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**KONRAD ADENAUER FOUNDATION (KAF)**

**“Support to the Legislative Assembly in Liberia”**

**Strengthening the Parliamentary Practise –**

**Legislation and Law Drafting**

**MISSION REPORT**

**by**

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## **1. Executive Summary**

The project „Support to the Legislative Assembly of Liberia“ focuses on the legislative branch of the Liberian government. The 2005 elections met democratic standards and the present Legislature can claim to be representative, although long terms in office (9 years for the Senators) provide weak incentives to pay close attention to voters and mechanisms for interacting with voters are weak. The main functions of the Legislature are: legislation, control and representation. The legislative branches of previous governments were not able to fulfil any of these vital functions in an appropriate way.

The present Legislature of Liberia, consisting of a Senate (30 members) and the House of Representatives (64 members), is likely to become increasingly important in Liberian politics because of the nation's divided government, in which the President's party has few seats in the Legislature, and because it will be called upon to pass urgent civil service, budget and reform measures.

Therefore, it is of utmost importance that the Legislature develops the capacity to carry out its responsibilities effectively. But limited member experience in public administration and policy formulation, undeveloped systems for processing legislation and managing house affairs, and serious infrastructure deficiencies limit the Legislature's ability to use its powers in an effective way.

The project has so far been able to contribute significantly to the strengthening of the Legislature in Liberia. Previous workshops, seminars and other measures made the members aware of their rights and duties as representatives. The good relationship between the members of both houses and the project office in Monrovia ensures a constant dialogue, co-operation and fruitful working conditions.

The expert was involved in the part of the project dealing with legislation and law drafting as one of the key functions of a democratic Legislature.

The report describes the work of the expert in Germany and Liberia considering the specific situation in Liberia and the information obtained during the expert's stay in Monrovia. The last part of this report contains recommendations and proposals for further support of the legislative branch by the EC/KAF project.

## **2. Introduction**

The expert followed the instructions laid down in the Terms of Reference. In order to improve the practise of legislative procedures in Liberia, the expert was assigned with the preparation of a first draft of the „Handbook on Legislation and Law Drafting“ under consideration of the specific situation in Liberia. The expert started with the preparations of the Handbook in August 2005 in Germany. So close cooperation between the expert and the project office, respectively Dr. Heinz Jockers, had been established at an early stage in the process. The project office provided the expert with all relevant information that were at hand. Prior to her visit in Monrovia the expert sent a questionnaire to the project office containing open questions regarding the legislative process in Liberia and its legal framework. In addition, the expert used material and other information available in Germany and met with other experts previously involved in the project.



A first draft of the Handbook, hand-outs and a Power Point Presentation for the working sessions were produced and sent to the project office before the expert's arrival in Monrovia. In Monrovia, working sessions on legislative procedures with the responsible staff of the two houses took place. All relevant issues regarding the legislative process had been addressed and thoroughly discussed. As far as possible the results of the working sessions were included in the Handbook. Apart from that, the expert continued her work on the Handbook. Given the fact that only little is available in written about the legislative process in Liberia, the new Standing Rules of the houses were essential for the preparation of the Handbook. During the work on the Handbook in Germany only the Standing Rules of the National Transitional Legislative Assembly (NTLA), a unicameral body, were at hand. Meanwhile, each house has adopted own Standing Rules that were handed over to the expert during a visit in the Parliament building. It has to be mentioned that due to a lack of photocopiers it was not possible for the Chief Clerk and the Secretary of the Senate to distribute the new rules to all members of the houses. By the time, the expert visited the Parliament building, only one typed version of the Standing Rules existed. The Standing Rules of the Senate and the HoR have been incorporated in the Handbook during the expert's stay in Monrovia. Additional information obtained through research in Monrovia, interviews with the members, meetings with the Liberian lawyer Tuan Wreh as well as local and international experts have also been used for the working sessions and the Handbook. The expert stayed in Monrovia from March 24<sup>th</sup> until April 6<sup>th</sup> 2006.

### **3. Aspects of Legislation under Consideration of the Liberian Situation**

Due to a quarter century of war and the number of problems the country faced from its inception as an independent republic in 1847 Liberia has never had a truly democratic order in which the principle of checks and balances, contained in the 1847 as well as the 1985 Republican Constitutions, was entrenched. The National Transitional Legislative Assembly (NTLA), a unicameral body, which came into being under the Comprehensive Peace Accord, signed in Accra 2003, was not able to establish a functioning democratic legislative system. The members of the NTLA were more interested in securing financial and other benefits for themselves and were far removed from the concern of the Liberian people to consolidate the fragile peace in the country. Given this, Liberia has no democratic legislative practise to build on. The current Legislature starts from „zero“.

#### **3.1. The Legal Framework for Legislation in Liberia**

The legal framework regarding the legislative process in Liberia is relatively incomplete and inconsistent. It is obvious that - due to its historical background - Liberian lawmaking follows the US-American system. But there is no general legal source laying down the principles and the single steps of the legislative process. The lawmaking process is mentioned in the Constitution and the Standing Rules of both houses, but only rudimentary.

Art. 29 of the Liberian Constitution vests the legislative power in the Legislature of Liberia, which shall consist of two separate houses, the Senate and a House of Representatives, both of which must pass on all legislation. Art. 34 and other provisions of the Constitution contain the legislative powers and competencies of the Legislature. Art. 35 regulates the procedure of the President's approval on new laws. Apart from that, the Constitution does not regulate the various stages of the lawmaking process.



As to the legislative process the Standing Rules of the Senate are more detailed than the ones of the HoR. To a certain extent the Senate has taken over the Standing Rules of the US Senate word for word but not in full length. The HoR has mainly taken over the Standing Rules of the NTLA which mention only parts of the legislative process, such as, for example, that a bill has to be read in three different sessions, that a bill read for the second time is open for amendments, that house bills adopted on second reading shall be ordered engrossed and the reference of legislative proposals to the respective committees.

It has turned out that the majority of the members has no previous experience in legislation and knows nothing about the legislative process. During the working sessions the Chief Clerk and the Secretary of the Senate reported that members constantly ask them about how to deal with bills and other legislative measures in parliament or in committees. The Constitution and Standing Rules are of little help as they regulate the legislative process only partly. Just one example: The Standing Rules of the Senate mention the so-called conference committee, a body that is becoming active in case the house of origin refuses to agree with the version of the bill of the second house. The house of origin may request the appointment of a conference committee in this case. The task of the conference committee is to negotiate a version of the bill agreed upon by both houses. It attempts to find a solution and to reconcile the two versions of the bill. Although the organization and functioning of a body like the conference committee has to be established by law (Constitution or House Rules), the Senate Rules say little about the appointment and the working process of a conference committee and the Rules of the House of Representatives do not mention the conference committee at all.

The members of the Legislature need a written guideline setting out and explaining the different stages and actions of the legislative process to gain an overview of the legislative procedure and to be able to refer to these guidelines during their work. The „Handbook on Legislation and Law Drafting“ may serve this purpose but it has also to be considered to review the Constitution and the Standing Rules of the Senate and the HoR to improve and strengthen the legal basis for the legislation and lawmaking.

### 3.2. Sources of Law in Liberia

It is almost impossible to produce well crafted laws and to develop the policy background for new legislation without knowledge of the existing law. Early in legislative proceedings, the legislator or law drafter should master the existing law and the experience of the jurisdiction which are pertinent to his proposal. This is essential so that new legislation can fit smoothly and workably with related laws. The legal surrounding of the proposed measure must be examined. Prior to the decision whether regulation is necessary one has to examine whether the outlined problem is already regulated by existing laws and/or regulations or not. It is important to **avoid double regulation**, which is superfluous and may have a negative impact on the credibility of laws in general. The following has to be considered:

- Laws dealing with similar matters must be studied.
- Because the courts will construe all such laws together, it is desirable to achieve as much consistency of language as possible.
- It should be examined if and how administrative officers have been interpreted and implemented related laws.
- Another question is whether there are judicial decisions that might have an impact upon the proposed legislation.
- It has to be checked whether terms used in the proposal have already been defined in other laws.



In Liberia's present legal system the laws and regulations may derive from the following sources:

- the Constitution adopted on July 26<sup>th</sup> 1847 (the "Constitution") along with the 1986 Amendments is the supreme law of the Republic of Liberia. All other laws and legal rules must conform to the Constitution, although the present Constitution contains many general statements which are subject to conflicting interpretation. Currently, there are no clear guidelines on how to interpret the Constitution.
- Legislative enactments such as ordinary laws, administrative rules and regulations.
- International law set down in international treaties and/or conventions. If these treaties and conventions shall be binding for Liberia, they have to be ratified by both houses of the Legislature and signed by the President. Then they are recognized as enforceable part of the national law.
- Customary laws: Liberian customs or customary laws may in some cases be a basis for judicial decisions. Customs are a recognized source of law in Liberia as they are mentioned expressly in Art. 2 of the Constitution. The constitutional reference to Liberian customs and traditions (see Art. 5 of the Constitution) illustrates that Liberian customs and traditions regulate behaviour and thus serve as a source of law. The Law Governing the Hinterland of Liberia are still in effect. It refers to native customary law and tribal traditions.
- Court precedents

The expert has been told that a system of consolidated laws does not exist in Liberia. Thus, the legislators have no access to the sources of law in Liberia and are lacking knowledge about the present legal system. Whereas a compilation of court decisions is said to be existing, an indexed collection of Liberian laws is not available. The expert has been informed that a lawyer in Monrovia is in possession of Liberian laws.

Although the Constitution mentions the "Official Gazette" as the central source for new legislation and other governmental and legislative matters, this publication is not existing at present. New laws in Liberia are published by the Foreign Office. But due to a lack of equipment the publication and distribution of authentic official texts of legislation, including bills, by the Foreign Office is not sufficient.

There is no transparency in the legislative process if there is no official publication and distribution of new laws and/or resolutions. At present, the media are the main instrument for informing the citizens about new laws. But the media can not act as an official body in that context and the publication of authentic texts is not secured. In addition, the information of citizens in rural areas by the media is insufficient. The Legislature must be provided with a sufficient infrastructure that secures the official publication of laws. As in most democratic states, the publication procedure shall be regulated by law.

### **3.3. Certain aspects of the Legislative Process: Committee Stage and Consultation**



Each aspect of the legislative procedure set down in the Term of Reference has been discussed during working sessions and is explained and described in the “Handbook on Legislation and Law Drafting”. During the working session, the participants discussed lively the committee stage and consultation process in connection with new legislation: The committees are said to be the “workhorses” of the legislative process. The committee stage is probably the most important stage as to the fate of the bill. It is at the committee stage that the bill receives detailed scrutiny. Committee reports are perhaps the most valuable single element of the legislative history of a law. They may be used by the courts, executive departments, and the public as a source of information regarding the purpose and meaning of the law.

If the bill is of sufficient importance, the committee may set a date for public hearings. The purposes of hearings may vary widely depending on the measure and the aims of the legislators. If well organized by the chairman and staff to that end, they can serve as a valuable means for investigating problems, for gathering information, for opening up the dialogue between parliamentarians and experts and affected parties and for testing the proposal's impact on the public. The committee may hear interest groups, affected parties, experts, officials, cabinet officers or other persons or bodies that have in interest or an concern regarding the proposed legislation. Whoever is interested and wants to testify in the public hearing should have the possibility to do so.

The two houses of the Legislature in Liberia have established various committees each having jurisdiction over certain matters. The Standing Rules regulate certain aspects of committee meetings and public hearings. There are no committee rules adopted by the respective committee. During the expert's stay in Monrovia, the Legislature was in the process of organization and due to the Easter break legislative activity was low so that there was no opportunity to attend a public hearing or a committee meeting. In meetings with the legislators it turned out that there is an uncertainty about how to conduct public hearings and how to undertake consultation. During the working session the positive effects of consultation as a means towards open governance and public hearings have been discussed. When it came to the parties to be consulted, mainly lawyers were mentioned by the members. Consultation seems to be understood as a meeting with a lawyer to examine whether a proposed legislation is in accordance with the law. The members did not seem to be aware of the fact that public hearings and consultations shall include users, stakeholders, experts, civil society organisations, NGO's, departments or central agencies that will have a role to play regarding the new law or departments that have relevant expertise in the area affected by the proposed legislation. So the working sessions pointed out the fact that consultations and public hearings enable the legislators to enhance their knowledge, to estimate the consequences of proposed legislation thoroughly and to gain broad public support for legislation because they can explain why new legislation is necessary. Consultation should be understood as an interaction between the legislature and parties that are likely to be affected by or interested in the regulation in question.

The participants of the session showed a great interest in a special training on consultation procedures and the conduct of public hearings. The possibilities of establishing a close network between committees and civil society organisations with special expertise for various matters have also been discussed in order to work quickly and with the support of experts on urgent reform laws.

Another issue was the committee report, respectively the possibility of issuing a minority report. The minority report is regulated in Rule 27, Sec. 3 of the Standing Rules of the Senate.



There is no equivalent provision in the HoR Rules. The participants of the working sessions were interested in the procedure and the meaning of minority reports. It has been discussed that any member or members in disagreement with the report may refuse to sign the report, and submit a minority report by announcing to the Senate/the HoR at the time the majority report is submitted that he/she intends to submit a minority report in writing with the Secretary of the Senate/the Chief Clerk of the House within one day thereafter. The minority report shall be made part of the business on the President's/Speakers's desk for the following Senate/House day.

#### 4. Law Drafting

A state under the rule of law needs laws of good quality. A law must follow certain essential demands: it must be **clear, precise, coherent and as simple as possible**. The language used by the legislator is simply the vehicle which transports and carries the rules produced by him. The language also expresses the legislator's will. Any imbalance between the intended meaning of the law and its expression causes uncertainty. The drafting of norms can only be based on a **clear language**. The behaviour which is supposed to be imposed by the law has to be clearly expressed, whether it is an obligation, prohibition, permission or simple authorization.

In fact every juristic norm depends upon the global problem of wording, which demands

- a suitable terminology,
- an adequate sentence structure,
- a logical order in the ideas and
- a coherent structure in expression.

Legal skills are necessary to turn the policy and administrative requirements into practicable, effective and clear legal rules.

At present there is no common and binding law drafting practise in Liberia. Skilled and trained drafters are not available and the Legislative Drafting Service mentioned in the Standing Rules does not exist. The few Liberian laws that were available to the expert showed no clear concept of the structure, arrangement and the language of legal texts. In the working sessions it turned out that legislative proposals and bills are drafted by inexperienced staff members or members of various departments of the executive branch. The results are drafts of poor quality, with contradictory usage of definitions and language and different structures.

The improvement of lawmaking includes the effective organization of the law drafting, particularly the training of drafters and the streamlining of the drafting process based on common guidelines to be applied by all drafters and legislators involved in the drafting process. The organisation of the drafting process, including adequate staffing, is the crucial basis for the production of good laws.

The participants of the working sessions stressed the need for training of law drafters and the establishment of a centralised drafting system with a Legislative Drafting Service in charge.



## **5. Handbook on Legislation and Law Drafting for Liberia**

One output of the expert's activity was a final draft of the "Handbook on Legislation and Law Drafting". As mentioned above, it was not possible to build on a democratic legislative practise when preparing the Handbook for Liberia and not much material on Liberian legislation was available. Nevertheless, the Handbook considers the Liberian situation and the national legal background of legislation as far as possible. It is based on international standards, internationally recommended practises and generally accepted drafting principles and conventions. As Liberia follows the legislative system of the United States and the Standing Rules of the Senate refer to the US-American "Jefferson Parliamentary Manual" certain general aspects of the US-American legislative system have been taken into account.

The Handbook consists of six parts. The first part describes the general background of legislation. The meaning of laws, values and policy is explained as well as the general function of legislation considering the constitutional arrangements in Liberia. Part 2 covers the legislative process in Liberia under consideration of the Constitution and the new Standing Rules of both houses. A detailed description of the stages of the law making process is included. Part 3 deals with the policy background of new legislation and describes the process starting from the impulse for a new law up to the development of the policy for new legislation. Part 4 describes the "art of writing laws". It contains recommendations for the organization of law drafting as well as common drafting rules. It shows how a bill is structured and of which parts a bill usually consists. Part 5 is dealing with the most effective way to give drafting instructions. The ex post and ex ante evaluation of laws is described in part 6 of the Handbook.

The Handbook is addressed to anybody who is involved in the legislative process in Liberia. It is meant to give an idea about the general background of legislation, the legislative process in Liberia and the competences of the Liberian Legislature under the Constitution. It is also meant to serve as a manual of form and style to be used in the preparation of bills and other legislative proposals. The checklists contained in the Handbook correspond to international standards. They are a practical tool for legislators and drafters. However, the samples and recommendations used in the manual, especially in Parts 3 to 6 should not be copied without careful consideration of their appropriateness for a particular legislative proposal. International principles can serve as a guideline and have been used in other countries with good results, but the ways to structure the legislative process and the laws are manifold and it is not possible to identify a single model given the great differences in national structures, legal systems, institutions and constitutional arrangements. When the Handbook was prepared a democratic legislative practise in Liberia has not yet been developed. In the future, Liberia has to develop its own lawmaking practise under consideration of internationally recognised standards for democratic states. For that reason, the Handbook should be updated on a regular basis to serve consistently as a practical tool for legislators and drafters in Liberia.

## **6. Conclusions and Recommendations**

Although the present Liberian government is facing enormous challenges, these challenges mean a unique chance for Liberia and its people and positive results may also serve as a model for other African states. A functioning Legislature is essential for the stabilisation and



reconstruction of the country. Up to date, the work of the EC/KAF office in Monrovia, Dr. Heinz Jockers and his team, has significantly contributed to the development of the Legislature's capacity. The members are grateful for the support and are able to use the knowledge gained in various workshops and seminars for their work. The constant cooperation between the EC/KAF office and the legislators led to an open dialogue and mutual trust and respect. The main achievements of the project activities so far served their purpose: they made the members aware of their basic rights and duties as representatives and provided them with necessary material. But there is a strong need for further support. The transfer of knowledge should be continued and deepened. The work of the newly elected Legislature has just started and the members have to learn how to perform their rights and duties in practise. Certain aspects of a parliamentary procedures have not yet been addressed sufficiently. With the assistance of the international community, a development plan may be set up including further training of legislators and their staff, establishment of a Drafting Service, preparation of common drafting rules as guidelines for the drafters, building up the infrastructure and other activities. The following recommendations might be considered when creating further development plans supported by the EC/KAF project:

#### **Legislature:**

- Law Drafting Organisation:
  - assistance in establishing a Legislative Drafting Service
  - training of drafters,
  - preparation of common drafting rules as a guideline for drafters
- Strengthening of Legislative Oversight: Compilation of consolidated Liberian Laws (collection, compilation and indexing of all valid Liberian Laws = book and electronic database, CD-ROM), building up of an archive, library and documentation room in the premises of the Legislature
- Budget Law workshop:
  - training of Parliamentarians, especially of members of the Committee on Budget, Ways, Means and Finance, on the budget law process, examination of the budget and its approval
  - assistance in preparation of a Budget Act regulating the budget law process and establishing a Budget Office like in Uganda (functions of the office: provision of budget-related information to all committees in relation to their jurisdiction; submission of reports on, but not limited to, economic forecasts, budget projections and options for reducing the budget deficit; identifying and recommending on legislation that provides an increase or decrease in revenue and the Budget; preparing analytic studies of specific subjects such as financial risks posed by Government-sponsored enterprises and financial policy; and generally giving advice to parliament and its committees on the Budget and National Economy.
- Improvement of legislative practises:



#### Committee action and consultation:

- preparation of committee rules
- training of committee members in conducting public hearings
- training of legislators in consultation procedures; assistance in establishing a network between legislators, respectively the committees, and local experts in various fields (preparation of a directory and list of local experts and civil society organizations)

#### Assessment of the effects of new legislation (Regulatory Impact Assessment = RIA)

- training of legislators and staff (and perhaps administration officers) in RIA (what is RIA? why is it necessary for the improvement of legislation? What are the benefits for political officials when carrying out RIA – advantages and practical difficulties?)
- Public participation in legislative proceedings
    - training of civil society in participation in the lawmaking process and policy development: e.g. how to define policy issues and objectives, using the media, constituency mobilization, networking with government officials, petitions, testifying in public hearings etc.
  - Public Relations and information services of the Legislature:

#### Publication of laws, resolutions and other matters:

- assistance in preparing a law (may include amendments of the Constitution) regulating the procedure of publication of new legislation, governmental decisions and other matters;
- re-activating of the “Official Gazette” (mentioned in the Constitution) as the central source for new legislation and other governmental and legislative matters
- assistance in establishing an archive or registry office in charge of keeping and producing the Official Gazette and other official publications
- training of staff

#### Information services of the Legislature:

- training of staff of the legislative press office
  - supporting legislative publications (such as a regular legislative newspaper, books, brochures) and Radio/TV and press coverage of plenary sessions and committee meetings
- Constitutional reform
    - establishment of a Constitutional Reform Commission (or Constitutional Council), consisting of local experts, legislators, members of the executive branch and the



judiciary, representatives of minority groups and civil society organizations plus a team of international consultants

- organization of a colloquium on constitutional law (with attendance of international experts, esp. from other African states), discussion of necessary amendments of the Liberian Constitution
- preparation of an agenda listing possible amendments (highlighting urgent amendments), supporting public debate and discussion on the political level (parliament, President and cabinet ministers)
- reform process