

**REMARKS BY CLLR. N. OSWALD TWEH, MINISTER OF
JUSTICE AND ATTORNEY GENERAL
NATIONAL NON-PERFORMING LOANS RESOLUTION
CONFERENCE
EJS MINISTERIAL COMPLEX
SEPTEMBER 9, 2026**

President Boakai, the Executive Governor and officials of the Central Bank of Liberia, Mr. Speaker and members of the Legislature, esteemed members of the Judiciary, Minister Ngafuan and other officials of the Government, members of the Diplomatic Corps, our multilateral and bilateral partners, representatives of financial institutions, members of the business community, fellow lawyers, and distinguished ladies and gentlemen:

I wish to commend the Central Bank of Liberia for placing the issue of Non-Performing Loans on the front burner of our national economic discourse. Non-Performing Loans, or NPLs as we have come to know them, represent a menace with the propensity to cripple financial institutions, which would inevitably have a ripple effect on the nation's economy.

When financial institutions are saddled with high levels of non-performing assets, finances that could otherwise be deployed for productive lending are entrapped. This leads to limited access to credit and creates a broader financing challenge. When businesses cannot access finance, it is not surprising that they might dry out or die out. In turn, the economy will not grow, job creation will be an illusion, poverty reduction will be stymied, tax revenue will decline, and the entire economic fabric of our nation will be weakened.

Beyond the economic implications, there is a dimension to this challenge that is particularly relevant to my presence here today.

The banking sector of Liberia operates within a heavily regulated environment. To see NPL levels at this height is therefore not only an economic issue; it is also a Rule of Law issue. That is why the Ministry of Justice is excited about its participation in these deliberations over the next few days, as we collectively seek stakeholder-driven solutions to the NPL challenge within the overarching aim of mitigating credit risks.

My brief remarks at this opening ceremony will focus on the third theme of this Conference: Assessment of the Legal Regime: Commercial Court, Insolvency, and Collateral Enforcement for Debt Enforcement. In this connection, I will discuss three connected issues. First, I will examine the laws on our books that enable debt recovery and collateral enforcement. Second, I will consider the practical application of those laws and the difficulties encountered in moving from judgment to actual recovery. Third, I will examine banking practices, particularly the structure and administration of loans, that may contribute to or increase the risk of non-performing loans. Due to the brevity of time, I will not touch upon Insolvency, which I believe there will be surplus of time during this conference to discuss that.

I. LEGAL FRAMEWORK

Article 25 of Liberia's Constitution provides that the *"Obligation of contract shall be guaranteed by the Republic and no laws shall be passed which might impair this right."* This constitutional protection is of paramount importance because the NPLs under discussion derive from voluntary agreements between natural or juridical persons. Article 25 effectively establishes a constitutional mandate upholding the binding force of these obligations, insulating them from arbitrary legislative interference. Consequently, the terms, conditions, and stipulated default remedies within these loan

facilities are sacrosanct, provided they do not contravene other standing laws of the Republic. The enforceability of these loan agreements is therefore not merely a matter of commercial convenience; it rises to the level of a constitutional imperative under Article 25.

Once the contractual obligation is established, the next question is where a creditor may seek enforcement. Article 26 of the Constitution addresses this directly: it guarantees that *"anyone injured by an act of the Government or any person acting under its authority, whether in property, contract, tort or otherwise, shall have the right to bring suit for appropriate redress."*

Title 17 of the Liberia Code of Laws Revised, specifically Chapter 4, Section 4.1, created the Debt Court and in Section 4.2, conferred upon it jurisdiction over debt matters in the amount of US\$2,000.01 and above. US\$2,000 and below, collection suits reside with the Magisterial Courts. It is important to make this distinction because there are Non-Bank Financial Institutions that cater to Small and Medium Enterprises and do have recovery challenges precisely within these lower amounts.

Over the years, it became clear that the Debt Court was inundated with debt cases. As a result, debtors enjoyed what was effectively a long holiday. It was a blessing in disguise for a creditor simply to sue a debtor before the court, since due to the crowded docket, the case would not be heard any time soon. This reality bred a culture of somewhat impunity among borrowers who calculated that the legal process itself would shield them from accountability.

Then, in 2010, when the Commercial Code was revised a Commercial Court was established to, among other commercial matters, hear cases of debt from US\$15,000 and above. The Commercial Court, with its three-judge bench, became a savior. The three judges could each hear separate cases of up to a million United States dollars in value, with all three sitting en banc in a case of more than a million United States dollars in value.

As it relates to having a secured loan transaction, the Commercial Code's secured-transactions framework allows financial institutions to take collateral to secure loans they grant and to record those security interests in the collateral they acquire. The Center for National Documents & Records Agency (CNDRA) is the registry, which is now buttressed by the Enhanced Collateral Registry that was launched last week by the CBL. Properly established security interests may create a preference over other holders of liens in the collateral, depending on the circumstances. It is also worth noting that the CBL has issued *Regulation No. CBL/RSD/002/2021 (the Regulation Concerning Prudential Regulations for Asset Classification, Provisions for Loan Losses and Suspension of Interest on Non-Performing Loans and Advances)*, which sets strict thresholds for the ratio of collateral value to the outstanding loan exposure. Under Section 4.00 of this regulation, the CBL defines what constitutes "well secured" collateral and imposes critical limitations. When a loan is granted to a borrower and the borrower defaults, that default is defined by the same Prudential Regulations. It categorizes default based on the number of days a borrower has failed to amortize a given matured installment and prescribes what the financial institution should do in terms of provisioning to absorb the risk.

As it relates to enforcing or recovering debt, the Civil Procedure Law provides for a financial institution to file an action of debt while at the same time praying for provisional remedy. Section 7.1 of the Civil Procedure Law allows a financial institution to sue a delinquent borrower by attachment, garnishment, or arrest, depending on the circumstances. These remedies serve different purposes and are subject to the conditions imposed by law. The financial institution could also file a straightforward action of debt and await the outcome. If the loan is collateralized, which it ought to be by CBL's standards, the financial institution could also elect to foreclose the mortgage created on the property. The important point is that the law does not provide only one method of recovery. It provides different legal routes through which a creditor may seek to protect assets, obtain judgment, and realize the value of a debt.

The legal framework does not end when judgment is entered. It also governs the debtor's request for deferred payment and the circumstances under which an appeal may delay enforcement.

When a judgment is rendered by a court, the defendant debtor often seeks deferred payment, which, in the eyes of the financial institution, may undermine its opportunity for speedy recovery. But the law is clear on this point. Section 44.22 of the Civil Procedure Law provides the exclusive mechanism for deferred payment of money judgments. A judgment debtor may apply to the court for leave to pay the judgment in installments, but the court shall grant the application only if three conditions are strictly met: (a) the applicant has no assets available for immediate payment; (b) the applicant pays twenty-five percent (25%) of the amount due on the

judgment immediately; and (c) the applicant files a bond to the effect that he will faithfully comply with the court's order to pay the judgment within the time specified and will pay interest on the unpaid balance at the rate of six percent per annum.

Finally, but without exhausting the legal framework on debt enforcement, amidst the constitutional prescription that makes the right to appeal inviolate, which has been interpreted to mean that once an appeal is announced and perfected, the judgment of the trial court is stayed pending the outcome of the appeal, in debt matters, however, a more stringent rule applies. For judgments arising from debt cases at the Commercial Court, the perfection of an appeal is conditioned upon the appellant depositing the full judgment sum into an escrow account. This requirement ensures that the pursuit of appellate review does not become a tool for delay, depriving a creditor of the fruits of a valid judgment. Without such a deposit, the judgment remains enforceable, and the debtor cannot invoke the pendency of an appeal to avoid payment.

2. PRACTICAL APPLICATION OF LEGAL FRAMEWORK

Having identified the legal tools available to financial institutions, let me now turn from the law on the books to the practical operation of the laws.

One of the most frequent hear complaints of banks is redress through the courts – the speedily and timely adjudication of cases; the timely enforcement of courts' rulings, among others.

I noted earlier that the docket of the Debt Court was crowded and adjudication of cases appeared slow. Let me be clear: adjudication

of individual cases was not inherently slow. Rather, due to the volume of cases on the docket, any given case might not be called sooner because there were other cases before it that had to be heard. This backlog phenomenon is not unique to Liberia. Conduct a survey in the sub-region and you will see similar patterns.

I also noted that the Commercial Court was established in 2010 to, among other things, ease some of the burden from the Debt Court. But sixteen years down the road, the Commercial Court has developed its own share of a crowded docket. Unlike in its early years, when it had fewer cases, the daily and weekly addition of new cases to unresolved cases now puts it in the general characterization of being slow. Moreover, the Commercial Court is not only dealing with debt. It also deals generally with disputes flowing from commercial transactions, further expanding its workload. Therefore, the situation seems not to have improved.

Recall that I mentioned that a financial institution could file its action of debt by attachment, garnishment, or arrest, depending on different circumstances. In each of those instances, the complainant financial institution must file a bond to cure any damages that might occur by virtue of the court's attachment, garnishment, or arrest if the financial institution does not prevail. That bond comes with a new cost added to the effect of the delinquency of the defendant borrower. Though the bond cost could be added to the cost of the proceedings and thereby included in the judgment sum, it is a cost the financial institution must underwrite upfront. This increases its cost-to-income ratio and affects its profit and loss statement, or profit-before-tax, whichever way one looks at it.

Additionally, let us assume that the financial institution sues by way of attachment. The financial institution identifies the property in which it holds a security interest, or simply identifies no property at all, in which case, the writ is issued and placed in the hands of the sheriff to serve on the defendant to show property of value to be attached, failing which the defendant may be brought before the court until a property of value is identified and attached. The bond has already cost the financial institution money. When the writ is served and property is identified and attached, the defendant can also file a bond to vacate the attachment. If that is done, the financial institution is back to a plain action of debt in which the defendant debtor faces no immediate pressure, precisely the outcome the institution was trying to avoid by filing the action with attachment in the first place.

When the case is finally adjudicated and ruled against the debtor, he or she might still not be able to satisfy the writ of execution. In that case, the financial institution might reasonably think that the surety that provided that bond, most likely an insurance company, may be served a Writ of Execution to pay the judgment sum in the face of the judgment debtor's failure to pay. No! We have seen instances where it was determined that the financial institution can only bring in the surety through a separate action for breach of contract, since the bond proffered was a contract. This means, the financial institution goes again to file an action for damages for breach of contract. When the financial institution wins, the surety takes an appeal to the Supreme Court. This is breach of contract, not action of debt, so a perfected appeal stays enforcement.

Let us also assume that a property was attached and remained attached until final judgment. The judgment debtor has no means of perfecting an appeal, so the judgment must be enforced. The court orders the auction of the attached property. The financial institution must underwrite the cost of newspaper publications for four weeks in papers of general circulation. That is a cost to the financial institution.

On the day of the auction, the court sets the floor price and the sheriff commences the auction. In most instances, no one is present to bid, or the bidders cannot afford the minimum price. That auction ends without a sale. The next auction must still be published at the expense of the financial institution. Sometimes a bidder bids a good price but fails to pay the price within the time specified. The property must then go back to auction at the expense of the financial institution yet again.

As to the collateral itself, there are many things to say about it, which time does not permit me to elaborate upon fully. The collateral might be non-existent. It might have been pledged to another bank previously, meaning the judgment creditor financial institution may not be first in preference for settlement. It might be in deplorable condition. Any of these circumstances compounds the recovery challenge.

The financial institution could elect to proceed by way of foreclosure of the mortgage, but that route is even longer. The institution must file its petition before the Civil Law Court, which has general default jurisdiction over civil cases and, as such, carries a greater docket than the Debt Court or the Commercial Court, or

alternative the petition will be filed before a Circuit Court in one of the counties. Besides that, since the foreclosure action goes after the property directly rather than the debt, the judgment of the court is subject to appeal, which stays the enforcement of judgment upon perfection.

I would like to close, but not exhaust, the practical applicability of the law on deferred payment. While it is true that the law on deferred payment requires twenty-five percent upfront on the judgment sum, followed by payment of the balance within twelve months, backed by a bond and an acceleration clause, financial institutions themselves often allow less than twenty-five percent on the judgment sum, payment of the balance over twenty-four or thirty-two months, and no bond whatsoever. When the judgment debtor makes the upfront payment, sometimes he or she does not pay any of the subsequent installments. When that happens, the financial institution goes back to court for a writ of execution, creating another cycle of stalled enforcement of judgment. This shows that the financial institutions sometimes undermine their own recovery by negotiating terms that the law would not have allowed the debtor to obtain from the court.

3. BANKING PRACTICES

My third and final point concerns banking practices and loan structures that could also be contributing factors underpinning NPLs.

As former president of the Liberia Chamber of Commerce, I consider myself particularly suited to speak on this matter, for I

know full well what businesses are saying regarding the repayment of their loans. Some say that the tenure of the loans is too short. Others say that there are, in almost all cases, no moratoriums on repayment to leave room for the loan to contribute to the business before repayment obligations commence. As a result, in some instances, borrowers use loan proceeds to amortize the loan.

This is not the only one contributing factor from the financial institutions. The business community is represented at this conference and they will have the opportunity to speak more extensively on these concerns. I am glad that their experiences will be heard alongside the perspectives of the financial institutions, the CBL, the Judiciary, lawyers, and other stakeholders. Let us discuss these issues with honesty and with the view of finding genuine solutions to NPLs, because regardless of the causes, the impact on the economy is real, and the consequences of inaction are too severe for us to ignore.

Many thanks again to the Central Bank of Liberia for the launch of the enhanced collateral registry which will aid enforcement against collateral. Thanks also for this great initiative and to everyone who has come to contribute to this discussion.

Thank you.