and others v. Attorney General, Oyo State and Others* (1967), The Supreme Court of Nigeria

⁴⁸ Heydon J, 'Does Political Criticism of Judges Damage Judicial Independence? Judicial Power Project Policy Exchange' 37(2) *University of Queensland Law Journal*, 2018 179.

⁴⁹ Shapiro M, 'Judicial Independence: New Challenges in Established Nations' 20(1) *Indiana Journal of Global Legal Studies*, 2013, 254.

⁵⁰ Shapiro M, 'Judicial Independence: New Challenges in Established Nations' 20(1) *Indiana Journal of Global Legal Studies*, 2013, 254.

The criteria for judicial independence outlined by Klerman and Mahoney are rigorous and provide an ideal benchmark for judicial independence, emphasizing tenure, financial autonomy, and resistance to external influence. While these benchmarks are widely accepted, however, they often fail to account for the socio-political complexities of developing nations, where judicial tenure, political interference, and financial autonomy remain pervasive. In Liberia, these issues are compounded by a history of weak institutional enforcement, leaving judges vulnerable to political pressures despite constitutional guarantees. While Madison's arguments in the *Federalist Papers* emphasize the judiciary's role in protecting minority rights, they presuppose a stable institutional framework, a presumption that does not hold in Liberia's case, where public perception often casts the judiciary as a tool of the elite rather than upholding impartial justice. This gap in literature highlights the need for a deeper examination of the judiciary's role in fragile democracies and the interplay between public trust and institutional independence.

The literature on separation of powers and judicial independence primarily focuses on established democracies with strong institutional frameworks. There is limited exploration of how these principles apply in contexts like Liberia, where political interference, financial dependency, and public mistrust challenge the judiciary's autonomy. Additionally, while theoretical models emphasize the need for independence, they often neglect practical mechanisms for achieving it in resource-constrained settings.

This study addresses these gaps by applying the principles of separation of powers and judicial independence to the Liberian context, specifically analyzing constitutional provisions (Articles 54, 71, 73, and 72) to assess their adequacy. Unlike previous works, this study incorporates the role of public perceptions and systemic challenges, offering a holistic view of judicial independence in Liberia. By bridging the gap between theory and practice, the research provides actionable recommendations for strengthening judicial independence in fragile democratic systems.

1.10 Methodology

The nature of the research conducted in this study will be qualitative. The main sources of

data in this paper will be primary sources including legislation, and historical documents. Moreover, this study will also rely on secondary sources including journal articles, books, book chapters, and reports.

This paper will use the doctrinal approach to focus on the text of the law. Using this method, the author will compose a descriptive and detailed analysis of legal rules found in primary sources (cases, statutes, or regulations). This author employs this approach so as to get clarity on the implementation of the laws and the understanding of the approaches taken by courts.

It will also employ the use of socio-legal approach. I will analyze the law directly, connecting it to the social situation it addresses, and place it within the context of that situation by examining how the law contributes to the creation, preservation, or transformation of that social context. I do this to understand and show the importance of judicial independence. This part of the work shall be prescriptive.

This paper shall employ the use of comparative analysis. The author does this to examine the differences and similarities between the judicial systems and reforms in Liberia and international best practice.

The author also uses case studies to provide detailed examinations of specific instances where judicial independence was challenged or upheld.

I expect to arrive at my conclusion by imploring both deductive and inductive reasoning.

1.11 Chapter Breakdown

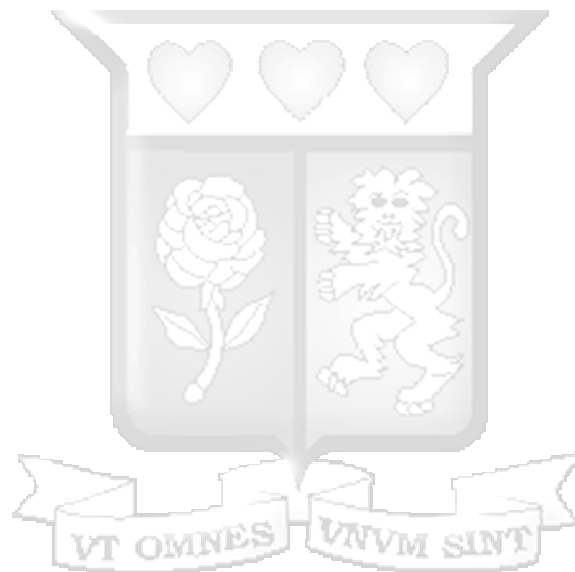
Chapter one is the introductory part of the study. The chapter shall present the research question and layout, setting the basis chapters to follow.

Chapter Two focuses on RQ1, this chapter evaluates whether the constitutional provisions are sufficient to uphold judicial independence in Liberia.

Chapter Three aligned with RQ2, this chapter explores the systemic and institutional weaknesses undermining judicial independence.

Chapter Four addresses RQ3 by proposing reforms aimed at bolstering judicial independence in Liberia. It evaluates options such as the establishment of a Judicial Service Commission, enhanced financial autonomy.

Chapter Five consists of findings, recommendations, and conclusions. It presents the findings applying it to various levels.



CHAPTER 2: INADEQUACY OF ARTICLES 71, 72, AND 73 FOR JUDICIAL INDEPENDENCE

2.1 Introduction

This chapter critically examines the adequacy of Articles 71, 72, and 73 of the Liberian Constitution in upholding judicial independence in the context of article 54 and 34(d). The analysis evaluates these provisions against the theoretical frameworks identifying gaps and limitations.

2.2 Concept of Judicial Independence

The judiciary's fundamental principle and core value is independence. This is expressed in many basic documents. Article 7(d) of the African charter on Human and people rights gives every individual the right to be tried within a reasonable time by an impartial and independent court⁵¹. Impartiality refers to the court's (or judge's) mindset regarding the parties and issues in a case. It requires the absence of any prejudice, preference, or bias, whether during hearings or in any other context⁵².

This study focuses on three main concepts: perceived judicial independence, respect for judicial independence, and trust in the judiciary. Given the subjective nature of independence, perceptions play a crucial role. Under common law, the evaluation of a court's independence must also consider the appearance of independence⁵³. The general consensus in the literature is that the court must be seen as independent in order to win the public's trust⁵⁴. The judiciary's legitimacy is thereafter strengthened by this trust⁵⁵. Trust and legitimacy are complex concepts with multiple dimensions.

⁵¹ Art 7, *African Charter on Human and People Rights*, 1 June 1981, 26363

⁵² OHCHR, *Human rights in the administration of justice: A manual on human rights for judges, prosecutors and lawyers*, PROFESSIONAL TRAINING SERIES No. 9, 2003, 115.

⁵³ *R v. Sussex Justices, Exparte McCarthy* [1924] 1 KB 256. *The case underscores that the appearance of independence must be considered when evaluating judicial independence. The judiciary must not only act impartially but also ensure that its impartiality is apparent to the public to maintain trust in the legal system.*

⁵⁴ Dijk F, 'Judicial Independence and Perceptions of Judicial Independence. In: *Perceptions of the Independence of Judges in Europe*' Palgrave Macmillan 2021, 37.

⁵⁵ Dijk F, 'Judicial Independence and Perceptions of Judicial Independence. In: *Perceptions of the Independence of Judges in Europe*' Palgrave Macmillan 2021, 38. s

In this study, trust refers to diffuse institutional trust, while respect for independence is viewed as a reflection of the judiciary's legitimacy.

This aspect of independence arises from the separation of powers among the branches of government to safeguard citizens in disputes with the state⁵⁶. The focus on independence also stems from the judiciary's fundamental purpose of resolving disputes fairly, particularly in a primarily adversarial context⁵⁷. Courts make significant decisions that deeply impact people's lives⁵⁸. Parties in disputes often have significant disparities in resources and power, frequently disagree, and clash in emotionally charged environments. Their primary aim is to win (or at least avoid losing), often resorting to extreme measures to achieve their goals. This confrontational nature sets the judiciary apart from most other professional organizations, placing the judge's independence as a central concern⁵⁹. A judge cannot be an effective arbitrator if (s)he is not independent and impartial and is seen as such by the parties. Their judgments should 'prove' the extent to which they are being led only by the law, and to this end are 'impervious' to inappropriate external (political and private) pressures and internal pressures (from other judges and management). Being led only by the law means that political, religious or other background does not play a role in adjudicating cases⁶⁰.

2.3 Constitutional Provisions and Judicial Independence

The 1847 Liberian Constitution, like its U.S. model, established three independent branches of government: executive, legislative, and judicial⁶¹. It called for an elected president and an elected

⁵⁶ Guerra L, 'The Judiciary and the Separation of Powers' Conference for Constitutional and Supreme Court Judges from the Southern African Region, Siavonga, 12-13 February 2000, 3.

⁵⁷ Ashenfelter O, Eisenberg T, and Schwab S, 'Politics and the judiciary: The influence of judicial background on case outcomes' 24 (2) Journal of Legal Studies, 1995, 257.

⁵⁸ Ervin S, 'Separation Of Powers: Judicial Independence' <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3279&context=lcp>

⁵⁹ Guerra L, 'The Judiciary and the Separation of Powers' Conference for Constitutional and Supreme Court Judges from the Southern African Region, Siavonga, 12-13 February 2000, 3.

⁶⁰ Ashenfelter O, Eisenberg T, and Schwab S, 'Politics and the judiciary: The influence of judicial background on case outcomes' 24 (2) Journal of Legal Studies, 1995, 260.

⁶¹ Article 1 subarticle 14, *Constitution of Liberia* (1986).

bi-cameral legislature, which was divided into a House of Representatives and a Senate⁶². It provided for a judiciary, with the Supreme Court of Liberia at its pinnacle, consisting of the Chief Justice and four Associate Justices⁶³. This more or less passes the benchmarks of separation of powers, and judicial independence on paper. However, these theories are only confined in the crevices of article 1 and article 5 of the constitution⁶⁴. A further look at the articles put in place to uphold judicial independence tells another story.

2.2.1 Article 54

Article 54 gives the President the power to nominate and, with the consent of the Senate, appoint and commission the Chief Justice and Associate Justice of the Supreme Court and judges of subordinate courts⁶⁵. While this provision ensures a role for both the executive and legislative branches, it also introduces the risk of political interference, especially in a system where executive dominance is prevalent. As per our good governance lens, does this process ensure *transparency and accountability*? Are there mechanisms to prevent executive overreach or bias? The provision allows for clear constitutional responsibility for appointments. However, it lacks checks to ensure appointments are impartial; no mechanism to prevent undue executive influence. In comparison to a country like India who once had a similar appointment style but has since been revised. In the landmark Indian 1991 case of *Subhash Sharma v. Union of India*⁶⁶, a three-judge panel ruled that the appointment of judges is not an executive act and established the collegium system for judicial nominations. The court emphasized the Chief Justice of India's (CJI) opinion as paramount, equating "consultation" with "concurrence," and highlighted the need for appointments to remain free from political interference.

The collegium system required the CJI to consult senior colleagues when forming opinions on appointments, with seniority preserved unless compelling reasons dictated otherwise. The executive could request a reconsideration of a candidate, but once the collegium reaffirmed its

⁶² Article 1 sub article 14, *Constitution of Liberia* (1986).

⁶³ Article 5 sub article 1 & 2, *Constitution of Liberia* (1986).

⁶⁴ *Constitution of Liberia* (1986).

⁶⁵ *Constitution of Liberia* (1986).

⁶⁶ *Subhash Sharma v. Union of India* (1991), AIR SC 631.

recommendation, the executive was obligated to make the appointment. This decision underscored the importance of removing executive discretion to safeguard judicial independence, ensuring judges were selected by a judicial body rather than the government.

2.2.2 Article 71

Article 71 states that “the Chief Justice and Associates Justices of the Supreme Court and the judges of subordinate courts of record shall hold office during good behavior. They may be removed upon impeachment and conviction by the Legislature based on proved misconduct, gross breach of duty, inability to perform the functions of their office, or conviction in a court of law for treason, bribery or other infamous crimes⁶⁷”. As per our Good Governance Lens, Does this ensure independence by protecting judges from arbitrary dismissal? Does it align with rule of law principles? It provides for security of judicial tenure which protects judges from arbitrary dismissal, a cornerstone of independence. However, dismissal mechanisms are vague or susceptible to executive influence and lack an independent oversight to adjudicate claims of misconduct which undermines the rule of law and accountability. In comparison with another African country like South Africa, judicial tenure is linked with retirement age or proven incapacity/misconduct, overseen by an independent Judicial Service Commission. In the case of *Justice Alliance of South Africa v. President of the Republic of South Africa*⁶⁸, the court declared *Section 8(a)*, a power given to the president to extend or shorten the chief justice term unconstitutional, finding that it infringed on judicial independence. The Court emphasized that the judiciary must remain free from actual or perceived executive interference. Granting the President unilateral authority to extend/shorten the Chief Justice's term created the risk of compromising the impartiality of the judiciary or, at the very least, fostering a perception of executive control. The Court further held that decisions regarding judicial tenure must be made through institutional

⁶⁷ *Constitution of Liberia* (1986).

⁶⁸ *Justice Alliance of South Africa v President of Republic of South Africa and Others, Freedom Under Law v President of Republic of South Africa and Others, Centre for Applied Legal Studies and Another v President of Republic of South Africa and Others* (CCT 53/11, CCT 54/11, CCT 62/11) [2011] ZACC 23; 2011 (5) SA 388 (CC); 2011 (10) BCLR 1017 (CC) (29 July 2011).

mechanisms, such as recommendations by the Judicial Service Commission (JSC) or constitutional amendments, rather than by the discretion of a single executive office.

2.2.3 Article 72

This provision provides for the salary and benefits of judges. In assessing this provision against the Good Governance Lens, are these adequate and safeguarded from manipulation by other branches? Does the system ensure that benefits are predictable and immune to executive or legislative control? The provision in theory protects judges from financial manipulation by other branches. It does not provide an independent mechanism to review judicial salaries; potential risk of political influence in setting compensation levels. In comparison with the United Kingdom, judicial independence is safeguarded, in part, through provisions outlined in the *Senior Courts Act 1981*, which ensures that judicial salaries are determined independently of political influence. Specifically, *Section 12 of the Senior Courts Act 1981* provides that judges' salaries shall be determined by an independent body and paid out of the Consolidated Fund. This mechanism ensures that neither the legislature nor the executive can manipulate judicial remuneration to influence judicial behavior or compromise the judiciary's independence. Kenya has also implemented the consolidated fund in the judiciary fund⁶⁹ which is used for the administrative expenses of the Judiciary and such other purposes as may be necessary for the discharge of the functions of the Judiciary⁷⁰.

2.2.4 Article 73

Article 73 protects judges from prosecution for decisions made in the exercise of their judicial duties. In accordance with Good Governance Lens, does immunity balance judicial accountability with protection against external pressures? Is there actual immunity? Is there clarity on limits to this immunity? On paper this provision prevents harassment of judges for their official decisions, ensuring they act without fear. However, due to vagueness, it can be perceived as shielding judges from legitimate accountability if no clear mechanisms exist to address abuse of authority or

⁶⁹ Article 73, *Constitution of Kenya* (2010).

⁷⁰ Article 73(2), *Constitution of Kenya* (2010).

corruption. Judges can be dismissed given several loopholes⁷¹. In comparison to the United States, in the case *Bradley v. Fisher*⁷², the US judges established that judges have immunity for official acts but can be removed for proven corruption or malfeasance through independent investigation.

2.2.5 Article 34(d)

Article 34 gives the legislature the power to set make appropriations for the fiscal government of Liberia. This article, however, cannot be read in isolation. Read together with the judiciary law⁷³, The Legislature has the authority to review, amend, and approve the judiciary's proposed budget in accordance with the fiscal budget set by the legislature. In accordance with Good Governance Lens, is this process effective and efficient? Although the judiciary can propose its own budget, ultimate control rests with the Legislature and the disbursement of the approved budget lies on the shoulder of the executive branch. This creates a potential avenue for political interference or underfunding, especially in cases where judicial decisions are unpopular with the legislative or executive branches. In recent instances, Chief Justice Sie-A-Nyene G. Yuoh highlighted that, despite the Financial Autonomy Act requiring quarterly disbursements to the judiciary within 15 days prior to each quarter, the Legislature and Ministry of Finance have not fully complied, leading to operational challenges⁷⁴. Also, The National Association of Trial Judges of Liberia demanded the government, through the Ministry of Finance, remit over US\$182,000 in overdue allowances, indicating intentional delays in budget disbursement affecting judicial functions⁷⁵. In comparison

⁷¹ Tactic device by the presidents called the Joint Resolution (hereafter J.R.) to remove judges who exhibit sparks of independence, at least eight judges were fired with no hearings on the validity of the action between 1913 to 1967, See, Africa Report, Nr. 107: Liberia - Resurrecting the Justice System, 2006, 19.

⁷² *Bradley v. Fisher* (1872), The Supreme Court of the United States.

⁷³ Section 21.3, *The Judiciary Law of Liberia* (Title 17 of the Liberian Code of Laws Revised)

⁷⁴ Yuoh S, 'Opening Address of Her Honor Sie-A-Nyene G. Yuoh Chief Justice, Supreme Court of Liberia October term A.D. 2024' October 14, 2024 <https://judiciary.gov.lr/wp-content/uploads/2024/10/CHIEF-JUSTICE-OPENING-ADDRESS-OCTOBER-2024.pdf?utm>

⁷⁵ Lomo G, 'Trial Judges In Liberia Give Ultimatum To Finance Ministry Demand That Finance Min. Remits Over US\$182K "Illegally Deducted" From Judges And Court Staffers' News Public Trust, February 14, 2023 <<https://newspublictrust.com/trial-judges-in-liberia-give-ultimatum-to-finance-ministry?utm> > on 18 January 2025.

to the international standards, the UN Basic Principles on the Independence of the Judiciary (1985) provides that adequate resources must be provided to the judiciary to ensure proper functioning. Similarly, the Bangalore Principles of Judicial Conduct (2002) stipulates that financial autonomy is critical for judicial independence, including the power to manage budgets once approved.

2.4 Empirical evidence

2.4.1 Case one

In March of 2019, under the presidency of President George Weah's, Counselor Kabineh Muhammad Ja'neh's was impeached as an Associate Justice of the Supreme Court of Liberia⁷⁶. This event was highly controversial, sparking debates about judicial independence and the rule of law in Liberia, as many consider this decision to be politically motivated. Ja'neh was seen as an opposition of President George Weah's administration, making him a perceived obstacle to the executive's influence over the judiciary⁷⁷.

Ja'neh was accused of misconduct and abuse of office by the legislature. These accusations came after issuing a prohibition order in a land dispute case involving the government and a private citizen; Ja'neh issued a writ to stop the government from collecting US\$0.25 tax imposed on the pump price of petroleum products, which was perceived as an abuse of his judicial powers.

Despite legal and procedural controversies surrounding the impeachment, including challenges to its constitutionality, the legislatures ultimately voted to remove Ja'neh from office.

Under Article 43 of Liberia's Constitution, the Legislature is required to set a rule of procedure for impeachment. However, the Legislature, during the impeachment process, elected to ignore

⁷⁶ Counselor kabineh Muhammad Ja'neh v republic of liberia & Anor, ECOWAS Judgment No ECW/CCJ/JUD/13/21, (2021).

⁷⁷ Jiffan A, 'Far From The Truth' -Justice Ja'neh Speaks At Impeachment Trial -Describes Impeachment Proceeding A Sad Day', The analyst, 19 March 2019, -<<https://analystliberiaonline.com/far-from-the-truth-justice-janeh-speaks-at-impeachment-trial-describes-impeachment-proceeding-a-sad-day/>> on March 29, 2024.

that constitutional mandate and proceeded with what they called “amended rules to govern the impeachment process”⁷⁸.

In keeping with Article 43, which says that you must prescribe rules or procedures, without which fair trial is not guaranteed⁷⁹. The Senate also breached Article 73 of the Constitution. The dismissal of a justice for carrying out a legal duty sets a precedent which has a likelihood to cause other judges, particularly those of subordinate courts, fearful to freely execute their legal duties when it involves cases where the interests of government or influential persons or entities are involved, consequently negating the objective why courts exist in our system of government⁸⁰. Both houses have the authority to indict and dismiss Judges. However, these procedures must comply with the law. Ja’neh forwarded this case to the ECOWAS court, where the court found the Republic of Liberia in violation of article 7 and 15 of the African charter on Human and People’s Rights (ACHPR) having not given the applicant a fair hearing and unlawfully terminating his appointment⁸¹.

The political nature of the impeachment process raises concerns about the adequacy of Article 54 in ensuring that judges can perform their duties impartially without fear of political retribution. While the Constitution provides a framework for impeachment, the legislature’s failure to adhere to procedural rules set out in Article 43 - specifically, the absence of a prescribed rule of procedure for impeachment - suggests a flaw in the enforcement of safeguards designed to prevent politically motivated removals.

⁷⁸ Counselor Kabineh Muhammad Ja’neh v Republic of Liberia & Anor, ECOWAS Judgment No ECW/CCJ/JUD/13/21, (2021).

⁷⁹ Counselor Kabineh Muhammad Ja’neh v Republic of Liberia & Anor, ECOWAS Judgment No ECW/CCJ/JUD/13/21, (2021).

⁸⁰ Remarks by Cllr. Tiawan S. Gongloe, President of the Liberian National Bar Association at the Seating of Associate Justice Yussif D. Kab, press release, May 21, 2019.

⁸¹ Hon Justice Amoako Asante of the ECOWAS made the following statements, ‘ dismissing of judges that do not dance to the political tune, reading political meaning into it, we didn’t want this kind of impunity to happen for politicians to have their way because the position of judges should be insulated all the time, such that politicians should not have the pendant to at any time they wish because maybe they may not be singing their song. See Counselor Kabineh Muhammad Ja’neh v republic of liberia & Anor 2021ECW/CCJ/APP/33/19/REV

The impeachment of Ja'neh reflects that political pressures can still force the judiciary to operate under constraints. When judges face the risk of removal for decisions that go against the political interests of the government, their independence may be compromised, regardless of salary protection.

The case of Ja'neh's impeachment reveals that these procedures can be bypassed or misinterpreted. The legislature's decision to ignore established procedures and adopt "amended rules" undermines the very essence of Article 73, which is to ensure fairness and legal compliance in the impeachment process.

While the Constitution theoretically provides safeguards for judicial independence, these provisions are not adequately enforced in practice. The political influence over the impeachment process, the disregard for constitutional procedures, and the failure to provide a fair hearing indicate that the existing legal framework is insufficient to protect the judiciary from political interference.

2.4.2 Case two

On June 5, 2024, the Director of Public Information for the Judiciary, Cllr. Darryl Ambrose Nmah, Sr., released an official statement outlining concerns raised by the Judiciary regarding its financial autonomy⁸². The statement detailed that, prior to the passage of the 2024 fiscal budget, the Judiciary engaged in meetings with the leadership of both the Legislature and the Presidency to address budgetary concerns. During these discussions, the Judiciary explicitly highlighted the repeated violations of the Financial Autonomy Act of the Judiciary Law⁸³.

The meetings emphasized that these violations undermine the Rule of Law and diminish the status of the Judiciary as a co-equal branch of government, effectively reducing it to a subordinate department within the Executive Branch.

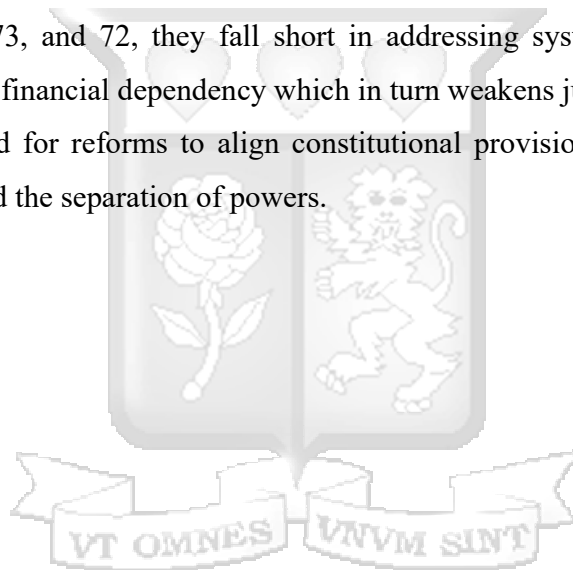
⁸² Saywon S, 'Liberia's Supreme Court warns of Constitutional clash over \$17 million budget allocations' Smart News Liberia, July 21, 2024 -< <https://smartnewsliberia.com/liberias-supreme-court-warns-of-constitutional-clash-over-17-million-budget-allocations/?utm>> on 18 January 2025.

⁸³ Peters G, 'Unfair and unjust -Judiciary rejects appropriations in Nat'l Budget' New Dawn Liberia, June 6, 2024 -< <https://thenewdawnliberia.com/unfair-and-unjust/?utm> > on 18 January 2025.

Empirical data from the 2024 fiscal budget shows that the Judiciary was allocated US\$17 million, alongside a one-time contingency amount of US\$3 million—constituting only 2.8% of the national budget. The Supreme Court of Liberia formally rejected this allocation, describing it as an imposition by the Legislative and Executive Branches, which disregards the Judiciary’s status as an independent and co-equal branch of government. This rejection underscores ongoing tensions between Liberia’s branches of government concerning constitutional autonomy and equitable resource distribution.

2.5 Conclusion

This chapter concludes that despite article 3 establishing judicial independence and its supporting provisions Articles 71, 73, and 72, they fall short in addressing systemic challenges such as political interference and financial dependency which in turn weakens judiciary autonomy. These gaps underscore the need for reforms to align constitutional provisions with the principles of judicial independence and the separation of powers.



CHAPTER 3: EXECUTIVE AND JUDICIARY OVERREACH AND JUDICIAL INDEPENDENCE

3.1 Introduction

This chapter examines the systemic and structural factors that undermine judicial independence in Liberia, directly addressing the research question: Does executive and legislative control over judicial appointments and budgets affect judicial autonomy in Liberia? It explores Liberia's history of political dominance to establish a link between persistent inadequacies in judicial autonomy and the overreach of the executive and legislative branches. By drawing on institutional theory and the theory of good governance, this chapter analyzes how entrenched political practices have weakened the judiciary's ability to function independently, ultimately compromising its impartiality and effectiveness.

3.2 Political Dominance and Its Implications on Judicial Independence

Judicial independence cannot thrive under systems where power is concentrated in a single arm of government, as checks and balances are naturally compromised⁸⁴. Political domination converts institutions into tools for the preservation of power, frequently at the price of institutional integrity⁸⁵. Several scholars argue that in nations where one political party controls the political realm, the chance of judges ruling against the government decreases⁸⁶. However, with a split administration, the court is anticipated to be more independent and willing to criticize the current government⁸⁷. The fundamental characteristic of this structure is that political dispersion reduces incumbents' ability to overturn judicial decisions or interfere in judicial

⁸⁴ Horowitz D, 'Constitutional Courts: A Primer for Decision Makers' 17(4) *Journal of Democracy Johns Hopkins University Press*, 2006, 127.

⁸⁵ Dahl R, 'The concept of power' Department of Political Science, Yale University, 1957, 202.

⁸⁶ Aydin-Cakir A, 'The impact of judicial preferences and political context on Constitutional Court decisions: Evidence from Turkey' 16(4) *International Journal of Constitutional Law*, 2018, 1101.

⁸⁷ Aydin-Cakir A, 'The impact of judicial preferences and political context on Constitutional Court decisions: Evidence from Turkey' 16(4) *International Journal of Constitutional Law*, 2018, 1105.

decision-making because the division of power makes it more difficult to pass new legislation or form a legislative coalition to limit judges' autonomy⁸⁸.

Scholars such as Lee Epstein and Jack Knight argue⁸⁹ that in politically dominant systems, judges are strategic actors who align their decisions with the preferences of the ruling party to avoid conflict or retaliation. This behavior, while pragmatic, undermines the independence of the judiciary. If judges hold policy preferences that differ from those of the government, it is expected that they will only express their true preferences and show greater willingness to rule against government decrees in contexts where political power is highly fragmented⁹⁰. Epstein and Knight highlight that judicial decisions are shaped by the surrounding political environment rather than being made in isolation. In systems dominated by a single political force, judges often refrain from issuing dissenting rulings due to a perceived lack of support, aligning their decisions with the interests of the dominant party⁹¹. This pragmatic approach seeks to preserve harmony with other government branches and avoid political repercussions, even at the expense of judicial independence. The appointment process, tenure protections, and the threat of impeachment, shape judicial decision-making.

Judges in dominant-party states may feel compelled to act cautiously, knowing that their positions and authority can be undermined by political actors who control these processes.

Judges often take a long-term view of their role within the political system. In a politically dominant environment, they may prioritize the survival and legitimacy of the judiciary over short-term independence, avoiding decisions that directly challenge the ruling party⁹². This balancing act between independence and cooperation shows that judicial decisions under political dominance are not only merely a reflection of bias but are often the result of strategic choices shaped by the

⁸⁸ Lee E and Knight J, *The Choices Justices Make*, 1st ed, CQ Press, Washington, 1998, 20.

⁸⁹ Lee E, Knight J and Martin A, 'The Supreme Court as a Strategic National Policymaker' 50(1) *Emory Law Journal*, 2001, 590.

⁹⁰ Lee E and Knight J, *The Choices Justices Make*, 1st ed, CQ Press, Washington, 1998, 20.

⁹¹ Lee E and Knight J, *The Choices Justices Make*, 1st ed, CQ Press, Washington, 1998, 21.

⁹² Lee E, Knight J and Martin A, 'The Supreme Court as a Strategic National Policymaker' 50(1) *Emory Law Journal*, 2001, 585.

political environment and institutional constraints⁹³. Judicial appointments in politically dominant systems often reflect the priorities of the ruling elite, undermining impartiality⁹⁴. The politicization of judicial appointments erodes public confidence in the judiciary's impartiality.

3.3 Political dominance and judicial independence in interaction: Liberia context

Liberia's political history has been characterized by a near-monopoly of power, first by the Republican Party (1847–1869) led by the Americo-Liberian elite and later by the True Whig Party (1878–1980), which maintained uninterrupted rule for over a century. The true Whig party later endorsed the unity party with the majority of its members joining the party. The unity party has won the 3 out of 4 elections post-war Liberia. The absence of political competition created an environment where judicial subservience to the executive became a structural norm⁹⁵. During the tenure of the True Whig Party (TWP), judicial appointments were reserved for loyalists, ensuring compliance with executive interests⁹⁶. The TWP's slogan, "So say one, so say all," encapsulates this culture of absolute loyalty, which extended to the judiciary and stifled dissent⁹⁷. Dissent within the party was rare and met with severe consequences, creating a culture of compliance that extended to the Judiciary. Judges, aware of the risks of defying the executive, often aligned their decisions with the ruling party's interests⁹⁸. Judges who opposed executive decisions faced political and professional repercussions, such as losing their positions or being barred from future

⁹³ Lee E, Knight J and Martin A, 'The Supreme Court as a Strategic National Policymaker' 50(1) *Emory Law Journal*, 2001, 590.

⁹⁴ Rosenberg G, *The Hollow Hope: Can Courts Bring About Social Change?*, 2nd ed, University of Chicago Press, Chicago, 1991, 90.

⁹⁵ Ellis S, *The Mask of Anarchy: The Destruction of Liberia and the Religious Dimension of an African Civil War*, 2nd ed. New York University Press, New York, 2007, 35.

⁹⁶ Sawyer A, 'Liberating Liberia: Understanding the Nature and Needs of Governance' 27(3) *Harvard International Review* 2005, 18. Also see, Sawyer A, *The Emergence of Autocracy in Liberia: Tragedy and Challenge*, 3rd ed, San Francisco Institute of Contemporary Studies Press, San Francisco, 1992, 98.

⁹⁷ Sawyer A, 'Liberating Liberia: Understanding the Nature and Needs of Governance' 27(3) *Harvard International Review* 2005, 18.

⁹⁸ Sawyer A, *Beyond Plunder: Toward Democratic Governance in Liberia*, 2nd ed, Lynne Rienner Publishers, Colorado, 2005, 200.

government employment⁹⁹. The judiciary often mirrored the political hierarchy, serving as a tool to legitimize the executive's actions rather than acting as an independent arbiter of justice¹⁰⁰.

As stated in the above chapter, the perception of independence matters, and one could trace the start of Liberia's problem to its inception as a Republic. When Joseph Roberts defeated Samuel Benedict, president of the Constitutional Convention, in its first presidential election 1847, the judicial branch has had second class status¹⁰¹. President Roberts then appointed Benedict, a private lawyer who had been vilified for defending a murder suspect, as the first chief justice of the supreme court of Liberia, some speculate as a way of putting a subservient stamp on the judicial branch's role¹⁰².

3.3.1 Executive and Legislative overreach

Executive control has historically undermined the judiciary's independence in Liberia. The President's unchecked authority to appoint, dismiss, or influence judicial positions creates a dependency that compromises impartial decision-making. This trend is evident in practices such as the use of Joint Resolutions (J.R.) mentioned in the above chapter to remove independent judges without hearing or due process¹⁰³. Additionally, presidents have oppressed political opponents and justified political violence by utilizing the legal system¹⁰⁴. Samuel Doe blatantly disregarded due

⁹⁹ The justices removed by J.R. include A.J. Woods in 1913, T. McCant Stewart in 1914, James N.F. Russ in 1928, O. Natty Davis in 1956, Lewis K. Free in 1966, Joseph Findley in 1967, Stephen B. Dunbar in 1967, and Joseph Kennedy in 1967. See, Africa Report, Nr. 107: Liberia - Resurrecting the Justice System, 2006, 19.

¹⁰⁰ Sawyer A, *The Emergence of Autocracy in Liberia: Tragedy and Challenge*, 3rd ed, San Francisco Institute of Contemporary Studies Press, San Francisco, 1992, 99.

¹⁰¹ Africa Report, Nr. 107: Liberia - Resurrecting the Justice System, 2006, 19.

¹⁰² Africa Report, Nr. 107: Liberia - Resurrecting the Justice System, 2006, 20.

¹⁰³ Between 1913 and 1967, eight judges were dismissed through this mechanism, including A.J. Woods, T. McCant Stewart, and Joseph Kennedy. Attempts to challenge these removals, such as Stewart's 1915 appeal to the Supreme Court, failed due to executive influence.

¹⁰⁴ President Doe address to the nation after the coup that Killed President William R Torbert ``The Tolbert government had to go because it disregarded the civil, human and constitutional rights of the Liberian people The balance of power which the separation of the Executive, the Legislative and Judiciary branches of Government was supposed to have brought about, never worked. The President and his main coworkers went through a fal- se procedure

process and arrested opponents of his harsh policies, including such notable figures such as Dr Beyan Kesselly, G. Baccus Matthews, Aloysius Toe, Amos Sawyer, D. Karn Carlos, Oscar Quiah, D.K. Wonzeleah, Dr George Klay Kieh, and Alaric Togbah¹⁰⁵.

President William V. Tubman changed the constitution in 1955 to allow him to serve as head of state for a limitless stretch of time¹⁰⁶. This was met with no concession from the judiciary branch since the ruling party and the three branches of government were one and the same¹⁰⁷. Under Taylor, the executive branch's hold on the legal system is alleged to have persuaded justices of certain cases to reach certain conclusions¹⁰⁸.

Articles 54 grants the President broad discretionary powers over judicial appointments. Judges, appointed through a patronage-based system, often prioritize loyalty over impartiality, reflecting the historical entrenchment of political dominance¹⁰⁹. Article 34(d) gives the legislature the power to amend and approval the judiciary budget. And the judiciary law gives the same executive branch the power of disbursement through the finance ministry. This unchecked authority over judicial appointments and financial allocations has perpetuated a system of dependency, further eroding judicial autonomy¹¹⁰.

to pass laws. The Judiciary was a mockery in many instances because cases were determined by how much money one could off.” See, Schmidt G, ‘The New Constitutional Developments in the Republic of Liberia’ 14 (3) *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, 1981, 243-268.

¹⁰⁵ Africa Report, Nr. 107: Liberia - Resurrecting the Justice System, 2006, 20.

¹⁰⁶Oxford Reference, ‘William Vacanarat Shadrach Tubman’ - <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803110032604> on April 1, 2024 .

¹⁰⁷Liberia (1943-present) <https://uca.edu/politicalscience/home/research-projects/dadm-project/sub-saharan-africa-region/liberia-1943-present/>

¹⁰⁸ Schmidt G, ‘The New Constitutional Developments in the Republic of Liberia’ 14 (3) *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, 1981, 243-268.

¹⁰⁹ Ellis S, *The Mask of Anarchy: The Destruction of Liberia and the Religious Dimension of an African Civil War*, 2nd ed. New York University Press, New York, 2007, 40.

¹¹⁰ Sawyer A, *Beyond Plunder: Toward Democratic Governance in Liberia*, 2nd ed, Lynne Rienner Publishers, Colorado, 2005, 200.

3.3.2 Theoretical framework and analysis

Using the theoretical framework, institutional theory underscores the role of entrenched norms and practices in shaping judicial behavior. This author puts forth that in Liberia, the judiciary has historically operated within a framework of patronage political interference and dominance, weakening its institutional safeguards. Patronage Politics: The judiciary was historically treated as an extension of the executive branch, with appointments often based on loyalty rather than merit¹¹¹. Systemic Entrenchment: Financial and administrative reliance on the executive and legislature exacerbated vulnerabilities, making the judiciary susceptible to external pressure. Path dependency and historical patterns of political interference perpetuate judicial vulnerabilities. The judiciary operates within a framework of patronage politics, where loyalty often supersedes merit in appointments.

Institutions are path-dependent, meaning that past practices of political interference continue to shape judicial behavior in post-dominance periods¹¹². This argument perceives judicial preferences as irrelevant in an unfriendly political environment and suggests that the judges' key motivation is to protect themselves from possible political retaliation¹¹³.

Transparency, accountability, and the rule of law are essential for judicial independence. Articles 54, 34(d) undermine these principles by enabling political favoritism and creating financial dependencies.

Article 54 of the Constitution grants the President discretionary power to appoint judges, subject to Senate confirmation. This provision, while constitutional, lacks the transparency and merit-based mechanisms necessary to prevent political interference. Historically, judicial appointments have been used as tools of patronage, prioritizing loyalty over competence¹¹⁴. For instance, the

¹¹¹ Sawyer A, *The Emergence of Autocracy in Liberia: Tragedy and Challenge*, 3rd ed, San Francisco Institute of Contemporary Studies Press, San Francisco, 1992, 101.

¹¹² North, D 'A Transaction Cost Theory of Politics' 2(4) *Journal of Theoretical Politics*, 1990 355.

¹¹³ Hilbink L, 'The Origins of Positive Judicial Independence' 64(4) *The Johns Hopkins University Press*, 2012, 587.

¹¹⁴ Lee E, Knight J and Martin A, 'The Supreme Court as a Strategic National Policymaker' 50(1) *Emory Law Journal*, 2001, 590. Scholars have asserted that in countries where one political party dominates the political sphere, the likelihood of judges deciding against the government diminishes. Under a divided government, however, the judiciary

appointment of Justice Kabineh Ja'neh in 2011 sparked controversy, with critics alleging political motivations over judicial qualifications. Such practices illustrate how executive overreach has undermined public trust in the judiciary. Financial Dependence and Resource Constraints. Article 72(b) ties judicial salaries and allowances to legislative approval, creating financial dependency on the executive and legislature.

Financial dependence on other branches of government significantly weakens judicial independence¹¹⁵. Resource constraints often force judiciaries in developing countries to prioritize executive interests over impartial adjudication¹¹⁶. For instance, in the case study in previous chapters, we have seen the legislative branch intentionally cut the budget of the judiciary which makes it impossible to carry out its functions¹¹⁷.

3.4 Conclusion

This chapter concludes that Liberia's judicial inadequacies are deeply rooted in an overreach by the other two branches of government given its history of political dominance and institutional dependencies. Articles 71, 72(b), and 73 lack the safeguards necessary to ensure judicial independence, enabling the executive and legislative with the use of article 54 and 34(d) to exercise control over the judiciary. Addressing these systemic flaws requires comprehensive reforms to reduce executive influence and strengthen the judiciary's autonomy and accountability.

is expected to be more independent and more likely to challenge the incumbent government. The basic feature of this mechanism is that political fragmentation reduces the capability of incumbents to overturn judicial decisions or interfere in judicial decision-making because the dispersion of power makes it more difficult to pass new legislation or put together a legislative coalition to curtail the autonomy of judges.

¹¹⁵ Feld L and Voigt S, 'Economic Growth and Judicial Independence: Cross Country Evidence Using a New Set of Indicators' Center for Economic Studies, CESIFO WORKING PAPER NO. 906, 2003, 5.

¹¹⁶ Helmke G, 'Courts Under Constraints: Judges, Generals and Presidents in Argentina' Cambridge University Press, 2005, 217.

¹¹⁷ Yuoh S, 'Opening Address of Her Honor Sie-A-Nyene G. Yuoh Chief Justice, Supreme Court of Liberia October term A.D. 2024' October 14, 2024 <https://judiciary.gov.lr/wp-content/uploads/2024/10/CHIEF-JUSTICE-OPENING-ADDRESS-OCTOBER-2024.pdf?utm>

CHAPTER 4: REFORMS TO ADDRESS INSUFFICIENCIES IN ARTICLES 54, 71, 73, AND 72

4.1 Introduction

This chapter conducts a comparative analysis of judicial independence in Liberia and South Africa, concentrating on constitutional provisions pertaining to the appointment and protection of judges. Both countries face challenges in ensuring a judiciary free from political interference. However, South Africa's adoption of reforms, particularly through its Judicial Service Commission (JSC), provides valuable lessons that Liberia could draw upon to strengthen its judicial framework. By examining the similarities and differences in legal systems, socio-political contexts, and the implementation of reforms, this chapter aims to offer actionable recommendations to address judicial insufficiencies in Liberia.

4.2 The Problem: Judicial Independence in Liberia

The primary issue in Liberia is the inadequacy of constitutional provisions 71, 72, and 73 and the undermining of article 34(d) and 54 in upholding judicial independence.. The president's unchecked power to appoint judges, coupled with vague safeguards for judicial independence, has raised concerns about impartiality and accountability within Liberia's judiciary.

4.3 Why Compare South Africa and Liberia?

This author chose South Africa for this analysis because of its similar historical experience with political interference in the judiciary during apartheid¹¹⁸ and its subsequent adoption of progressive constitutional reforms in 1996¹¹⁹. These reforms established a Judicial Service Commission to oversee judicial appointments and ensure merit-based selection processes free from executive

¹¹⁸ *Harris v Minister of the Interior* (1952), Appellate division of the Supreme Court OF South Africa. The Appellate Division ruled against racial restrictions on voting rights. In response, the government passed the High Court of Parliament Act to override the court's decision, exemplifying legislative disregard for judicial independence.

¹¹⁹ After the end of apartheid, South Africa adopted the **Constitution of 1996**, which introduced radical reforms to ensure judicial independence and protect human rights. The Constitution is widely regarded as one of the most progressive globally.

dominance¹²⁰. Liberia and South Africa share certain commonalities, such as a history of centralized presidential power¹²¹, challenges with corruption, and efforts toward constitutionalism. However, differences in economic capacity, political culture, and institutional frameworks will also be considered to assess the feasibility of adopting South African reforms in Liberia.

4.4 The State of Law: Judicial Independence in South Africa

South Africa's 1996 Constitution is internationally regarded as a progressive legal framework that underscores the principles of democracy, accountability, and judicial independence¹²². The judiciary's autonomy is safeguarded under Section 165, which explicitly states that courts are independent and subject only to the Constitution and the law. This provision establishes the judiciary as a distinct and co-equal branch of government, free from interference by the executive and legislative branches.

A significant pillar of judicial independence in South Africa is the **Judicial Service Commission (JSC)**, created under Section 178 of the Constitution. The JSC is tasked with recommending candidates for judicial appointments, ensuring that these decisions are made through a consultative, merit-based process¹²³. It comprises a mix of judges, legal professionals, legislators, and members of the executive to strike a balance between transparency and accountability. Public interviews for candidates further bolster this transparency, minimizing executive overreach in judicial appointments.

¹²⁰ Section 178, *Constitution of South Africa* (1996)

¹²¹ During the apartheid era, South Africa's political system was marked by a strong executive branch, with the State President holding substantial centralized power. The apartheid government maintained strict control over political and civil rights, suppressing opposition and centralizing authority to enforce its policies. See **Harrison D**, *The White Tribe of Africa*, 3rd ed, British Broadcasting Corp, United Kingdom, 1984, 161.

¹²² Klug H, *Constituting Democracy: Law, Globalism and South Africa's Political Reconstruction*, 1ed, Cambridge University Press, Cambridge, 2000, 56.

¹²³ Section 174, sets out clear guidelines for judicial appointments, emphasizing merit, diversity, and consultation with the Judicial Service Commission.

The remuneration and tenure of judges are safeguarded under the *Judges' Remuneration and Conditions of Employment Act, 2001*, which provides financial security and protects judges from arbitrary dismissal. Removal from office is reserved for cases of serious misconduct or incapacity and requires a two-thirds majority in parliament. These stringent protections have fortified the judiciary's ability to function independently.

South Africa's judiciary has repeatedly demonstrated its independence through landmark cases. For instance, in *Economic Freedom Fighters v. Speaker of the National Assembly and Others (2016)*, the Constitutional Court held the president accountable for unconstitutional expenditures. This case highlighted the judiciary's role as a check on executive power, reinforcing public trust in the judicial system.

4.5 Comparative Analysis: Lessons from South Africa

A comparison between Liberia and South Africa reveals critical distinctions in their approaches to judicial independence and highlights reforms that Liberia could adopt. While both countries recognize the importance of an independent judiciary, South Africa's robust legal framework and institutional mechanisms provide valuable insights for addressing gaps in Liberia's system.

Judicial Appointments: In Liberia, Article 54 of the Constitution grants the president significant discretionary power in judicial appointments, with Senate confirmation serving as the only check. This process has been characterized by political patronage and a lack of transparency. In contrast, South Africa's JSC ensures a consultative and merit-based selection process, with public interviews providing accountability. By establishing a similar independent body, Liberia could minimize executive dominance in judicial appointments.

In the South African case of *Justice Alliance of South Africa v. President of the Republic of South Africa (2011)*, it was demonstrated the importance of limiting executive influence in judicial appointments. The court underscored the need for an impartial process, bolstered by the Judicial Service Commission.

Liberia Comparison: There are no notable Liberian cases establishing a similar framework. However, criticisms of appointments made solely under Article 54 highlight the need for a more transparent and consultative process.

Tenure Protections: Article 73 of Liberia’s Constitution protects judges from prosecution except through impeachment. While this provision aims to shield the judiciary from undue influence, its vague application has allowed judges accused of misconduct to evade accountability. This lack of effective judicial oversight mechanisms has emboldened the executive and legislature to manipulate disciplinary actions, creating an environment where judges are either excessively protected or excessively vulnerable, depending on their alignment with political powers¹²⁴. South Africa’s legal framework, which clearly outlines conditions for judicial removal, provides a model for balancing independence with accountability. Liberia could adopt explicit statutory protections and clear disciplinary procedures to address this gap.

Judicial Oversight and Accountability: South Africa’s judiciary has consistently demonstrated its autonomy through cases that challenge executive authority, such as *Justice Alliance of South Africa v. President of the Republic of South Africa (2011)*, where the court struck down legislation compromising judicial independence. Liberia’s judiciary, however, faces significant challenges in asserting its independence, often influenced by political pressures and weak institutional support. Strengthening judicial review mechanisms and insulating judges from political interference could enhance the judiciary’s role as a check on other branches of government.

¹²⁴ In 1961, C.A. Cassell, an early Tubman attorney general, was disbarred after commenting at an international conference that the judiciary was the weakest link in government, subject to executive influence#. In his address CA Cassell stated that the executive and legislative branches do not always respect and enforce court decisions underscores the judicial branch’s weakness. See, Africa Report, Nr. 107: Liberia - Resurrecting the Justice System, 2006, 19.

One tactic involves leveraging impeachment proceedings. Although impeachment is meant to serve as a mechanism of accountability, it has at times been used as a tool of intimidation. For instance, in 2013, Chief Justice Johnnie Lewis faced criticism and pressure from the legislature over allegations of administrative misconduct, ultimately leading to his resignation under duress. Similarly, Justice Kabinah Ja’neh’s impeachment in 2019, ostensibly for abuse of office, was widely criticized as politically motivated. The impeachment, which followed Ja’neh’s rulings unfavorable to the government, raised concerns about the judiciary’s independence and its susceptibility to executive and legislative pressure. See, Counselor Kabinah Muhammad Ja’neh v Republic of Liberia & Anor, ECOWAS Judgment No ECW/CCJ/JUD/13/21, (2021). Also see, October 2017, the Supreme Court indicated that prioritizing a high-profile bribery case involving former House speaker Alex Tyler was not their focus, opting instead to concentrate on election-related matters.

In the South African case of *Glenister v. President of the Republic of South Africa (2011)*, the court ruled against the executive's attempts to dissolve an independent anti-corruption unit, reinforcing the judiciary's oversight role and commitment to accountability. In comparison to Liberia, Liberia lacks precedent-setting cases where the judiciary has robustly acted against executive or legislative overreach, further highlighting the need for reforms to bolster judicial independence and assertiveness.

4.6 Applicability to Liberia

Adopting South Africa's reforms to strengthen judicial independence in Liberia requires careful adaptation to the local context. While South Africa's model offers compelling solutions, differences in socio-economic conditions, political culture, and institutional capacity must be considered.

4.6.1 Institutional Feasibility

Implementing a Judicial Service Commission in Liberia would necessitate legislative reforms and resource investments. The composition of such a body should reflect Liberia's unique socio-political realities, including representation from civil society, the legal profession, and the judiciary. Establishing clear guidelines for its operation and decision-making processes would ensure credibility and effectiveness.

4.6.2 Social political landscape

Liberia's socio-political landscape is shaped by its history of civil conflict, ethnic diversity, entrenched political patronage systems, and weak institutional structures. These realities must be carefully considered when designing a Judicial Service Commission (JSC). For instance:

1. Post-Conflict Dynamics: Liberia's judiciary has been significantly impacted by its history of civil wars (1989–2003), which eroded public trust in state institutions, including the courts¹²⁵. A JSC should address this trust deficit by ensuring transparent and inclusive

¹²⁵ World Justice Project, *Rule of Law Index* 2019, 6 and 97.

judicial appointments to rebuild confidence in the judiciary.

2. Political Patronage and Corruption: Political interference in judicial appointments has historically undermined the independence of Liberia's judiciary¹²⁶. The JSC should be structured to operate independently from the executive and legislative branches to prevent undue influence.
3. Limited Resources and Capacity: Liberia's judiciary faces chronic underfunding and a lack of human and technical capacity¹²⁷. Adequate resources must be allocated to the JSC to ensure it can fulfill its mandate effectively.

4.6.3 JSC

To establish credibility and effectiveness, the JSC in Liberia must operate under clear and transparent guidelines, including:

1. Composition and Representation:
The Judicial Service Commission (JSC) should be composed of representatives from various sectors, including the judiciary, bar associations, civil society organizations, academia, and the general public. The selection of members should be based on merit and professional qualifications to ensure that the commission is composed of individuals with the necessary expertise and integrity to uphold judicial independence. Additionally, there should be mechanisms in place to promote gender balance and regional representation, ensuring that all segments of society are fairly represented in the judicial selection process. This approach aligns with best practices, such as those outlined in Section 178 of the South African Constitution, which emphasizes inclusivity and fairness in judicial appointments.

¹²⁶ Africa Report Nr. 107, *Liberia: Resurrecting the Justice System*, 2006, 19.

¹²⁷ In Liberia, the legislature sets the judicial branch's budget, and the minister of finance frequently reallocates funds among the other branches of the justice system. As a result, the judicial branch lacks financial autonomy. See, Africa Report, Nr. 107: Liberia - Resurrecting the Justice System, 20.

2. Mandate and Functions:

The Judicial Service Commission (JSC) should be responsible for overseeing judicial appointments to ensure that the selection process is based on merit, transparency, and integrity. By implementing a structured and impartial approach, the JSC can prevent undue political influence in the appointment of judges. Additionally, the commission should actively monitor judicial performance and have the authority to conduct disciplinary proceedings when necessary, maintaining high ethical and professional standards within the judiciary. To enhance accountability, the JSC should provide regular reports to Parliament and the public, detailing its activities, decisions, and any challenges faced in promoting judicial independence and efficiency.

3. Selection Criteria for Judges:

The Judicial Service Commission (JSC) should establish clear minimum qualifications, experience requirements, and ethical standards for judicial appointments to ensure that only highly competent and principled individuals are selected. This framework should outline specific academic credentials, professional experience, and a demonstrated commitment to upholding judicial independence and the rule of law. Additionally, rigorous vetting procedures should be implemented, including comprehensive background checks and public interviews, to assess candidates' integrity, competence, and impartiality. By making the selection process transparent and merit-based, these measures can help build public trust and confidence in the judiciary while minimizing the risk of political interference.

4. Operational Independence:

The Judicial Service Commission (JSC) must be safeguarded from political and executive interference by ensuring its financial autonomy and implementing an independent process for appointing its members. This autonomy would allow the JSC to function without undue influence from other branches of government, preserving the integrity of judicial appointments and oversight. Additionally, decisions made by the JSC should be legally binding to reinforce its authority, with any potential legislative override requiring a supermajority vote under strictly defined guidelines. This measure would prevent arbitrary

rejections of JSC decisions while maintaining a system of checks and balances that upholds judicial independence.

5. Public Engagement and Transparency:

The Judicial Service Commission (JSC) should publicly disclose clear criteria for judicial appointments and decision-making processes to enhance transparency and build public trust in the judiciary. By making these standards accessible, the public can better understand the qualifications and competencies required for judicial roles, reinforcing confidence in the system. Additionally, civil society organizations should be given an opportunity to participate in the vetting process, allowing them to provide input and raise concerns where necessary. This inclusion would promote accountability and ensure that judicial appointments reflect the principles of fairness, competence, and impartiality.

6. Ethics and Accountability:

The Judicial Service Commission (JSC) should establish a comprehensive Code of Conduct to uphold ethical standards and prevent corruption or conflicts of interest among its members. This Code should outline clear guidelines on integrity, impartiality, and professional conduct, ensuring that all members adhere to the highest ethical principles in their decision-making processes. Additionally, there must be strict disciplinary measures in place for any member found in violation of these standards. These measures should include sanctions ranging from warnings to removal from office, depending on the severity of the misconduct, to maintain the credibility and effectiveness of the JSC.

4.6.4 Building Public Trust

Public trust is essential for judicial independence to thrive. In South Africa, the judiciary's transparency in appointments and decisions has bolstered public confidence. In Liberia, public education campaigns and transparent recruitment processes could similarly enhance trust. Encouraging civic participation and awareness of judicial processes would further legitimize the judiciary's role in governance.

4.6.5 Resource Constraints

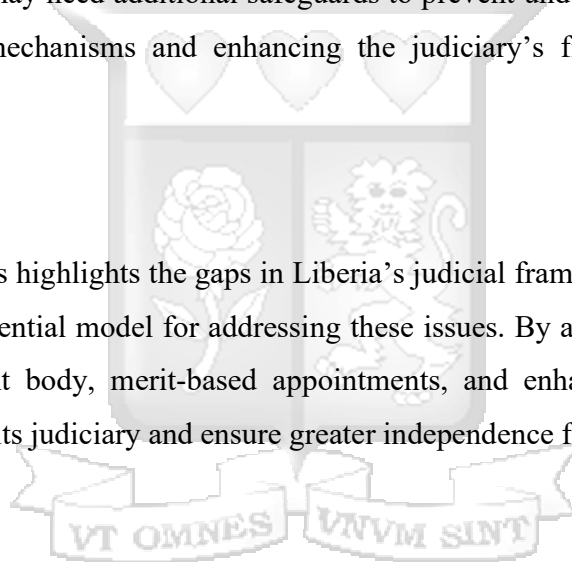
While South Africa's relatively strong economy has facilitated judicial reforms, Liberia faces significant resource limitations. Prioritizing cost-effective measures, such as targeted training programs for judges and digitized case management systems, could improve judicial efficiency without requiring substantial financial investments.

4.6.6 Context-Sensitive Reforms

Any reforms must be tailored to Liberia's specific challenges, such as political patronage and systemic corruption. For instance, while South Africa's JSC includes legislative and executive representatives, Liberia may need additional safeguards to prevent undue influence. Establishing independent oversight mechanisms and enhancing the judiciary's financial autonomy could address these concerns.

4.7 Conclusion

This comparative analysis highlights the gaps in Liberia's judicial framework and presents South Africa's reforms as a potential model for addressing these issues. By adopting measures such as an independent oversight body, merit-based appointments, and enhanced tenure protections, Liberia could strengthen its judiciary and ensure greater independence from political interference.



CHAPTER 5: FINDINGS, RECOMMENDATIONS, AND CONCLUSION

5.1 Introduction

This chapter presents the key findings of the study, addressing the extent to which Articles 71, 72, and 73 of the Liberian Constitution uphold judicial independence considering Articles 54 and 34(d). Based on these findings, the chapter provides recommendations at the legislative, administrative, judicial, and industry levels to strengthen judicial independence in Liberia.

5.2 Findings

This study set out to evaluate the adequacy of Articles 3, 71, 72, and 73 of the Liberian Constitution in upholding judicial independence, particularly in the context of Articles 54 and 34(d), which grant the executive and legislature control over judicial appointments and financial resources. The study further examined how this structural dependence affects judicial autonomy and explored potential reforms to strengthen judicial independence by addressing political interference. The key findings are as follows:

1. **Insufficiency of Constitutional Safeguards:** While Articles 3, 71, 72, and 73 provide structural protections for judicial independence, they are undermined by Article 54, which grants the President discretion over judicial appointments, and Article 34(d), which places budgetary control in the hands of the legislature. This framework allows political influence to seep into judicial affairs, compromising impartiality.
2. **Political Interference in Judicial Appointments and Operations:** The appointment of judges by the President without adequate checks and balances creates a judiciary that may be politically aligned with the executive branch. Additionally, legislative control over judicial finances further weakens the judiciary's autonomy.
3. **Erosion of Public Trust:** Due to the judiciary's perceived susceptibility to political influence, public confidence in the impartiality of the judiciary has declined. This distrust extends to perceptions of corruption, bias, and lack of accountability within the judicial system.
4. **Impact on Judicial Performance:** The financial dependence of the judiciary on the legislature has resulted in budgetary constraints that affect the efficiency of court

operations. Limited funding impacts judicial training, case backlog resolution, and overall access to justice.

5. Need for Structural Reforms: The research confirms that strengthening judicial independence requires institutional reforms, including changes in appointment procedures, financial autonomy, and mechanisms that insulate the judiciary from political pressure.

5.3 Recommendations

To address these challenges and enhance judicial independence in Liberia, the following recommendations are proposed at the legislative, administrative, judicial, and industry levels:

Legislative reform: To enhance judicial independence, constitutional amendments should be considered to limit executive discretion in judicial appointments. Establishing a Judicial Service Commission, composed of representatives from the judiciary, legal academia, and civil society, could provide a more merit-based, transparent process. Additionally, reforms should ensure that judicial budget allocations are determined independently, rather than being subjected to legislative approval, to prevent financial coercion from other branches of government. Legal provisions should also be introduced to safeguard tenure by clearly defining conditions for judicial removal, limiting arbitrary executive or legislative influence.

Administrative reform: Beyond legislative measures, administrative frameworks should be strengthened to promote impartiality within the judiciary. Clear guidelines on judicial ethics, performance evaluation, and case allocation should be developed and enforced by an independent regulatory body. Strengthening legal education and training programs for judges and legal practitioners will enhance professionalism and reduce susceptibility to external influence. Additionally, institutionalizing mechanisms for monitoring political pressure within the judiciary, such as anonymous reporting channels and oversight committees, would provide greater accountability and transparency in decision-making processes.

Judicial reforms: Within the judiciary itself, reforms should focus on internal checks and balances to uphold independence. Implementing a transparent system for case assignments and decisions would mitigate concerns about political favoritism. Strengthening judicial discipline mechanisms, with oversight from an impartial body, will enhance accountability while preserving judicial

autonomy. Greater collaboration with regional and international judicial networks could also improve best practices and provide external support against political interference. Furthermore, an emphasis on judicial self-governance, where judges have a more significant role in administrative decisions affecting their operations, would reduce dependence on other branches of government.

Industry-level reform: The broader legal industry, including the bar association and civil society organizations, plays a crucial role in safeguarding judicial independence. Strengthening the role of the Liberian National Bar Association in advocating for judicial reforms and maintaining professional standards is essential. Legal professionals should actively engage in public discourse and policy debates regarding judicial independence. Increased media and civil society scrutiny of judicial appointments, budget allocations, and case decisions will provide additional accountability and transparency. Encouraging public education on judicial independence and legal rights can also foster a more informed citizenry that demands a fair and impartial judiciary.

5.4 Conclusion

This study confirms that while Articles 71, 72, and 73 of the Liberian Constitution provide foundational safeguards for judicial independence, they are insufficient in the face of Articles 54 and 34(d), which expose the judiciary to executive and legislative influence. Political interference in judicial appointments and financial control erodes judicial autonomy, leading to public distrust and systemic weaknesses in the rule of law.

To address these challenges, this study recommends legislative amendments, administrative improvements, judicial reforms, and industry-level advocacy efforts. The establishment of a Judicial Service Commission, financial autonomy for the judiciary, and stricter accountability mechanisms are critical to ensuring that Liberia's judiciary functions as an independent and impartial arbiter of justice.

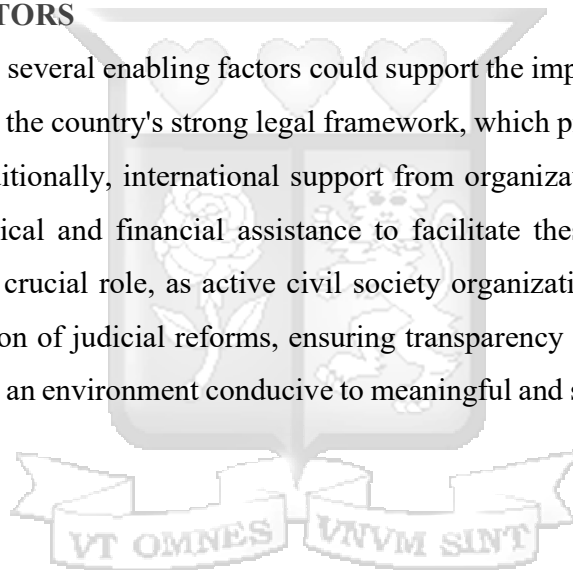
By implementing these recommendations, Liberia can strengthen its judicial system, enhance the rule of law, and restore public confidence in the judiciary's ability to dispense justice fairly and without political influence.

5.4.1 OBSTACLES

Implementing similar reforms in Liberia faces several obstacles. One major challenge is political resistance, as political leaders may oppose reforms that reduce their influence over the judiciary. Additionally, entrenched corruption within the judiciary and other branches of government further complicates reform efforts, making it difficult to establish transparency and accountability. Another significant obstacle is the lack of resources, as inadequate funding and infrastructure may hinder the successful implementation of necessary changes. Overcoming these challenges requires strong political will, effective anti-corruption measures, and sufficient financial and institutional support.

5.4.2 ENABLING FACTORS

Obstacles exist; however, several enabling factors could support the implementation of reforms in Liberia. One key factor is the country's strong legal framework, which provides a solid foundation for judicial reforms. Additionally, international support from organizations and donor countries can offer essential technical and financial assistance to facilitate these changes. Civil society engagement also plays a crucial role, as active civil society organizations can advocate for and support the implementation of judicial reforms, ensuring transparency and accountability. These factors collectively create an environment conducive to meaningful and sustainable reform efforts.



ANNEX V: DISSERTATION PROJECT PROGRESS LOG (LOG BOOK)



Strathmore
UNIVERSITY

STRATHMORE LAW SCHOOL















SLS 4246 RESEARCH PAPER









DISSERTATION PROJECT PROGRESS LOG (LOG BOOK)

Student name and no.
Tinlyn Yatta Garyeazon 113836

Research topic
Investigating constitutionalism and
Judicial independence in Liberia

Supervisor
Claude Kamau

	Present data that supports an association between the problem and cause.		
December 7, 2024	Submitted changes from the meeting on the 6th of December. Changes accepted.		
January 7, 2025	Consultation on progress of Chapter 3. The structure of the paper isn't too clear. Provide correlation between the articles being critiqued- a clear theme. Also, change the hypothesis from directly associated as it could be hard to read.		
Jan 24, 2025	Submission of Chapters 3 & 4.		
February 10, 2025	Comply with the format of the final dissertation in terms of page number requirements (page breaks) and removal of bullet points. The paper should have Chapter 5. This consists of findings, recommendations, and conclusions. Apply the findings and recommendations at the legislative, administrative, judicial, and industry levels. The short bullet points should be replaced by more detailed analysis on these levels. Ensure each chapter introduction references the relevant research question and that each conclusion is clear on how the chapter has answered the relevant research question.		
February 18, 2025	Submission of implemented changes and the draft of Chapter 5.		
February 24, 2025	Consultation for chapter 5. Format the paper to adhere to the guidelines. Spacing, lines, page structureza.		
February 26, 2025	Submission of final draft of dissertation to Supervisor		

Date	Supervisor's comments /Submissions	Sign. Student	Sign. Supervisor
July 20, 2024	Submission of proposal.		
August 14, 2024	<p>Received feedback on the proposal. Add more authority. The explanation of this fact pattern is cursory and insufficient insofar as establishing the issue at hand.</p> <p>Provide evidence of a direct linkage between the Executive's power and the malpractices/underperformance within the judiciary.</p> <p>Identify the specific legal entry point. Critique the implementation/realization of the provisions. Identify the specific legal entry point. Identify whether the law has: A contradiction, an inconsistency, or an inadequacy. Rewrite the research questions.</p> <p>Research question 1 should speculate on the existence of the specific problem. RQ 2 should speculate on the possible cause. RQ 3 should speculate on the possible solutions.</p>		
August 16, 2024	Group meeting. Feedback on how Chapter 1 should be structured. Additional literature review.		
November 25, 2024	Submission of draft of Chapter 1 with implemented changes. Consultation for Chapter 2.		
December 6, 2024	Submission of draft of Chapter 2. Restructure your work. It's too long, especially Chapter 1. Chapter 2 should be expository. it should discuss the entire legal policy, ground the legal problem, and should revolve around particular provisions. The chapter should also discuss the sources in order of hierarchy. Each chapter should have a conclusion. Chapter 3 should establish a relationship between the problem and the cause.	