

In Liberia: Judicial Tyranny

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The recent decision by the Supreme Court to suspend Justice Minister Christiana Tah for granting compassionate leave to journalist/publisher Rodney Sieh has created shockwaves across the length and breadth of the political landscape. The entire Judiciary, the Executive, as well as the Liberia Bar Association have been reduced to caricatures of what properly functioning, independent structures of government and their attendant professional organizations should be.

Nowhere in Liberian law is it granted that the Ministry of Justice must first seek approval of the Court in its management of people committed to prison. The Supreme Court of Liberia itself can produce no such law. Not even lawyers who have argued in support of the Court have been able to provide such a reference. Let us also remember, the Justice Ministry was not required to seek Court approval to send Mr. Sieh to the hospital. The Supreme Court never argued that. They only argued that any compassionate leave of prisoners under civil commitment must be approved by the Court.

In sanctioning Minister Tah, the Supreme Court communicated in unambiguous terms that the Justice Minister and other respondents should simply come to the Court and apologize, and the whole matter would be over. Even a layperson understands that once you apologize, you surrender your right to mount any defense of the law. You prostrate yourself before the Court and beg for mercy. Thus, in keeping with the Court's stipulation, the Justice Minister, the Ministry's lawyers, including a former Solicitor General, all formally "apologized" to the Court. The Court then responded to the requested apology by suspending the Justice Minister's license for six months, in effect preventing her from practicing law.

The treachery of the Court in demanding an apology, and then suspending the Justice Minister, also extended to suspending Mr. Sieh's lawyer for three months – for his audacity in advocating for his client! In this environment of judicial misconduct, neither the Liberian Bar Association nor any one of Liberia's supposedly towering legal "giants," which include some perennial presidential candidates, rose to defend the law.

It appears that the Court's behind-the-scenes machinations were designed purposefully to prevent the Justice Minister from presenting a defense to the Court's contempt citation, because any such defense would have laid bare the Court's actions as nothing more than a vindictive power play. Whether this was in concert with the Executive remains an open question. However, the President's silence on the abrogation of a privilege reserved exclusively for the Executive demonstrates tacit consent.

In its ruling, the Court claimed that the Justice Ministry had formulated no rules for granting of compassionate leave, therefore the Ministry of Justice arbitrarily sought to disobey Mr. Sieh's commitment. When the Justice Minister tried to submit a Petition for Re-Argument, the Court

rejected the petition, saying, “We only want another apology.” As of today, the Court is still demanding yet another apology. But if the Minister’s initial apology resulted in a six month suspension, logic should tell anyone that another apology may well result in the Minister’s disbarment. Is this the type of behavior we want for our country’s highest court? Only the pathologically insecure can find pleasure in continuously humiliating those they exert power over in this manner. Such judicial sadism is unacceptable in a democratic country.

What is abundantly clear by law, as highlighted below, is that the custodial supervision of all prisoners is the exclusive domain of the Bureau of Corrections and the Ministry of Justice.

Under Liberia’s criminal law code § 34.20. Leaves from prison.

1. Compassionate leave. The Minister of Justice shall formulate rules or regulations governing compassionate leave from institutions and, in accordance with such rules and regulations, may permit any prisoner to leave his institution for short periods of time, either by himself or in the custody of an officer, to visit a close relative who is seriously ill, to attend the funeral of a close relative, to return to his home during what appears to be his own last illness, or to return to his home for other compelling reasons which strongly appeal to compassion. The rules or regulations shall provide for the manner in which compassionate leave shall be granted, for its duration, and for the custody, transportation, and care of the prisoner during his leave. They shall also provide for the manner in which the expense connected with such leave shall be borne, and may allow the prisoner, or anyone in his behalf, to reimburse the State for such expense.

§ 34.2. Segregation of persons committed to correctional institutions.

In institutions or parts of institutions supervised by the Ministry of Justice, the following groups shall be segregated from each other:

- (a) Female prisoners from male prisoners;
- (b) Prisoners under the age of twenty-one from older prisoners;
- (c) Persons detained for hearing or trial from prisoners under sentence of imprisonment;
- (d) Persons detained for hearing or trial or under sentence, from material witnesses and other persons detained under civil commitment.

Additionally, section § 34.2.(d) of the criminal code clearly assigns the “segregation” of ALL prisoners under the supervision of the Ministry of Justice. It is difficult to believe that the unstated legislative intent of this law was for the Ministry of Justice to supervise all aspects of a prisoner’s custody, when he eats, when he sleeps, when he exercises, but only if he is a prisoner under civil commitment that has received court approval for compassionate leave.

There are two Supreme Court Justices who previously served as Minister of Justice: Justice Kabina Janneh, and Justice Phillip A. Z. Banks. As Minister of Justice, Justice Janneh granted compassionate leave to a pregnant woman prisoner who did not return to prison. Justice Phillip A. Z. Banks also served as Minister at a later date. Are these two Justices asking us to

believe that the rules for compassionate leave used by then Minister Janneh were non-existent or voided after he left office, or that neither of them were aware of those rules? In either case, it makes their argument specious at best. Secondly, by demanding that the Ministry of Justice simply apologize, the Ministry was not allowed to present any evidence that such rules as above do exist.

[Ministry of Justice Compassionate Leave Regulations Updated \(January 2013\)](#)

Liberia does have quite a number of drinking establishments called bars, but the Liberian Bar Association is supposed to be the organization which deals with things like legal misconduct and the policing of lawyers. It has become increasingly difficult to distinguish between the Liberian Bar Association and the Association of Liberian Bars, though the latter boasts far more vocal advocacy for its members. When then Justice Minister Phillip A. Z. Banks violated every protection provided by law for the Nigerian Valentine Akiya, the Bar Association did not raise its voice to that misconduct. Mr. Akiya took his case to the ECOWAS Court, which found Liberia guilty in *Valentine Ayika v Republic of Liberia*: “Judges who presided over the trial informed the Government of Liberia's lawyers that the Liberian Government acted illegally by seizing the then Nigerian businessman money, and as such should pay back the money in the tune of US \$508,200 to Mr. Ayika” (<http://allafrica.com/stories/201210150746.html>).

The actions taken by Justice Minister Phillip A. Z. Banks has brought nothing but shame to Liberia and has tarnished its image, especially amongst its fellow ECOWAS countries. Liberia is now refused a place on the ECOWAS Court until the Liberian judiciary complies with ECOWAS legal standards.

In other countries, when Mr. Banks was nominated for the Supreme Court, the Bar Association would have raised alarms and sought serious debate over his appointment given his violations of Mr. Ayika's rights. When this same Justice Phillip A. Z. Banks refused to recuse himself from Mr. Sieh's appeal, even though Mr. Toe's lawyer is his brother-in-law, and he had previously worked at his brother-in-law's law firm prior to becoming an Associate Justice, the Liberian Bar Association said nothing about the breach of ethics. Although the rules of disqualification may not be present for Liberia, Justice Banks studied law at Yale University in the US and should be familiar with [28 U.S. Code § 455 pertaining to the Disqualification of justice, judge, or magistrate judge](#). Chief Justice Lewis was many things, but even he had the honor and dignity to recuse himself in the matter regarding Mr. Sieh, after Mr. Sieh complained that he would be partial because Mr. Sieh had previously published articles about his drinking habits and alleged judicial misdeeds. Regarding Justice Banks, we should not be surprised that a Justice Minister who violated the rules of the ECOWAS Court refuses even the appearance of bias.

The silence of the Liberian Bar Association, and that of ALL lawyers in Liberia, is a glaring indication that the freedom of speech this President is so highly praised for in reality does not exist. If the lawyers of Liberia, who are charged with defending the free speech rights of the citizens, are themselves too afraid to give candid professional opinions about Supreme Court

rulings, can we seriously say that free speech exists in Liberia? Was this not the crux of Mr. Sieh's complaint against the judicial system?

President Sirleaf should think long and hard about this. We are eight years into her presidency, and the Court she has appointed is carving a legacy worse than that of prior courts under the True Whig Party, and the Doe and Taylor regimes. The actions of the Court and the President's silence, for whatever reasons, have exposed the entire Liberian judicial system, from the Supreme Court to the Bar Association, as incapable of functioning impartially. All of the people on the Court were chosen by President Ellen Johnson Sirleaf, and thus their every action, and her inaction, reflects her legacy.