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## Justice Kabineh Ja'neh Highlights Pitfalls in Liberia's Justice System

Many have, overtime, criticized Liberia's Justice System sometimes describing it as weak, corrupt, unfair, and at time for sale to the highest bidder. The latest criticism comes from one of its own – Associate Justice of the Supreme Court Bench, Kabineh Ja'neh.

He spoke at an International Symposium on the State of Democratic Governance and Development in West Africa and Challenges of the future held at the Monrovia City Hall recently on the topic “The rule of law in Liberia: Access to Justice Perspective”. Justice Ja'neh examined issues, which he noted, bordered on access to justice with particular focus on Liberia's criminal justice system *“Our goal here is to highlight the challenges faced by the System and to encourage a more robust national investment in the criminal justice sector especially in the light of UNMIL departure from Liberia”*.



Associate Justice Kabineh Ja'neh making clarification on the Rule of Law in Liberia

According to Justice Ja'neh, Liberia's justice system, particularly the criminal justice sector, is besieged by numerous and complex challenges, naming several hurdles as key to reform and desired transformation of Liberia's justice system.

These include:

1. Archaic habit by security officers of rushing to arrest suspects without gathering relevant evidence adequate to ensuring successful prosecution;
2. Perennial failure by magistrates to properly exercise their authority to issue writ of arrest only upon determination that probable cause exists, as mandated by law;
3. The passage of barrage of laws not necessarily responsive to current realities;
4. Prohibition on being called upon to answer to a capital or “infamous crime” except “upon indictment by a Grand Jury;
5. Inverse relation between number of magisterial courts and population size like in Sinoe and Grand Kru vis-à-vis Nimba, Bong and Lofa.

Justice Ja'neh emphasized that these challenges have had serious implications within the context of our criminal justice administration.

*“Some of the consequences include long pre-trial detention, prison strikes, repeated jail break attempts and mob justice actions. In my judgment, the key and most often criticized is the pervasive sluggishness at which the wheels of the justice system turn. As it stands, “Access to Justice”, particularly in the criminal justice sector, remains a hugely elusive goal. Long pre-trial detention, ladies and gentlemen, is an*

*obtrusive violation of our Constitution (1986) and brings into question our claim of being a country operating under the “Rule of Law”.*

Justice Ja’neh highlighted other concerns that have undermined and may continue to undermine public trust in the criminal justice system including but not limited to the following:

**1. Access to justice by the “poor” and prisoners.**

The rights of a good number of accused persons are being insidiously violated as suspects continue to languish in prison and detention centers for ages without being indicted or tried. Monrovia Central Prison is fast becoming the humiliating home of accused persons, **especially the poor and destitute** who, unfortunately, cannot afford to hire lawyers to defend their fundamental rights of due process.

*“A society where the vulnerable and poor majority are unable to access the courts in order to protect their fundamental rights, to challenge national actions and policies, and to put forth their claims, said society cannot justifiably claim to be under the canopy of the “Rule of Law”.*

**2. Protection of “fundamental human rights”:**

Justice Ja’neh pointed out that a nation’s commitment to the rule of law is exhibited by adhering to internationally accepted standards, including the protection of the rights of the accused. He maintained that respect for fundamental rights is sine qua non to the preservation and sustainability of peace and security in every society.

*“Transgression of fundamental rights of the people of this country by successive administrations has been identified as a key contributor to Liberia’s violent civil upheavals”. Notwithstanding these constitutionally protected rights, the rights of a good number of accused persons are being insidiously violated as suspects continue to languish in prison and detention centers for ages without being indicted or tried. Monrovia Central Prison is fast becoming the humiliating home of accused persons, especially the poor and destitute who, unfortunately, cannot afford to hire lawyers to defend their fundamental rights of due process”.*

Statistics of pre-trial detainees at the Monrovia Central Prison is said to be alarming. According to Justice Ja’neh, reports as at March 15, 2015, show that the total number of pre-trial detainees at the Monrovia Central Prison was 691 (six hundred and ninety one). He noted that some of these detainees have been at the Monrovia Central Prison for up to at least 6 (six) years. Sex crimes detainees account for roughly 30% of the overall figure of pre-trial detainees. He emphasized that:

*“In the current system in Liberia, an accused could remain in pre-trial detention from one (1) day to more than three hundred and sixty five (365) [EX. Austin and Robert, 2,000 days and above] due to the requirement that an indictment be presented by the Grand Jury as a condition precedent to a criminal defendant being brought in the Circuit Court to answer to any major or capital offense. Hence, detainees languish literally forever in our prisons.”*

Meanwhile Justice Ja’neh has called for an amendment to the statute on Grand Jury composition to include perhaps a group of magistrates randomly selected from within the County to constitute its Grand Jury. *“We believe that a group of magistrates, in comparison to lay persons, is better*

*trained and situated to examine and pass on evidentiary questions*". He said the Grand Jury System, as constitutionally provided and practiced in Liberia, has become a major obstacle to according the accused his/her constitutional right to speedy trial.

Despite these challenges to Liberia's criminal justice system, Justice Ja'neh commended the Government for including "Access to Justice" as a "Development Pillar" in its reform agenda. Under this Development agenda, the Liberian Government seeks to create a robust justice system that guarantees due process of law through access to justice for all. This reform agenda item is aimed at creating a truly responsive, speedy and inexpensive justice delivery system and dispute settlement for the benefit of all, without any regard to political eminence, economic and social status.

Another criticism of the criminal justice system is the availability of trained magistrates and courts not only in Monrovia but across the country. According to Justice Ja'neh, since 2006, the Government (in collaboration with development partners) has made tremendous investment in reforming and transforming our entire justice system, especially the criminal justice sector. He noted that every county now has a law school graduate as County Attorney, and an equally trained defence counsel paid by government, adding that the Judiciary, under the Government's human capital investment initiatives, recruited more than 100 (one hundred) legally trained persons at the Louis Arthur Grimes School of Law, and built courts throughout Liberia to assure access to justice.

Concluding, Justice Ja'neh noted **the most outstanding public concerns still needing answers:**

- Why those charged with raping children, armed robbery and economic crimes are not kept in jail?
- Why is it that the court is weak and corrupt as to keep unleashing "*criminals*" unto the public who are so shameless as to rape children?
- Why will the justice system give freedom to those who commit the crime of siphoning huge public monies thereby depriving the country of desperately needed development funds which could be utilized to build schools and hospitals for the people of Liberia?.

*"Ladies and Gentlemen, it is of utmost importance to emphasize here that successful prosecution of crimes, especially crimes of interest to the general public, which include murder, rape, armed robbery and economic crimes [corruption cases], would remain a practical impossibility as long as the petit jury, the civilian component in the prosecution process, is **bent on selling justice to the highest bidder.**"*

## **Empowering Local Businesses as Engines for Growth**

**Samuel D. Tweah, Jr.** a young Liberian economist is recommending that government develops a private sector policy and implementation framework that brings together the Government, donors, the private sector and civil society that assures economic empowerment of Liberia's small business entrepreneurs. Such a framework, he said, should collate existing private sector

policies and disparate activities into a functioning whole to execute programs in a way that maximizes private sector outcomes and enhances coordination.

Also speaking at the International Symposium on the State of Democratic Governance and Development in West Africa and Challenges of the future held at the Monrovia City Hall on July 2, 2015 Mr. **Tweah, Jr** who eulogized on economic challenges that continue to defy policy solutions - "**Empowering Local Businesses as Engines of Growth and Development in Liberia**". His approach was from the perspective of private sector development, with emphasis on Liberian owned Small and Medium Enterprises, SMEs.

Mr. Tweah's presentation summarized

1. The evolving structure of the Liberian economy;
2. Facts and possibilities of the Liberian private sector;
3. A brief review of the literature on the nexus of private sector development and economic growth and development;
4. Constraints to the Liberian private sector;
5. Government and Donor interventions to relax these constraints
6. Policy recommendations aiming to engender transformation.

### **The Evolving Structure of the Liberian Economy: Potential and Scope for SMEs**



Mr. Samuel D. Tweah stressing a significant point at the symposium

Putting the Liberian economy in a 50 year retrospect, Mr. Tweah described it as "an enclave in structure with large multinational extractives engaged in natural resource exploitation intended for export. He said "*data from the Liberia's Constraints Analysis shows that between 1964-1974*

*the Industrial Mining Sector accounted for as much as 40% of*

*Gross Domestic Product, with agriculture, dominated by rubber agriculture, accounting for as high as 27%. The services sector accounted for a little more than 30% during this period (Liberia Constraints Analysis, 2013 p.22)."* Some fifty years later, Mr. Tweah noted that "*data from the Central Bank of Liberia and the International Monetary Fund show that in 2014, Agriculture and Fisheries accounted for 25.7% of nominal Gross Domestic Product (GDP), Forestry 6.9%, Mining and Panning 16.8%, Manufacturing 3.7% and Services 47% (IMF Country Report No. 14/197)."*

Tweah also noted that the structure of the Liberian economy is changing, albeit moderately. He emphasized that the economy is less enclave than it was 50 years ago, and that "*the IMF projects that the share of mining as a percent of GDP will hover around 16% in 2019, almost 25% less*

*than the share mining consumed five decades ago. **Agriculture, will ramp up oil palm production, and rubber is projected around 21% in 2019, down from 31.9 % in 2013.***”

In other words, total revenue accounted for 26% of GDP in 2013 equaling (in dollar terms) about US\$450 million. Also in 2013, mining contributed 2.7% to government revenue, or US\$46 million. Tweah pointed out that *“in 2019, mining is projected to contribute about 2.6 % of GDP or about US\$77 million to revenue. In other words, the share of public revenue accruing to mining will be around 12% in 2019, up by about 2%, since currently, mining’s share in public revenue is around 10%.”*

With this statistics on hand, the questions now are how can Liberia improve foreign investor’s interests in our natural resources? What are the long term implications on Liberia’s economy taking into consideration foreign investment fatigue? **Mr. Tweah explains:**

*“The implication of this is that over the medium to long term, the Liberian economy will be dominated by the services sector, which is projected to account for more than 52% of GDP over the next several years. Current shocks to prices of rubber and iron ore, which have precipitously declined over their spot prices one to two years ago, may partially explain the reduced contribution to GDP of the rubber and iron ore sectors. This evolving structure of the Liberian economy presents strong opportunities for Small and Medium Enterprises and for economic diversification. The timing of the structural evolution compels a priority policy shift toward strengthening the environment for local business in a manner that goes far beyond the modest impact of ongoing business and private sector reforms.”*

This new push should aim to situate SMEs as the engine for job creation and growth, embedding them with capacity and capabilities to develop critical niches in all economic sectors- mining, agro-forestry, agriculture, manufacturing and services.

It is important to note that SMEs account for a marginal share in Liberia’s GDP and face a number of constraints. (Small Medium and Micro-Enterprise Policy developed by the Ministry of Commerce and Industry, Enterprise Policy, small enterprises are those with 4 to 20 employees while medium enterprises have 21 to 50 employees, with large enterprises having beyond 50 employees).

*According to Liberia Business Registry data of 2012, registered businesses in Liberia were about 9,000. Between 2006 and 2012, an average of 2,342 new businesses were registered with the Liberian Business Registry, ranging from a low of 800 in 2006 to a high of 5,000 in 2012 (Liberia Constraints Analysis, 2012 p24). In 2012, 83% of all businesses in the economy were Liberian owned. **Sole proprietorship businesses largely owned by Liberians made up more than half of the total number of enterprises recorded over this period. However, analysis of the data reveals a high failure rate among Liberian businesses, owing to many constraints.** More than 50% of registered businesses are in the wholesale/retail trade and repairs, with agriculture accounting for only 3%. This suggests that most agriculture businesses are in the informal sector.*

The 2010 Labor Force Survey data indicates that paid employment from non-farm private businesses, the type of businesses registered with the Liberia Business Registry, account for about 33% of the number of paid employment jobs, followed by Government and State owned enterprises - 29% **(2010 Labor Force Survey)**. Non-farm private enterprise employment should

far exceed public sector employment in any economy aspiring toward middle income country status.

### **Literature Review on the Impact of SME's on Economic Growth/Development**

It is a known fact that some resource poor countries experience higher economic growth and better standard of living than many resource rich countries. The **African Development Bank notes that the African private sector contributes around 80% of the continent's GDP.** Micro and small enterprises employing fewer than 20 full time employees create between 67% and 80% of jobs, and contribute between 30% and 35% of GDP (Private Sector Development Strategy, AfDB, and March 2012).

According to Mr. Tweah, *“private small and medium sized enterprises (SMEs) typically account for more than 95% of all firms outside the primary agriculture sector, constitute a major source of employment and generate significant domestic and export earnings in the OECD, transition and developing countries.”* Therefore improved SME competitiveness could contribute to economic and social development, and poverty reduction (promoting Entrepreneurship and Innovative SMEs in a Global Economy, **2<sup>nd</sup> OECD Conference for Ministers Responsible for SMEs, June 2004**).

Recent studies find that SMEs contribute over 55% of GDP and over 65% of total employment in high-income countries. They also show that SMEs and informal enterprises account for over 60% of GDP and over 70% of total employment in low-income countries, while they contribute over 95% of total employment and about 70% of GDP in middle-income countries (Ayyagari, Beck and Demiguc-Kunt, 2003 p.27-28). Using a sample of 45 countries, the study finds strong association between the importance of SMEs and per capita GDP growth but no evidence that SMEs alleviate poverty or decrease income inequality (**SMEs Growth and Poverty: Cross Country Evidence, March 2005**).

Economists generally agree that a strong vibrant private sector is sine qua none to economic growth and poverty reduction, even if they disagree on the mix of policy that generates the biggest impact on growth, employment and poverty reduction.

### **Constraints to Private Investment in Liberia**

“The Liberia Constraints” developed in support of pending Millennium Challenge Corporation's investments in Liberia, summarizes the key constraints to private sector investment and growth in Liberia. The study used “the Growth Diagnostics Methodology developed by Ricardo Hausman, Dani Rodric and Andres Velasco” which shows that private sector constraints follow two broad channels: low returns to economic activities, and the high cost of finance. Low returns to economic activities are affected by macroeconomic risks, such as macroeconomic volatility as in the commodity price shocks presently confronting Liberia's rubber and iron ore sector; by micro risks such as corruption, ineffective tax administration and weak contract enforcement or market failures. On the high cost of finance side, private investment is discouraged by costly finance/financial intermediation, and low savings.

Other binding constraints to private investment could be caused by the following contributing factors:

- The lack of reliable and affordable supply of electricity
- Poor road infrastructure/transportation.
- Contract enforcement
- Human capital
- Access to finance
- Access to Markets
- Political instability
- Corruption
- Concessions Management
- Commodity Price Volatility and Dutch Disease

### **Gains made by the Government of Liberia and Donors include:**

**Electricity:** Rehabilitation of the MT. Coffee Hydroelectric Dam, which is expected to come online in 2016; Road rehabilitation; **Central Bank of Liberia Credit policy's** medium term lending to micro and small businesses; **Human Capital** -GoL and UNDP's Private Sector Development and Natural Resource Governance Program, intended to address obstacles to enterprise development in administrative and regulatory areas, licensing, registration, taxation, regulatory compliance requirements and expanding access; effective **natural resource management** (NRM) and linking NRM to value-addition and job creation ( Private Sector Development Project, UNDP); **Launch of the MSME policy;** Enactment of about 60 investment climate reforms, enabling Liberia to jump 21 places on the World Bank's Doing Business Indicator, though the country still ranks amongst the lowest in the World; **Small Business Empowerment Act** among others.

### **The Need for a more Comprehensive Private Sector Focus**

The UNDP's Private Sector Development Project Document argues this point rather forcefully. It observes that *“there are currently a number of sector policy frameworks and strategies aimed at enhancing the development of the private sector. These include the MSME Policy, the Industrial Policy and Strategy, PPP Guidelines and Strategy, Special Economic Zones Law; and Business Linkages and Growth Corridor Studies. However, there is no overarching policy framework to serve as a convergence platform for these various initiatives and co-ordination among the various institutions whose work impact on private sector development is limited.”*



Partial view of participants at the symposium

So the private sector is like a child who is loved by everybody but at the same time is loved by nobody. Politicians and policy makers make references to the private sector as the engine of growth but do very little to sustain it. Donors expatiate on the importance of private sector as the pathway to sustainable economic transformation but the

private sector gets about the smallest share of donor funding. Of course, donors are funding the major roads and power infrastructures, but these are public goods. Maybe the lack of momentum on robust private sector outcomes in the governance reform process is partly obtained because the private sector as an “interest group” or a business lobby, has not found a way to exert a meaningful influence on the political economy of Liberia.

Maybe the Liberian Chamber of Commerce or the Liberian Business Association may have to be more forceful in their attempts to situate the Liberian private sector on higher rungs of the policy ladder. Of course, this phenomenon is not unique to Liberia. However, it is no gainsaying that in Liberia, political economy incentives for private sector development are about the weakest among low-income countries.

To reverse this situation, the country has to move towards a strong, robust consensus on private sector development.

### **Policy and Program Prescriptions for Private Sector Transformation/ Recommendations**

1. Develop a private sector policy and implementation framework that brings together the Government, donors, the private sector and civil society. Such a framework collates existing private sector policies and disparate activities into a functioning whole and executes programs in a way that maximizes private sector outcomes and enhances coordination.
2. Rationalize and consolidate all government funding streams to the private sector into one line in the national budget, placed under the Ministry of Commerce and Industry, but jointly managed by the private sector framework already referenced. Such a line will fund programs relaxing constraints to local businesses and the private sector in general on a priority basis. These may include credit guarantees to banks to relax aversion to lending due to micro risks discussed previously, business capacity development etc. The aim of

these funding streams should be to help business help themselves, the very definition of sustainability, rather than subsidize the private sector.

3. In private sector development implementation, devote particular attention to developing indigenous private sector opportunities and capacities for Liberian-owned businesses. Liberian owned businesses face the highest burden of challenges but provide the biggest opportunities for realizing employment and growth impacts. Many laws have been developed to protect Liberian businesses but these are enforced in the breach. The Legislature is now developing a Small Business Empowerment Act. Policies and programs to develop Liberian businesses have been developed. The missing link is policy enforcement. Legislative oversight in this area remains weak. Under this proposed framework, all laws, policies and regulations providing specific protections for Liberian businesses would have to be collated and placed on a priority implementation track.
4. Establish and formalize Government procurement within the smallholder Agriculture Sector. This policy provides markets for struggling smallholder farmers and is a big catalyst for value chain development within the sector. Agriculture remains the most effective and efficient route to poverty reduction and income growth, since the sector employs more than 70 percent of Liberian workers. Unfortunately, the Liberian private sector is virtually disconnected from the sector which has essentially become a subsistence wasteland. The policy provides incentives for private investment, and raises the income of rural farmers.
5. **Prioritize Liberian Businesses in the Government Procurement Process.** The National Budget is an assured means of catalyzing growth in the Liberian business sector. **The Government spends about 40 percent of budget resources on procuring goods and services. These purchases could provide a critical spur to Liberian businesses. Unfortunately, foreign businesses receive the lion share of receipts from Government procurement.**
6. **Recognize that in the competitive business environment, Liberian businesses have the weakest capacities and capabilities and direct programs and opportunities to specifically address capacity challenges.**  
One way to do this is to give Liberian firms special privileges and opportunities in government contracting. For example, **Government procurement can require joint bidding by foreign and Liberian owned firms, with specific mechanisms that assure capacity development and knowledge transfer during project implementation.**
7. **Ensure effective measurement and communication of results from private sector development.** Arguably the most important private sector data is the number of jobs generated annually in an economy. **Unfortunately, little reporting is done on job creation, leaving the politicians to estimate the number of jobs that government programs will create. This has to be corrected through the proposed implementation mechanism.**

Concluding, Mr. Tweah said **the challenge with SMEs “development” consists of progressively enforcing appropriate policies, and developing and implementing innovative programs that assure private sector transformation.** He maintained that his proposed “development of a private sector policy and implementation framework”, as previously mentioned can achieve strong outcomes in the private sector, particularly the Liberian private sector, if taken into consideration, stressing the time to act is now..

## Public Sector Reform kicks off with the first 6 MACs in Monrovia

The Governance Commission (GC), in collaboration with Civil Service Agency (CSA) and the Liberia Institute for Public Assistant (LIPA) has begun a series of workshops to reform Liberia’s Public Sector. The first six Ministries, Agencies and Commissions (MACs) have already completed the Public Sector Reform exercise.



Officials of the GC, LIPA and CSA holding technical discussion with MAC’s on Public Sector Reform

The objective of the Public Sector Reform is introducing changes to the structures and processes of public sector organizations of Liberia and getting them to function more effectively.

The goal for instituting this process in Liberia emanates from several quarters including:

- Pressure from citizens, requirements by International Financial Institutions like the World Bank, the International Monetary Fund, the United States Treasury etc., as conditions for awarding loans, grants and other forms of financial support to the country;
- The need to change Government’s modus operandi, bad governance climaxed by the 1980 military coup, and other interventions and programs intended to improve revenue collection in Liberia;
- An entrenched political system of patronage, partisans/faction leaning recruitments, nepotism, a weak merit-based recruitment system, and the inability to meet up with citizens’ demands and to operate within existing financial constraints.

All of these societal ills continued to plague Liberia up to the end of the civil war in 2003. The by- products of this civil crisis were a shattered economy, collapsed infrastructure and basic service delivery, high level of unemployment with approximately 64% of the populace living below the poverty line, bloated wage bill coupled with corruption, waste and impunity.

The Governance Commission has therefore undertaken the process of carrying out the Mandates and Functions Review process in the public sector as a way forward in ensuring that the reform process can achieve the desired results. Visioning and working toward a middle income country goal, the reform foresees a civil service sector that is vibrant, results-focused, capable of effective service delivery to the populace, comprising of qualified personnel with the requisite skills and experience to man the restructured and reorganized government entities, working in an enabling environment that provides remuneration commensurate with qualifications, job security and a promise of financial existence even after public service.

- In light of the above, twelve (12) Government Ministries, Agencies and Commissions (MAC's) have been targeted by the Governance Commission to implement this process but presently, only six (6) of these MAC's have undergone the process of establishing Internal Review Committees (IRC's) due to technical support and policy guidance that has been provided by the Governance Commission who has been working collaboratively with its partners (CSA and LIPA) in the Tripod. This coordinating body consisting of the GC which provides the policy guidance and leads the process under the tripartite arrangement, the CSA which also provides technical support to the MAC's in the recruitment and professional placement of personnel in line with the reorganization and redesigning of MAC's and LIPA which serves as the capacity building arm of this collaborative initiative, is collectively referred to as the Tripod (GC, CSA and LIPA).

In the context of Public Sector Modernization, the current reform process has been focused in the following areas:

- A. Review of Public Institutions
  - Mandates and Functions Review (MFR)
  - Creating the Public Service Commission
- B. Public Sector Modernization
  - Improve pay management
  - Improve performance.

The Internal Review Committees (IRC's) from the perspective of the public sector modernization project (PSMP) serves as a driving force in the Mandates and Functions Review process. Members of each of these IRC's will be inheriting additional tasks in addition to their normal duties and responsibilities in their respective MAC's and as such, will have to be trained to take ownership of the MFR process in their ministries. In light of this new development, the IRC members of the six (6) targeted **ministries (Ministry of Foreign Affairs, Ministry of Public Works, Ministry of State, Ministry of Labor, Ministry of Commerce and Industry and Ministry Youth and Sports)** will be made cognizant of the MFR Framework and Processes to enable them effectively carry out their roles and responsibilities as it relates to the MFR framework and processes in these MAC's thus, ensuring the establishment of a Public Sector that possesses some of the tenets of modernization.

The Governance Commission as the lead government agency in this process recognizes the need to train members of the IRC's in the six (6) MAC's on the MFR framework and its processes to build their capacity in facilitating the MFR process ahead of when the International Consultancy Firm begins its work in Liberia. This initiative also supports the Agenda for Transformation (AFT) in ensuring that Government entities and State Owned Enterprises (SOE's) can effectively implement their mandates and carry out their roles and responsibilities in ensuring improved service delivery to the population.

Against this background, the Governance Commission in collaboration with its other tripod members (CSA and LIPA) organized an orientation program for IRC's in six (6) Government Ministries, Agencies and Commissions (MAC's) and targeted forty-two (42) beneficiaries consisting of seven (7) members in each IRC in each of the six (6) ministries. Each IRC is headed by a principle Deputy Minister or Deputy Director General (preferably for Administration assisted by technical Directors either for Research or Policy, and other key resource personnel in each of the MAC's.