The Movement for Progressive Change (MPC), represented by its National Chairman, John D. Barlone of the City of Monrovia, et al. **Petitioner**s *v.* **t**he **National Elections Commission of Liberia (NEC)**, represented by Honourable James Fromoyan, Chairman and all Commissioners, Executive Officers et al. **Respondents**

LRSC 1 (2011)

PETITION FOR A WRIT OF PROHIBITION

MR. CHIEF JUSTICE LEWIS delivered the Opinion of the Court.

The Constitution of Liberia states that it is the supreme and fundamental law of Liberia; that its provisions have binding force and effect on all authorities and persons throughout the Republic; and that any laws, treaties, statutes, decrees, regulations, and customs found to be inconsistent with it shall to the extent of the inconsistency be void and of no legal effect. LIB. CONST., ART. 2 (1986). As such, any laws enacted by the Legislature or administrative actions or proceedings taken by any administrative agency of the Government in violation of or inconsistent with any provisions of that sacred document are deemed to be unconstitutional. To ensure that its provisions remain the supreme law of the law and that the rights guaranteed by it are protected, the document grants not only the right to seek redress but it also provides the mechanism through which the redress can be secured. It states, at Article 26, that any person alleging contravention of any of the rights granted by the Constitution or other laws may invoke the privilege and benefit of court direction, order or writ, including a judgment of unconstitutionality; and that any person injured by the act of the government or persons acting under authority of the government has the right to bring legal action for appropriate redress. LIB. CONST., ART. 26 (1986).

Articles 2 and 66 elaborate further regarding the court which, under Article 26, is to give direction regarding a constitutionally aggrieved person. Article 2 states, inter alia: "The Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional...." LIB. CONST., ART. 2 (1986); and Article 66 states: "The Supreme Court shall be the final arbiter of constitutional issues and shall exercise final appellate jurisdiction in all cases whether emanating from courts of record, courts not of record, administrative agencies or any other authority, both as to

law and fact....The Legislature shall make no law not create any exceptions as would deprive the Supreme Court of any of the powers granted herein." LIB. CONST., ART. 66 (1986).

It is in respect of the rights stated above and the constitutional authority conferred upon this Court, that the petitioners, the Movement for Progressive Change (MPC), Abraham Massaley, Sayku Kromah et al., simply representing themselves as "Concerned Citizens of Liberia", took resort to this Court on September 14, 2011 by filing before the Justice in Chambers, Madam Justice Wolokolie, a petition for a writ of prohibition. They sought to have this Court declare as unconstitutional the action by the Co-respondent National Elections Commission in certificating and qualifying certain presidential aspirants, nominated by their political parties, to contest the ensuing October 11, 2011 Presidential and Legislative Elections; and to have this Court undo the 1st Respondent's qualification and certification of the named presidential aspirants. The following form the factual background leading to the filing of the petition for the writ of prohibition.

On August 22, 2011, the National Elections Commission, 1st Respondent in these proceedings, as a matter of public record, announced that it had provisionally certificated sixteen (16) candidates to contest the presidency in the ensuing Presidential and General Elections. No official objections were raised, either with the National Elections Commission or any judicial body regarding the certification of any of the presidential aspirants or candidates listed by the National Elections Commission.

On September 9, 2011, eighteen days thereafter, the 1st respondent National Elections Commission had published what it denominated as the "final" listing of the candidates for various elective positions in the ensuing October 11, 2011 General and Presidential Elections. Amongst the candidates certificated in this "final" listing by the 1st respondent National Elections Commission were the sixteen presidential candidates named by the Commission in its August 22, 2011 preliminary listing. It is this latter and final certification that the petitioners, the Movement for Progressive Change (MPC)

and Abraham G. Massaley, Sayku Kromah et al., denominating themselves as "Concerned Citizens of Liberia", acting jointly, had raised a constitutional challenge, terming the qualification and certification as illegal and unconstitutional.

The petition states three basic premises for the challenge: (a) that the aspirants certificated and qualified by the 1st respondent National Elections Commission to contest the presidency in the ensuing October 11, 20111 Presidential and General Elections did not meet the residency requirement set out in Article 52(c) of the Constitution since none of the said aspirants had resided in Liberia for ten "consecutive" years; (b) that the 1st respondent National Elections Commission's action, in certificating and qualifying the named presidential aspirants of the 3rd respondents political parties, was not only in violation of Article 52(c) of the Liberian Constitution, but that 1st respondent did so knowing that the certificated candidates did not meet the constitutional requirement of Article 52(c); and that the action of the 1st respondent National Elections Commission, with the acquiescence of the 2nd respondent Ministry of Justice and in conspiracy with the 3rd respondents political parties, was tantamount to an act of treason, as defined by Article 76 of the Constitution. The 3rd respondents, whose qualifications are being challenged, include the Congress for Democratic Change (CDC), represented by its Standard Bearer, Winston A. Tubman; Liberia Transformation Party (LTP), and its Standard Bearer, Reverend Kennedy; Unity Party (UP), represented by its Standard Bearer, Ellen Johnson-Sirleaf; The National Union of Democratic Progress (NUDP) and its Flag Bearer, Prince Y. Johnson; Liberty Party, and its Standard Bearer, Charles Walker Brumskine; The National Democratic Coalition (NDC), and its Standard Bearer, Dew Tuan Wleh Mason; and all aspirants who, [although petitioners did not specifically name] but elected to refer to as "similarly situated".

We note that where the constitutionality of legislation or conduct of an administrative agency is challenged, it has been the practice in this jurisdiction for the Minister of Justice/Attorney General to intervene as a matter of right granted under the law, See Civil Procedure Law, Rev. Code l:S.64, but in the instant case, the Ministry of Justice,

R. L., represented by the Attorney General, Counselor Christiana H. Tarr, was named in the petition as the second co-respondent.

In order that the contentions and arguments of the petitioners are addressed in their full context, we deem it appropriate, in setting the basis for this opinion, to reflect in detail the essence of those contentions and arguments, as raised in the seventeen-count petition, and set forth below:

1. That the 1st Petitioner, the Movement for Progressive Change, is a political party certificated and licensed by the 1st Respondent on December 8, 2010 to participate in the democratization of the country, canvass for and produce a progressive and responsible leadership through the ballot box in the forthcoming October 11, 2011 Presidential and general Elections pursuant to Chapter VIII, Articles 77, 78, 79, 80, 81, 82, 83 and 84 of the Liberian Constitution; that by virtue of the 1st Petitioner's certification as a political party by the 1st Respondent, a fiduciary obligation was created between the 1st Petitioner and the 1st Respondent that compel them to respect and honor every statutory law governing elections, including the 1986 Constitution, and specifically those provisions of the 1986 Constitution relating to elections.

We note that no documents were attached to the Petition to confirm the allegations laid in the Petition, and no allegations were made by the Petitioners as to whether the 1st Petitioner had fielded a presidential candidate, whether and if the candidate had met the constitutional requirement of Article 52(c), and whether the 1st respondent National Elections Commission had certificated and qualified the said presidential candidate nominated by the 1st petitioner.

2. That the 1st respondent National Elections Commission had the statutory responsibility under section 2.9(n) of the Elections Law to "vet and scrutinize all candidates for elective public offices and accredit their candidacy", as well as "reject the candidacy of any [person] who has not met up with or is not qualified" in keeping with the 1986 Constitution [and] the New Elections Law, and especially Section 15.2

of the First Respondent Guidelines; and that consistent with its mandate, the 1st respondent National Elections Commission had the duty to administer and enforce all laws relative to the conduct of elections in Liberia, especially the 1986 Constitution.

3. That Article 52{c) of the 1986 Constitution states that: "No person shall be eligible to hold the office of President or Vice President unless that person is resident in the Republic ten years prior to his election", the word "Republic", it says, being "synonymous to domicile which is unchanging, stationary and comes from the Latin word 'Domus' which means a dwelling house or home....a place where an individual has a true, fixed and permanent home to which he/she intends to return whenever he/she is absent." Using such reasoning, the petitioners state further that the "Republic in which a person is to hold the office of president or vice president shall reside or be a resident for ten years prior to his election is immovable, fixed and will continue to exist as long as Liberia remains a statehood In the comity of nations and therefore is arguably synonymous to a domicile."

4. That the residency requirement in "Article 52(c) demands a constitutional durational period of ten years, during which a person, to be eligible to hold the office of president or vice president, shall be a resident during the ten years within the Republic consecutively...and that a person shall reside in that impermanent, temporary and transient abode or dwelling place ten years prior to his election; and [that] the 1st respondent [has] woefully misconstrued the spirit and intent of Article 52(c) by suggesting that residency is synonymous to domiciliary and therefore has proceeded to certificate unqualified individuals to contest the Liberian presidency."

5. That the ten year residency clause contained "in Article 52(c) of the 1986 Constitution is intended by the Legislature as a pure residence requirement, which must be acquired consecutively or consistently for would-be presidential candidates to qualify; it demands that any person, irrespective of his natural attributes, political experience, belief, or academic credentials and moral status submit[s] to the civic, social, and political fabric of the Republic for a specified period, i.e. 10-years prior to

contesting the highest seat in the Land...."

6. That the 3rd respondents, "being political parties, although fully aware of the facts and circumstances as political parties that they were under a solemn obligation to respect the rule of law, all electoral statutes and the 1986 Constitution at all times, for no other reasons but to pursue a selfish agenda, chose as their presidential aspirants/candidates, Winston A. Tubman, Ellen Johnson Sirleaf, Prince Y. Johnson, Rev. Kennedy Sandy, Charles Walker Brumskine and all other parties and aspirants similarly situated, nominated and forwarded their names to the 1st respondent, even though said nominees/aspirants did not meet Article 52(c) 10-year durational residency requirement to contest the Office of the President. 1st petitioner says despite such glaring defects in the nominees' qualifications, the 1st Respondent, in total disregard of the 1986 Constitution, has qualified and certificated the said nominees/aspirants with the unbridled acquiescent and approval of 2nd respondent, also in total violation of the Constitution of Liberia." We note again the except for the allegation that the presidential candidates did not meet the ten-year residency requirement, the Petition did not state in any specific terms or attach any documents to authenticate or substantiate the "glaring defects in the nominees' qualifications.

7. That 1st Petitioner filing of the petition was not out of anger, fear or attempt to delay the electoral process or the candidacy of any presidential aspirant but was in response to the "flagrant violation of the 1986 Constitution, specifically Article 52(c) and the concerted action by the 1st Respondent in cohort with the 2nd Respondent to undermine our democratic process by introducing extra-constitutional actions or arrangements to satisfied a vested political interest to the detriment of our young democracy."

8. That with specific reference to the 2ndPetitioners, Abraham Massa ley and Sayku Kromah, they averred that they the action was a "public interest litigation" which sought to address hideous violations and undermining of key provisions of the 1986 Constitution being perpetrated by the 1st , 2nd and 3rd Respondents for selfish reasons,

acts which the petitioners characterized as a "treasonable offense" under Article 76{5) of the Constitution, "a capital crime that carries a life imprisonment or a death penalty." Hence, they asserted that they were not required to demonstrate or show any injuries or damages suffered by them in order to have legal standing or capacity to bring the matter to court to prohibit, hinder or arrest the reckless abuse of the law, "especially where the intent is to debase the organic law of the land". The 2nd Petitioners cited Article 26 of the 986 Constitution as vesting such a right in them.

9. That the Co-respondent Unity Party (UP), its Chairman and Madam Ellen Johnson Sirleaf, the presidential aspirant, "knew or had reason to know that it [had] not [met] the Constitution's 10-year residency requirement, and in an apparent fear of a constitutional breach or a violation, caused the holding of a national referendum, in concert with the 1st Respondent, and openly spearheaded on radios, televisions and in the newspapers, a campaign for the "yes votes" for the entire propositions, specifically the First Proposition "that talks about the reduction in the 10-year durational residency requirement to five years, as a form of constitutional amendment, in order to qualify and contest the ensuing October 11, 2011 elections, but the entire propositions were overwhelmingly and resoundingly rejected by the Liberian people. Further, 1st and 2nd petitioners say if one of the 3rd co-respondents, namely the Unity Party's (UP) nominee/aspirant, Ellen Johnson Sirleaf, was qualified or if all of the 3rd Respondents' nominees/aspirants were qualified, as it is being suggested by the 1st Respondent, what was the constitutional necessity for holding a national referendum with the inclusion of the first proposition?"

10. That "the only obvious reason for the conspicuous silence of the 2nd Respondent or it seemingly halfhearted behavior not to take affirmative and decisive actions to arrest the continued utter abuse or violation of the 1986 Constitution, especially Articles 52(c) and 76(5) is that it has pretentiously reduced itself to a "lame duck" simply to aid and abet the violations of the Constitution by the 1st and 3rd Respondents for purely selfish reasons."

11. That "the 1st Respondent has brazenly violated the Constitution by abrogating or attempting to abrogate, subverting or attempting or conspiring to subvert the Constitution by ignoring and setting aside the ten (10) [years] residency clause by proceeding to qualify and certificate presidential candidates, namely, Winston A. Tubman of the Congress for Democratic Change (CDC), Ellen Johnson Sirleaf of the Unity Party (UP), Dew Tuan Wleh Mayson of the National Democratic Coalition (NDC), Charles Walker Brumskine of the Liberty Party (LP), and all other parties and aspirants similarly situated---people who have not met up with such requirement or have not resided in the Republic of Liberia ten years prior to the holding of the ensuing October 11, 2011 elections."

12. That the candidates named in the petition are not qualified or meet the residency requirement of ten years and the 1st Respondent is fully aware, or have reasons to know, that its qualification and certification of these individuals as presidential candidates, inarguably amounts to abrogating or attempting to abrogate, subverting or attempting or conspiring to subvert the Constitution (1986), especially Article 52(c); and although 1st respondent proceeded in vain to cure this constitutional defect by holding a national referendum in which it made Article 52(c) the first proposition for constitutional amendment to reduce the residency qualification from ten years to five years in order to qualify its benefactors who are nominees/aspirants of the named political parties, the 3rd Respondents herein, and the proposition had failed miserably to be passed by the voters, the 1st Respondent had chosen to sport with or trample underfoot the 1986 Constitution for selfish reasons. Moreover, the petitioners said, the 2rd Respondent, as enforcer of the law ---the 'police power' of the Liberian state --- was not only silent but was openly aiding and abetting the 1st Respondent [to] unduly violate the 1986 Constitution, especially Article 52(c) just to qualify presidential candidates.

13. That the failure of the first proposition or the entire referendum to pass a constitutional test of "yes votes" is clear that the sovereign citizens of Liberia do not want any premature constitutional amendments---they want a strict and unfettered

adherence to all provisions of the 1986 Constitution not least Article 52(c); that despite the unanimous verdict of a resounding "NO" to the amendment of Article 52(c) as it is reflected in the national referendum results, the 1st and 2nd Respondents have ganged up not only to trample underfoot the VERDICT of the referendum results but to make the ten years residency durational requirement a laughing stock by ignoring it as if it is not a fundamental constitutional requirement for anyone seeking the highest office in the land; that the 1st , 2nd and 3rd Respondents, in blind pursuit of power or other pecuniary objectives have arrogated unto themselves the power and authority to suspend, set aside or ignore the ten years residency requirement of Article 52(c) of the 1986 Constitution with an offhand approach or approval of the 2nd Respondent.

14. That this Court should rule to bring finality to the continuous violations of the Constitution by the 1st , 2nd and 3rd respondents such that it lends credibility to the electoral process, by ensuring that the proper and qualified candidates who have met the 10-year durational residency period are qualified and certificated consistent with a genuine and truly national constitutional reform process, as the inclusion of the names of the 3rd Respondents in the ensuing elections will do substantial irreparable harm or damage to the democratic credentials of Liberia and its prospects for a genuine constitutional order and hinder, if not reverse, the promotion of peace, unity and genuine reconciliation and thereby remove any likelihood that the electoral process may provoke violence."

On the basis of the foregoing, the petitioners insisted that "a writ of prohibition is the proper remedy at law to inhibit, restrain or stop the flagrant abuse of the organic law of the land and thereby safeguard and arrest the unprovoked attacks and extra-constitutional actions of the respondents..."

It is important to note two significant points: Firstly, although Article 52(c) of the Constitution references presidential and vice presidential candidates as being required to meet the residency requirement, the petitioners have chosen to focus only on the presidential candidates. A logical conclusion may be drawn therefrom that all of the

vice presidential candidates had met the requirements of Article 52(c). Secondly, no mention was made of the presidential candidate of the first petitioner who, the respondents argued, was certificated at the same time as the other presidential candidates, or notice given that there was such a candidate and the he was legally certificated, unlike the other presidential candidates. We note further that the petitioners have not limited their challenge to only the political parties and aspirants specifically named in the petition, but have made the attempt, shown in the caption of the petition, to expand the coverage of the petition to "all other parties and aspirants similarly situated".

The respondents, who have been placed into three categories (1st , 2nd and 3rd) and in the case of the 3rd respondents, into sub-sets of the 3rd category, have responded separately, both in respect of the returns and briefs filed and the engagement of counsel, except for the 1st and 2nd respondents who have chosen to file joint returns and briefs. Thus, while the issues and contentions set forth and addressed by the respondents are very similar, and in many cases identical, given that there are divergence and variance of views expressed in the separate returns and briefs of the respondents as well as in the oral arguments of their respective counsel, we deem it appropriate to set out separately the contentions raised by each of the categories of respondents and the sub-sets categories of 3rd respondents.

The 1st and 2nd respondents, the National Elections Commission and the Ministry of Justice filed joint returns and brief, setting forth the following allegations and contentions:

1. That the petition was without any legal and factual basis in that the 1st respondent had required that each of the presidential and vice presidential candidates fill out a form wherein each of such candidates indicated how long he/she had resided in the Republic of Liberia prior to the 2011 elections; and that in compliance with the requirement each of the presidential candidates had stated that they had resided in Liberia for periods over and above that required by Article 52(c) of the Constitution;

that the language of Article 52(c}, not having stated whether the required residency period is consecutive or cumulative and whether or not it is immediately prior to the elections, the 1st respondent had no basis or authority to dispute the claims made by the candidates that each of them had resided in Liberia for more than 10 years prior to the 2011 elections and to thereby deny any of them of the right to participate in the said elections.

2. That the petitioners use of the word "consecutively" or "consistently" was tantamount to wrongly and illegally putting into Article 52(c) of the Constitution words that were never used by the drafters of the Constitution and the people of Liberia, and which were therefore not intended by them as the petitioners had maintained; and that had the framers of the Constitution intended such, the word "consecutive" would have been inserted in the document by the drafters of the Constitution.

3. That if the petitioners had any objections to the certification or qualification of the candidates by the 1st respondent, they should have filed such objections with the 1st respondent before the process was completed by the 1st respondent, and not wait until the process was completed. The Respondents exhibited documents which they alleged were filed with the 1st respondent by the 3rd respondents' presidential candidates showing the period they had resided within the Republic of Liberia.

4. That the two 2nd petitioners did not have standing to bring the action since at the time of the filing of the action they were out of the Republic, being at the time residing in the United States of America, and that not having designated any person as their attorney-in-fact, as required by Liberian law, there could not be an appearance for them before the Supreme Court. Further, that the said 2nd petitioners had exhibited no document(s) to authenticate their claim to Liberian citizenship as would vest in them the right to challenge the action of the 1st respondent National Elections Commission and the 3rd respondents, political parties and aspirants.

5. That prohibition would not lie because the standard set by law for prohibition to obtain did not exist, in that prohibition would lie only where the body complained of (a) did not have jurisdiction over a matter, or (b) having jurisdiction over a matter had exceeded the jurisdiction ascribed to it by law, or (c) had proceeded by wrong rules other than those which should be observed at all times. None of the foregoing, they said, existed in the instant case. Further, that while prohibition will lie to prevent an act and undo an act illegally done, it will not lie where the act sought to be prohibited had been completed, as in the instant case, where nothing remained to be done by the 1st respondent.

With regard to the 3rd respondents, we note that the petitioner had named twelve co- respondents, which had been effectively divided into six sub-sets, each of which sub-set contained a political party and the presidential aspirant of the party. As noted earlier in this opinion also, because each sub-set of the 3rd respondents had engaged separate counsel, filed separate returns and briefs, and advanced views, contentions and arguments that were at time at variance, we believe that it is appropriate to reflect the separate views, contentions and arguments advanced by each of the sub- sets co-respondents in the 3rd category.

The first sub-set of 3rd co-respondents, the Unity Party (UP), represented by its Chairman, and Ellen Johnson Sirleaf, the presidential aspirant, filed a 29-count returns and a six page brief in response to the Petition. In their returns, reiterated in their brief, the UP and Ellen Johnson Sirleaf, while acknowledging that UP was a registered political party under the laws of Liberia and that it had Indeed nominated Ellen Johnson Sirleaf, currently the President of Liberian, as its presidential candidate in the ensuing October 11, 2011 Presidential and General Elections, they denied that either of them had committed any violation of Article 52(c) of the Liberian Constitution or any provisions of the Elections Law of Liberia in nominating Ellen Johnson Sirleaf as candidate for the Office of President of Liberia. They also denied that the Elections Commission had violated any provisions of the Constitution or the Elections Law in certificating Ellen Johnson Sirleaf, or that any of their actions were

treasonable as the word "treason" is defined in Article 76 of the Constitution, and that even if solely for the purpose of argument, it could be said that the National Elections Commission was in error in certificating Ellen Johnson sirleaf, that error was not an act of treason. To substantiate that the 1st Respondent, National Elections Commission, had acted legally and properly in certificating Ellen Johnson Sirleaf, and that Ellen Johnson Sirleaf had met the ten-year residency requirement stated in Article 52(c) of the Constitution, co-respondents Unity Party and Ellen Johnson Sirleaf set forth the following factual and legal premise:

1. That Ellen Johnson Sirleaf was a natural born citizen of Liberia, born on October 29, 1938 in Monrovia, Liberia, unto Liberian parents; that having been born within the territorial bailiwick of Liberia, she is presumed to be a resident of the Republic of Liberia; and that the onus is upon any person challenging or assailing her residency as a citizen of Liberia to produce prima facie evidence to the contrary, which they said the petitioners had failed to carry out.

2. That Ellen Johnson Sirleaf remained a resident of Liberia by virtue of the fact that she (a) had served the Government of Liberia in various capacities in the 1970s, 1980s and 1990s; (b) was a founding member of Liberia Action Party on whose ticket she contested the senatorial seat in 1984, and on which she served as an Executive Members until 1997 when she resigned her membership to become a member of Unity Party; (c) became and remained Standard Bearer of Unity Party in 1997 and contested in the 1997 Elections, and again in the 2005 Special Elections, losing the former and winning the latter elections; (d) had in 1998, with others, founded a Liberian humanitarian not-for-profit organization, Mesuagon, on whose Board she served as Chairperson until 2005; (e) while having lived out of Liberia on a temporary basis "from time to time" during the period 1997-2003, on temporary contracts as a consultant or searching for funding for various development projects and humanitarian services rendered by Mesuagon, she maintained her residence in Liberia; (f) left Liberia in 2003 as a delegate to the Accra Peace Conference on Liberia and in the same year, after losing her contest for the Chairmanship of the Transitional Government, served

as Chairperson of the Good Governance Commission, provided for in the Comprehensive Peace Agreement on Liberia executed in Accra; (g) contested the 2005 Presidential and General Elections in 2005 as the Unity Party Standard bearer, in which she won the presidency of Liberia and which she holds to and including the time of filing of the petition; (h) has owned and continues to own various form of real and personal properties in Liberia, upon which she continues to pay taxes; and (i) that as a consequence of those factors, Ellen Johnson Sirleaf remained a residence of Liberia, her temporary absence from the country not having ever incapacitated her or deprived her of her residency status.

3. That while the co-respondents admit that Ellen Johnson Sirleaf was absent from the country from 1997 to 2003, she always had the intention of returning to Liberia and therefore never abandoned her residency of Liberia. Accordingly, they argue, she has been a resident of Liberia for fourteen years (1997-present), thereby meeting the requirement of Article 52(c) of the Constitution.

4. That 1st Respondent National Elections Commissions did vet and scrutinize Ellen Johnson Sirleaf and found her to be in compliance with the requirements of Article 52(c) of the Constitution, the Elections Law, and the Electoral Guidelines, as far as the residency requirement is concerned; that even assuming a place of abode or a dwelling place, or ownership of a developed real property was the test or was necessary to establish residency, that residency was established by the real properties owned by Ellen Johnson Sirleaf in Liberia for more than forty years, evidenced by the certificate issued by the Ministry of Finance of Liberia. The respondents attached in support of their allegations a number of documents, allegedly from the persons named therein, including a certificate from a Dr. Charles A. Clarke, certifying the period Ellen Johnson Sirleaf served as Standard Bearer of the Party between 1997 and 2005, which she continues to hold to the present; a certificate signed by Clavenda Bright-Parker, purporting to be Chairperson of Mesuagon, Inc., stating that Ellen Johnson Sirleaf was one of the incorporators of the organization and that she had been engaged in fundraising for the organization; other communications allegedly written or pertaining

to Ellen Johnson Sirleaf; newspapers clippings stating that Ellen Johnson Sirleaf was returning to Liberia in 1998;and a Statement of Property Valuation allegedly from the Ministry of Finance.

The respondents also relied on the recent Illinois Supreme Court Opinion in the case Walter P. Maksym et al., Appellees, v. the Board of Elections Commissioners of the City of Chicago et al., Appellants, which they asked this Court to accept as the proper and governing definition and approach to the issue of residency.

On the basis of the foregoing, they prayed that the petition be dismissed and denied, and that the Stay Order issued by the Supreme Court be lifted.

The second sub-set of 3rd Respondents, the Congress for Democratic Change (CDC) and Winston A. Tubman, the presidential aspirant of the CDC, elected to have only the CDC file returns to the petition, wherein it defended its action in nominating Co-respondent Winston A. Tubman to be its presidential candidate in the ensuing presidential and general elections. In its 19-count returns, co-respondent Congress for Democratic Change set out the following defense, being principally a challenge to the capacity and standing of the petitioners and a denial of any violation of Article 52(c) of the Constitution or any other laws of Liberia by them or the 1st respondent National Elections Commission in certificating and qualifying co-respondent Winston A. Tubman as a contesting candidate for the presidency in the ensuing presidential and general elections:

1. That the Elections Law of Liberia (1986) conferred on the 1st respondent National Elections Commission the statutory power to formulate and enforce guidelines and regulations for the control and conduct of elections and that under the said guidelines promulgated by the 1st Respondent, any complaint, required to be in writing, against actions of the 1st Respondent must mandatorily be filed before the 1st Respondent within seventy-two hours of the action taken by the 1st Respondent, and that it is only after a hearing and decision on the complaint, completed by the 1st Respondent, that

a party may resort to the Supreme Court on appeal, with the 1st Respondent being given the appropriate opportunity to respond to the notice of appeal. The Supreme Court, co-respondent CDC says, is therefore without jurisdiction to entertain the petition for the writ of prohibition, and that the petitioners, not having challenged the certification of the presidential candidates by the 1st respondent, done on August 22, 2011, within the period prescribed by the guidelines and regulations of the 1st respondent, they had no right to challenge before the Supreme Court, on September 14, 2011, twenty-three days thereafter, any acts done on August 22, 2011, and September 10, 2011.

2. That the petitioners claim that Article 52(c) of the Liberian Constitution requires that a presidential and vice presidential candidate be resident ten consecutive years in Liberia as a precondition to contesting for those positions is false and misleading. Rather, it says, Article 52{c) does not state that a person must be a resident for ten consecutive years prior to his election in order to become president, only that a person be a resident for ten years; and that they therefore did not violate the Constitution or the Elections Law.

3. That Co-respondent presidential and vice presidential candidates, Ambassador Winston A.
Tubman and Ambassador George Weah, were not in violation of the ten year residential clause of Article 52(c) of the Constitution as Ambassador Winston A. Tubman was born in Liberia, grew up and went to school in Liberia, was a member of the Supreme Court Bar and served as Minister of Justice and Attorney General of Liberia; that Ambassador Weah was also raised in Liberia; and that in all of this period both Ambassador Tubman and Ambassador Weah maintained their resident status in Liberia.

4. That the two aspirants were international civil servants rendering services to the United Nations and its agencies in various capacities and roles for several years prior to 2005 and therefore under the 1969 Vienna Convention on the Law of Treaties and

the optional protocols, to which Liberian is a party, Liberia has the obligation to encourage its citizens and not to provide hindrance for their citizens to render services to the United Nations and its agencies. Notwithstanding, the CDC asserts, the two men have always maintained their respective permanent residencies within the Republic of Liberia and have uninterruptedly paid taxes to that effect over the several years.

5. That the Constitution was suspended for several years during the several interim governments from 1991 to 1997 and from 2003 to January 2006; and that petitioner reliance on Article 52(c) to preclude the CDC presidential aspirant from contesting the presidency of Liberia is therefore irregular and in contravention of the general principle of constitutional law.

6. That as Liberia was in a state of civil war between 1990 and 2006, its citizens had the right under the principle of natural justice and natural law of preservation to seek protection in other nations as refugees, seek political asylum, or just change residence for the preservation of their dear lives; that under such condition when the state had collapsed and was unable to protect its citizens, and the Constitution was expressly and constructively suspended, the citizens were at liberty to seek protection in third countries and therefore cannot be held liable in violation of the Constitution.

The co-respondent CDC therefore prayed that in view of the foregoing, and especially as this
Court lacked the appropriate jurisdiction; the Court should dismiss the petition.

The third sub-set of the 3rd respondents, the National Union for Democratic Progress (NUDP) and Prince Y. Johnson, aspirant, set out several basic contentions in their returns and brief for the dismissal of the Petition:

1. That the petitioners had misinterpreted Article 52(c), in that the said 52(c) was not intended to exclude natural born Liberians from contesting the presidency of their country or participating in the democratic process, and hence the provision was not

applicable to him since he, Prince Y. Johnson, was a natural born Liberian; that being a natural born Liberia, the applicable provisions of the Constitution were Articles 52(a) and 52(b), the condition of which he had met having been born in Liberia and lived in the country all his life until 1992 when he was forced to flee the country and settle in Nigerian where he was granted political asylum, his departure being due to the Liberian civil war. Thus, the co- respondents say, the 14 years stay by co-respondent Prince Y. Johnson did not affect his residency in Liberia, given the fact that he had returned to Liberia, been elected as Senior Senator for Nimba County, and owned property in Liberia; and that he could not be denied of his fundamental rights under the Constitution merely because of his absence from the country due to the civil war.

2. That the absence by a person from Liberia, contemplated by Article 52(c) of the Constitution, in order to be applicable, must be deliberate, purposeful and voluntary. This, the co-respondents said, was not the case with co-respondent Prince Y. Johnson since his absence from the country was involuntary.

3. That Article 52(c) was intended to apply only to non-natural born Liberians, evidenced by the fact that sub-section (c) ends with a semi colon while sub-section (b) ends with a period. The co-respondents therefore maintained that the Article 52(c) provision means that one who is not a natural born Liberia must have resided in Liberia for ten years and own unencumbered real property worth at least twenty-five thousand dollars.

4. That the ten years residency requirement operates for the entire life of a Liberian and not necessarily ten years immediately preceding an election year, and that any interpretation as set forth by the petitioners "could unconstitutionally disqualify a Liberian who travels abroad to study or who had to travel because of the civil war". This, they say, was not the intent of the drafters of the Constitution.

The fourth sub-set of the 3rd respondents, the Liberty Party and Charles Walker Brumskine, aspirant, similarly challenged the capacity and standing of the petitioners

and the interpretation given Article 52(c) of the Constitution by the petitioners. The details of the defenses set forth by the said correspondents are set forth below, as follows:

1. That the petitioners lacked legal standing to file the petition because they had failed to show (a) that they had suffered a distinct actual or threatened injury, and (b) that there is a direct and traceable casual connection between the injury, if any, and the respondents' challenged conduct.

2. That the petitioners had filed the wrong form of action since under the Elections Law it was the National Elections Commission that had the exclusive power and authority to screen, certificate, reject unqualified candidates or accredit candidates for elective public offices, and that under the said Elections Law any party, a party dissatisfied with the decision of the NEC should file an appeal with the Supreme Court, rather than a petition for a writ of prohibition, as done by the petitioners.

3. That under the principle of constitutional law, the court has the duty to construe the provisions written deliberately and carefully by the framers of the Constitution and not to adopt or rewrite the provisions, as the petitioner would have the Supreme Court do. Nowhere in Article 52(c) of the Constitution, the co-respondents asserts, is it stated that in order to be eligible to contest for the presidency or vice presidency the aspirant must have resided ten consecutive years prior to the election.

4. That in any event, the Comprehensive Peace Agreement of 2003 suspended certain provisions of the Constitution, including Article 52(c), and that the said suspended provisions, including Article 52(c), were only restored and became operational on January 16, 2006, with the inauguration of the new constitutional government. The co- respondents therefore reasoned that since ten years have not elapsed since the restoration of the suspended provisions of the Constitution, including Article 52(c), which period will only lapse after January 16, 2016, the ten year residency period stipulated by Article 52(c) cannot be used to determine the

eligibility or ineligibility of a presidential or vice-presidential candidate before January 16, 2016. Hence, they say, co-respondent Charles Walker Brumskine is not affected by the provision and cannot therefore be said to be barred or precluded from contesting the presidency in the ensuing elections.

5. That further, because the issue of residency is a novel one in this jurisdiction, resort should be made to the common law of the United States, as permitted under Section 40 of the General Construction law, title 16, Liberian Code of Law of 19S6; that under the said law, resort should be made to the Illinois case of Maksym et at. v. The Board of Election Commissioners, wherein the Supreme Court of Illinois, in January 2011, held that to establish residency, only two elements are required: (1) physical presence, and (2) an intent to remain in the place as a permanent home, both of which standard or requirement co-respondent Charles Walker Brumskine had met; and that 1st respondent national Elections Commission, believing that those criteria had been met, proceeded to certificate and qualify co-respondent Charles Walker Brumskine to contest the presidency in the ensuing elections. They argued also that once residency is established, the presumption is that it continues and the burden of proof than rest on the party claiming that it has been changed or lost. The party having the burden of proof, being the petitioners in the instant case, having failed to meet that burden of proof in objecting to co-respondents Brumskine's certification and qualification by the 1st respondent as a presidential candidate, by a showing that the co-respondent had abandoned or otherwise lost his residency in Liberia, the petition should be dismissed.

6. That the Liberian people had rejected proposition 1 which called for the residency of a person seeking the office of president of five years immediately prior to his election, which evidenced that there was no intent that the current Article S2(c) of the Constitution should be interpreted to mean ten consecutive years, and therefore the Supreme Court cannot be requested to change the Constitution by the addition of the word "consecutive or "continuous" before the word "years".

The co-respondents therefore, similarly as with the other co-respondents in the category of the 3rd respondents, prayed this Curt to dismiss the petition.

The fifth sub-set of the 3rd respondents, the Liberia Transformation Party, and Its aspirant, Rev. Kennedy Sandy, also filed returns to the petition. In their returns, the Liberian Transformation Party and its presidential aspirant, Rev. Kennedy Sandy, also challenged the standing and capacity of the petitioners and the authority of the Supreme Court to entertain the prohibition, as well as the substantive issue of the petitioners' interpretation of the residency clause of Article S2(c) of the Constitution. The returns, as summarized, stated:

1. That the petitioners had violated Chapter 9, Section 9.4 of the Elections law which required that a party aggrieved by any decision of the National Elections Commission, must first file a complaint before the Commission where an administrative adjudication will be conducted by the NEC and should be completed prior to the commencement of any action by the Judiciary Branch. This cited Act, they say, states the reason for the requirement as being "to prevent appeals or petitions against NEC to the Supreme Court of Liberia, or any other Liberian court, concerning matters which the NEC has not duly been notified of an exception, received a complaint, reached a decision on the complaint, and had the opportunity to respond to any notice arising from the complaint." The final clearance by the NEC, they say, was issued on September 9, 2011. Hence, not only was the petition filed later than the date prescribed by the statute, but it was filed before the Supreme Court rather than the Board of Commissioners of the NEC.

2. That whilst t is true that Article 52(c) provides that "No person shall be eligible to the office of President or Vice President unless that person is a resident in the Republic ten years prior to his election", the provision does not require a citizen wishing to contest the position of President of Liberia to be a resident for ten consecutive years as contended by the petitioners; that the provision is unambiguous and needs no interpretation; and that the petitioners interpretation to that effect that it means ten

consecutive years prior to election has a deliberate ulterior motive designed to misinterpret the provision.

3. That co-respondent Rev. Kennedy Sandy was born in Liberia, went to elementary and high school in Liberia, worked in Liberia for many years as a preacher of the gospel, and owns properties in Liberia; that the aid co-respondent has remained a resident of Liberia for more than seventy-five percent of his life and intended to remain a resident of Liberia, and is therefore qualified to run for the presidency as provided by the Constitution; that it is only because the petitioners sensed defeat in the ensuing elections and seek to have an advantage over the other political parties and frustrate the electoral process that they, the petitioners, have filed, in bad faith, the petition for the writ of prohibition, since the filing of the petition has resulted in the issuance of a Stay Order by the Supreme Court; and that the 2nd petitioners are mere paid agents who has filed the petition for the writ of prohibition solely for the purpose of delaying and to baffling the ensuing elections from being held as directed by the Constitution.

The sixth set of 3rd respondents, the National Democratic Coalition and its presidential aspirant Dew Tuan Wleh Mason, did not file returns to the petition and were not represented by counsel at the hearing of the petition.

The foregoing constitutes the full background of these prohibition proceedings. From the facts narrated above, and the contentions raised by the contending parties, this Court is asked to determine three prime issues, the first two of which are procedural in nature and relate to the capacity and standing of the petitioners. While the last one which deals with the substantive issue, center around the interpretation of Article 52(c) of the Constitution as it relates to the residency requirement for presidential and vice presidential contestants. The three issues are:

1. Whether this Court can assume jurisdiction over these proceedings, the Elections Law and Regulations promulgated by the National Elections Commission being clear

on their face that any challenge to the decision of the National Elections Commission must first be placed before the National Elections Commission for a final determination and only thereafter an appeal taken to the Supreme Court?

2. Whether the 2nd petitioners in these proceedings have standing to bring the instant prohibition proceedings, they not being in Liberia and not having executed any instrument authorizing any counsel or party to represent them?

3. Whether the ten-year residency clause for presidential and vice-presidential candidates contesting the Presidential and General Elections, stipulated in Article 52(c) of the Constitution, although not specifically stating the word "consecutive" means ten consecutive years prior to the election of a person to the presidency, and whether this provision applies to the 20 II presidential and general elections?

We shall deal with the issues in the order stipulated above. However, before proceeding to address the issues, we believe that it is important to disabuse the petitioners of the contention that the acts of the 1st respondent in certificating the presidential aspirants, the alleged inaction or acquiescence by the 2nd respondent in the certification, and the act of the 3rd respondents in nominating the named aspirants as their presidential candidates are acts tantamount to treason, as that term is defined in Article 76 of the Liberian Constitution. This Court holds that even if the acts of the various respondents, complained of by the petitioners, were based on a misreading or misinterpretation of Article 52(c) of the Constitution by the 1strespondent, that error can never be a basis for the preposterous and utterly illogical claim of treason. Indeed, it is because of such perception of treason and the history experienced by the nation and the pains suffered by many of its citizens, growing out of such seemingly deliberate devious perception, that caused the framers of the Constitution consciously determined to define the term in the Constitution and specifically set the standard for charging a person with the commission of the offense of treason.

The contention, therefore, that the acts of the 1st , 2nd and 3rd respondents, in submitting the names of presidential aspirants whom the petitioners claim do not meet the requirements of Article 52(c), and are therefore treasonable, being without any legal, factual or other basis or merits, is dismissed without any further consideration. Such contention, in our view, demonstrates of a grave lack of knowledge of the law. Moreover, if the petitioners felt strongly that treason had been committed by the respondents. Then they should know that such is not the province or purview of prohibition; rather, that it is a proper subject for an indictment before a criminal court of competent jurisdiction for the crime. Again, bringing such accusation to this Court of last resort demonstrates the severe Jack of knowledge of the Jaw, a disregard of and for the Jaw, an attempt to deceive the Court, or a desire to create mischief. In any case, to subscribe to such contention, not of the essence of the case, would mean that the matter is not properly before us, and therefore warranting dismissible. However, because, as we have held, the issues are different and are before us, legally and properly, as we shall later show, we shall proceed with the determination thereof.

In regards to the first issue presented, the 1st , 2nd and 3rd respondents, both in their returns and briefs, and in their oral arguments, have challenged the capacity and standing of the petitioners to bring these prohibition proceedings and the jurisdiction of this Court to entertain these proceedings because, according to them, the petitioners had failed to: (a) follow the procedures prescribed by the Elections Law and Guidelines by first bringing an initial complaint before the I" respondent National Elections Commission, awaiting a disposition thereof by the Commission, and appealing therefrom to the Supreme Court rather than coming directly to this Court on prohibition as prescribed by the Elections Law and the Guidelines of the National Elections Commission; (b) show that they were injured by the action of the 1st respondent in certificating and qualifying the 3rd respondents political aspirants for President of Liberia, or that the said action threatened them, or that the 1st respondent had failed to follow rules which ought to be observed at all times; (c) show that the 2nd petitioners, although claiming to be Liberians and living in the United States of America, were truly in fact Liberian citizens, and that being Liberian

citizens, had vested authority in any person or institution in Liberia to represent them in these proceedings. They assert that the 1st and 2nd petitioners were without the discretion to deviate from the mandatory procedures laid out under the relevant provisions of the Elections Law and Guidelines and the Civil Procedure Law regarding the institution and maintenance of actions by persons who are without the bailiwick and jurisdiction of Liberia; and that the deviation deprived this Court of the required jurisdiction over the petitioners' persons and rendered the petition dismissible.

The Elections Law of Liberia, approved September 29, 1986, and published October 4, 1986, and which is currently the governing Elections Law of Liberia, vests in the National Elections Commission (NEC), 1st respondent herein, the power and authority to administer the Elections Law, including (a) the enforcement of all laws relating to the conduct of elections; (b) the accrediting and registering of political parties and independent candidates who meet the minimum requirements laid down by the NEC; (c) the conducting of all elections for elective public offices ... and declaring of the results thereof; (d) the formulating and enforcing of guidelines controlling the conduct of elections for elective public offices, which guidelines shall not be inconsistent with the provisions of the Constitution and the Elections law; and (e) the screening of candidates for elective public offices and accrediting of their candidacy and/or rejecting of the candidacy of anyone who is not qualified under the Elections Law and the guidelines laid down by the Commission. See Elections Law, Rev. Code 11:2.9. The same Act, at Section 2.9(q) states that "Appeal from the decision of the Commission in any election contest shall lie before the Supreme Court in accordance with the provisions of this title relating to elections contest."

The respondents further argue that the National Elections Commission, 1" respondent herein, acting pursuant to the authority granted it to formulate and enforce guidelines controlling the conduct of elections for elective public offices, issued on July 20, 2005 Elections Guidelines, section 9.4 of which, entitled "Submission of Complaints", Regulation of Complaints and Appeals, states: "Where a complaint concerns an action

or decision of the NEC itself, then the complaint shall be submitted within seventy-two (72) hours of the time that the action or decision (or omission, if the complaint involves an omission) has been commenced or taken". Further, section 3(b) of the said Regulations states that: "the administrative adjudication of any such matter shall be completed prior to the commencement of action by the Judiciary Branch, to prevent appeals or petitions against the NEC to the Supreme Court of Liberia. or any other Liberian court, concerning matters upon which the NEC has not duly been notified of an exception, received a complaint, reached a decision on the complaint, and had the opportunity to respond to any notice of appeal arising from the complaint."

According to the co-respondents who challenged the capacity of the petitioners and the jurisdiction of this Court in the matter, the petitioners should have adhered to those mandatory procedural requirements, firstly by filing a complaint with the 1st respondent National Elections Commission within seventy-two hours of the accreditation and qualification of the candidates for the elective office of President of Liberia, await the conduct of a hearing by the Commission into the complaint, and thereafter, being dissatisfied with the decision of the Commission, appeal the matter to this Court. They contend that under the circumstances presented in the case and the failure of the petitioners to adhere to the procedures set out by the laws cited above, this Court is without jurisdiction to entertain the petition for the writ of prohibition; rather, that the authority this Court is clothed with, under the mentioned laws, is limited only to entertaining a hearing on appeal, assuming that the prescribed procedures under the law had been followed.

Ordinarily, this Court would be in full agreement with the respondents' contention; and we would also accept as tenable that petitioners' failure to first lay their protest and complaint before 1st respondent NEC, the body authorized by law to receive, examine, and investigate such a complaint and to scrutinize evidence from all the interested parties, is a fatal error on the part of the petitioners. Two legal principles adhered to by this Court in a long line of cases would support such a position.

Firstly, where the law provides that an aggrieved person/party must exhaust all of the administrative remedies availed by law as a prerequisite to seeking a court's intervention in regards to the legality of the agency's decision or its conduct, this Court has held that that course must be followed. Keyor v. Borbor and Carr, 17 LLR 46S (1966). This Court has observed that the petitioners have, in none of their submissions, directly responded to what has been pointed out as petitioners' woeful failure to lay a complaint before co-respondent NEC as a fundamental requirement to compel an appellate review of the complaint embodied in their petition now laid before this Court of last resort, except to state that such right Is conferred on them by Article 26 of the Constitution and that the action is consistent with that right.

In Keyor, referred to above, the petitioner for a writ for prohibition failed and neglected to obey the law governing removal of a case/complaint from an administrative agency to the Supreme Court. In dismissing the petitioner's petition, this Court said: "It is o general rule of low that o person whose constitutional rights have been invaded by an act of the Legislature or of any administrative board must raise the objection of the earliest available opportunity and exhaust the remedies which may have been provided for the correction of unreasonable and improper orders before he will be permitted to make on attack in the courts on the constitutionality of the statute". Ibid. 468. See also Vamply of Liberia, Inc. v. Kandakai.._22LLR 241(1973).

Common law authorities are generally agreeable on this point; that failure by an aggrieved party to raise an opportune objection to an order of the court viewed as an invasion of the party's constitutional right may be regarded as a waiver by the failing party. 16 AM JUR. 20 Constitutional Low, §159. Indeed, as espoused by a recognized authority under the Liberian Reception Statute, section 40 of the General Construction Law, title 1S (19S6 Code), "The general rule is that a constitutional question must be raised at the earliest opportunity or nit will be deemed waived....Additionally, a voluntary failure to assert a right provided by statute

constitutes a weak foundation for a claim that the statute denies a constitutional right." Ibid.

Yet, while as stated earlier this Court would ordinarily consider that a mandatory procedural direction prescribed by the law must be followed, we believe that the situation presented in the instant case is different and presents an exception to that general principle stated above. Liberian National Union, et al. v. The National Elections Commission (NEC), decided on September.... 2011, at the Special Session, Supreme Court of Liberia, September 2011. We are of the opinion that because the issue presented and the challenge raised by the petitioners do not partake of an ordinary case, of a complaint of a violation of a constitutional right, but rather require interpretation of the Constitution, ambiguous in its wording, that general principle of law is not applicable to the instant case. We therefore do not accept the contentions raised by certain of the co-respondents that the issue has been improperly raised before this Court since it is this Court that is clothed with the constitutional authority to decide constitutional issues.

Firstly, while it is true that Section 2.9(a) vests in the National Elections Commission the power "to administer and enforce all laws relative to the conduct of elections throughout the Republic of Liberia" and Sections 2.9(h) and 2.9(u) state one such powers to be "formulate and enforce guidelines controlling the conduct of all elections for elective public offices", the latter sections place a caveat on the exercise of that power, to the effect that all such guidelines "shall not be inconsistent with the provisions of the Constitution and the Elections Law." [Emphasis ours] We note that the provisions of the Guidelines quoted above are so overly broad that they cover all elections and elections related matters, not just the certification of candidates for the presidency of the Republic; and that as such if they were to be applied across the board, they would come into conflict with certain provisions of the Constitution, which the Elections Law that vest the power prohibits.

The matter before us is not another ordinary electoral matter determined by the

National Elections Commission which would require that the prescribed administrative procedural process be followed. Rather, the matter involves a challenge to acts which all of the parties to these proceedings, including the 1st respondent National Elections Commission, agree require interpretation of a constitutional provision by this Court. Nowhere in the Constitution or in the Elections Law is the NEC vested with the power or the authority to pass upon an issue that requires constitutional interpretation. The Constitution, at Article 2, is very clear on the issue. It states that the authority to declare any law, treaty, statute, decree, customs and regulations, unconstitutional is vested solely in the Supreme Court. The provision clearly says that the Supreme Court acting pursuant to its power of judicial review can declare the acts or laws unconstitutional. It does not say that the Supreme Court acting pursuant to its power of appellate review. LIB. CONST., ART 2 (1986). And while Article 66 of the Constitution states that "the Supreme Court shall be the final arbiter of constitutional issues...", this has never been interpreted to mean that an administrative body, such as the Elections Commission, has the authority to first deal with or interpret the Constitution or resolve a constitutional issue before the Supreme Court can assume jurisdiction to determine the constitutionality or unconstitutionality of the law or the act complained of, especially in light of Article 2 of the Constitution.

The position taken by the Court is clearly supported by the Rationale Document released by the Constitutional Advisory Assembly. That document shows a deliberate change of the wording contained in the original Draft Constitution produced by the National Constitution Commission. The initial wording of Article 2, in the Draft Constitution released by the National Constitution Commission, stated:

"The Constitution is the supreme and fundamental law of Liberia and its provisions shall have binding force on all authorities and persons throughout the Republic. Any laws, treaties, statutes, decrees and regulations found to be inconsistent with it shall to the extent of the inconsistency by void and of no legal effect. The Judiciary, pursuant to its power of judicial review, is empowered to declare any inconsistent laws to be unconstitutional."

Those wordings were revised by the Constitutional Advisory Assembly to the current wordings that appear in the 1986 Constitution, and which read as follows:

"This Constitution is the supreme and fundamental law of Liberia and its provisions shall have binding force and effect on all authorities and persons throughout the Republic. Any laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect. The Supreme Court, pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional."

We note that the word "'Judiciary", as appeared in the Draft Constitution prepared by the National Constitution Commission, was changed by the Constitutional Advisory Assembly to "Supreme Court". The Constitutional Advisory Assembly explained in its Rationale Document why it had made the change. It said: "The word 'Judiciary' was replaced with the words 'Supreme Court'. The word 'Judiciary' as used in the Draft is ambiguous since the Judiciary embraces the Supreme Court and all other subordinate courts, both of record and not of record. The Supreme Court is Head of the Judiciary under our republican form of Government and has the sole power to declare unconstitutional any laws found inconsistent with the Constitution.... " [Emphasis ours]

The foregoing leaves no doubt as to what the framers of the provision intended. Accordingly, we hold that it was the intent, contemplated by the drafters of the Constitution, that only the Supreme Court is vested with the authority to declare laws or other acts in the Republic unconstitutional. The National Elections Commission cannot therefore be the proper forum for the disposition of a constitutional challenge to its acts or actions. The only proper and appropriate legal forum, under the Constitution, is the Supreme Court. We do not therefore subscribe to and reject the proposition that where the National Elections Commission has done an act which is challenged as to its constitutionality, as in the instant case, and which warrants an

interpretation of the Constitution, a complaint must first be filed with the Commission to determine whether it has acted constitutionally or not before the challenge can be brought to the Supreme Court. We hold accordingly that in view of the clear wording of the Constitution and the open and written expression of the intent of the drafters, contained in their Rationale Document, the National Elections Commission is without the authority, in a situation such as is presented in this case, to decide whether its action is unconstitutional or not before the Supreme Court can assume jurisdiction to determine the constitutionality of the act, when the Constitution states that it is only the Supreme Court that has the authority to pass on the constitutionality of an act or action. If this were not the case, what then would be the essence or reason for the circuit courts referring constitutional issues to this Court where they are raised before those courts in litigation that involve other issues?

Additionally, as we indicated in the recent case Liberia National Union and the National Democratic Party of Liberia et al. v. The National Elections Commission, petition for a writ of prohibition, decided September 20, 20 II, "where there is manifest necessity to the disposition of the dispute as would prevent serious and irreparable harm or injury, and the other jurisdictional requirements are met, [this Court] will allow, as permitted by law, in this case the Constitution, the appropriate remedial process to be entertained. Henries and Dagbeh v. Fahnbulleh et al., 42 LLR 446 (2004)." In the instant case, the Elections Commission had made a determination or decision, first on August 22, 2011 in a provisional decision, and subsequently, in a final decision, on September 9, 2011, only a month from the ensuing October 11, 2011 Elections. The NEC was pursuing a course consistent with that determination or decision in so far as the certification and qualification of the presidential candidates are concerned. The decision and the NEC continued pursuit of that decision were believed to be unconstitutional and were challenged in a manner that required a constitutional interpretation of Article 52(c) of the Constitution. Prohibition therefore seems an obvious avenue to challenge the constitutionality of the course being pursued. A different course could not only cause a delay to an already overburden process, impact the elections or have negative consequences and irreparable harm for the

electoral process and put the ongoing democratic process at risk, but it would also get the Commission involved in providing interpretation to an acknowledged ambiguous provision of the Constitution, and which is vested solely in the Supreme Court and which only this Court has the prerogative of passing upon. We hold therefore that under the rule articulated in Liberian National Union and the National Democratic Party of Liberia v. The National Elections Commission and the authority vested in the Supreme Court by Articles 2 and 66 of the Constitution, this Court can legally assume jurisdiction of the constitutional challenge and dispose of same, under the course chosen by the petitioners.

The second issue is whether the 2nd petitioners, Abraham Massaley and Sayku Kromah, have standing to bring the instant prohibition proceedings, they not being within the jurisdiction of Liberia and not having fulfilled the legal requirements to be a party before this Court?

The 1st and 2nd respondents, National Elections Commission and Ministry of Justice, challenge the standing and capacity of the 2nd petitioners to bring and maintain this action because they alleged that they are citizens of Liberia, yet they have failed to demonstrate or substantiate the allegation that indeed they are Liberian citizens, especially given that they are not within the Republic of Liberia but currently reside in the United States of America. The respondents have also asserted that even had these petitioners demonstrated that they were Liberia citizens, they also had the legal obligation to properly designate an attorney-in-fact, through the execution of a power of attorney or other legal instrument(s) of authority authorizing counsel or another person in Liberia to represent them in these proceedings, an act which they had also failed to do.

Counsel purporting to represent these petitioners, when queried by the Court, admitted that contrary to what had been indicated in the caption of the case that the 2nd petitioners were in the City of Monrovia, Liberia, they intact were in the United States of America. He also admitted that he had received no communication from

the said petitioners to represent them in these proceedings, whether in the form of a duly authenticated power or attorney or a letter of authorization, stating instead that their instructions to him had been by telephone.

This Court says that for the purpose of commencing and maintaining any proceedings, and especially as in the instant case where there is a constitutional challenge to the acts and actions of the 1st respondent National Elections Commission's certification of political parties candidates to contest the Liberian presidency, a challenge which could only be advanced by Liberians, the petitioners were under a legal obligation to show that they were Liberian citizens, beyond the mere allegations set forth in the petition. This required that the petitioners should have executed a statement duly authenticated before a notary public to the effect that they are the persons they purport to be and that there be further verification by an appropriate Liberian foreign service authority that they are in fact citizens of Liberia. These arc necessary since many Liberians who left the country because of the civil conflict and other factors took up citizenship in other countries, an act which under the Aliens and Nationality Law of Liberia would deprive such person of Liberian citizenship. It is also a necessary requirement to prevent non-Liberian persons portraying themselves as Liberians. Yet, none of these steps were undertaken by the petitioners and hence the claim to Liberian citizenship remains one of speculation and unsubstantiated allegation. We believe that every citizen of Liberia is entitled to the equal protection of the law, but at the same time the procedure to secure that protection must be adhered to and the respect for the law and the rule of law must always be shown by parties seeking the intervention of the Court. The failure of the 2"d petitioners to demonstrate their citizenship and to vest authority in counsel or a local person to secure their standing before the Court deprived them of the required standing to participate in or maintain the action.

Liberian law is clear as to how a person desirous of commencing an action before the courts of Liberia. The law provides that such persons as the 2nd Petitioners, who desire to commence some form of legal action in the courts of Liberia but who live in a

foreign jurisdiction, should execute a power of attorney vesting in a person within Liberia the authority to commence the action on their behalf or in the alternative execute some form of letter of authority with the appropriate authentication. In the absence of such instruments, no person or counsel in Liberia can claim to have authority to represent such parties. Bryant v. The African Produce Company, U.S.A., 6 LLR 27, 30 (1937). This is particularly important because of the nature of these prohibition proceedings, the prayers contained in the petition, and the impact which this Court granting of the prayers could have for the electoral process and the future of the Liberian nation-state. We are therefore in agreement with the respondents' challenge to the standing of the 2"d petitioners and according hold that the said petitioners lack the required standing to commence these prohibition proceedings. In re Benjamin J. Cox, 36 LLR 837, 846 (1990).

The filing of a letter on the day of the arguments, purported to have been sent by one of the 2nd petitioners, Abraham Massaley, on behalf of himself and the other 2nd petitioner, Sayku Kromah, does not meet the test or the standard prescribed by the laws of this jurisdiction. Not only is it not authenticated but no authority is shown from Sayku Kromah to substantiate that Abraham Massaley could write on behalf of the both 2nd petitioners. Such display of negligence by counsel, in not securing or ensuring that the proper instrument is executed and that it conforms to the law is noted, and counsel is warned that a continued display of such negligence will warrant this Court taking measures to protect the legal sanctity of this Court and those appearing before it. Under the circumstances, we are in full agreement with the co-respondents raising the issue that the 2nd petitioners, Abraham Massaley and Sayku Kromah lack any standing to commence or maintain this action.

As for the "et al.", also said to be comprise 2nd petitioners, this Court says that it has on several occasions stated that such unidentifiable "et al." have no legal status or legal standing to bring or maintain any action. See (CITATION) Hence, as with the other two 2nd petitioners named in the petition, this Court holds that they are without any legal standing to institute and maintain these proceedings, and accordingly as to

them, dismiss any claims or challenges asserted by them on the constitutionality of the acts of the 1st respondent or as regard the interpretation of Article 52(c) of the Liberian Constitution.

We now proceed to the substantive issues raised by the parties, which leads us to the 3rd issue raised by the parties, which is whether the ten-year residency clause for presidential and vice-presidential candidates contesting the Presidential and General Elections, stipulated in Article 52(c) of the Constitution, although not specifically stating the word "consecutive" means ten consecutive years prior to the election of a person to the presidency, and whether this provision applies to the 2011 presidential and general elections?

Some of the respondents hold the view that the quoted provision of the Constitution is clear and unambiguous on its face; others disagree and hold the opinion that the provision needs interpretation by this Court so that it is laid to rest. Our inspection of the records before the Court reveals that even the various respondents have different views as to what the provision means. This leads us to the conclusion that there is sufficient view of ambiguity that an interpretation or clarification is warranted. Clearly, the interpretation of Article 52 (c) of the Constitution is therefore central to the disposition of the controversy before this Court.

The respondents have generally contended that petitioners' interpretation of Article 52(c) is erroneous and poses serious difficulties. Some of the respondents state that "[t]he language of Article 52(c) seems to be plain,... [and hence] the interpretation suggested by the petitioners that any Liberian who has been absent from the country for any length of time, regardless of the reasons for the absence, must be barred from contesting for the presidency is a difficult proposition. According to these respondents, the petitioners' insistence that all persons seeking the presidency must have resided in the country for a period of ten consecutive years is erroneous and incorrect since the Constitution itself does not stated "whether this magic ten year residency requirement is consecutive, immediately before the election or may be cumulative."

One of the co-respondents, in arguing the issue, submitted further that "[g]iven the apparent clear and unambiguous language of Article 52{ c) and the erroneous assumption that Article 52 (c) was intended to disqualify Liberians who, because of the Liberian government's inability or unwillingness to protect them from the horror of the conflict fled the country for their safety is simplistic. The question may be stated thus: Did the drafters of the Constitution intend to exclude otherwise qualified Liberians, who for no fault of their own, were forced by the civil war to leave the country and [to] become refugees in various counties, or who left the country prior to the civil war but were forced to remain outside the country because of the civil war, from seeking the Presidency?..." [emphasis supplied].

In respect to this central question before us, we note that in retrospect the residency requirement for the President has always been an essential part of our constitutional history. We believe it is important, therefore, to put the issue in its historical context. The adoption of Liberia's independence Constitution in 1847 preserved the colonial constitutional residency principle.

Article III, Section 7th of the 1847 Constitution, as amended, reads, inter alias:

"No person shall be eligible to the office of President who is not a citizen of this Republic by birth or a naturalized citizen of over twenty-five years' residence..."

For about 80 (eighty) years, the adopted 1847 Liberian Constitution strictly commanded that a person desirous of running for president reside in Liberia for five (5) years as a constitutional eligibility requirement. A 1927 proposal was adopted in 1928 amending the residency requirement and increasing the eligibility requirement period to 15 (fifteen) years. But the fifteen (15) years' residency requirement was relatively short-lived, since barely 15 (fifteen) years thereafter, in 1943, the Republic adopted yet another amendment. This time, twenty-five (25) years' residency" on Liberian soil became constitutionally mandatory as an eligibility requirement for

every presidential candidate. From 1943, the "twenty-five (25) years residency" remained a constitutional requirement until April 1980 when the Peoples' Redemption Council (PRC) suspended and abrogated the 1847 Constitution.

The Draft Constitution, which was prepared by the National Constitution Commission, the Body established by Decree No. 49 of the Peoples Redemption Council for the purpose of preparing a new Constitution for Liberia following the PRC's abrogation of the 1847 Constitution did not contain a residency requirement. Our review of the records of the National Constitution Commission reveals that the issue of whether there should be a residency requirement for persons contesting the presidency of the nation was raised and discussed exhaustively. Indeed, the minutes of the National Constitution Commission, dated August 13, 1982, show that after discussion and decision on the provisions relating to eligibility for the presidency as relate to "natural born citizens" and "ownership of property" requirements, as submitted by the Drafting Committee, and adopted as follows: 11 in favor; 6 opposed; 2 abstention, the following day, August 14,1982,the residency issue was raised as a possible third requirement for eligibility to contest the presidency. See document captioned NATIONAL CONSTITUTION COMMISSION, MINUTES OF MEETING HELD 14 AUGUST 1982, under the signature of Mrs. Beryl Brewer. We quote from page 2 of the records: "On the same section under discussion (see section. Article V),Commissioner Tarpeh asked Counsellor Banks to draft a (c) to the section making it mandatory for Liberian citizens to hold residence in Liberia for ten consecutive years before seeking election to the Presidency." See document captioned: NATIONAL CONSTITUTION COMMISSION. MINUTES OF MEETING HELD 14 AUGUST 1982, under the signature of Mrs. Beryl Brewer.

Although the Commission did not act on the request at the time it was made, the issue again surfaced at the August 20, 1982 meeting of the Commission. The following is recorded in the August 20, 1982 minutes of the Commission, at pages 3 and 4:

"Reverting to Section 2 of Article V, Commissioners Tarr, Seyon and Tarpeh

introduced an amendment in the form of a (c) to the section; so that as a further requirement, no person shall be eligible to hold the office of the president unless the person has resided In Liberia for 15 consecutive years."

"Commissioner Grimes, Chairman of the Drafting Committee, asked them not to press it because such a provision would preclude citizens serving in the foreign service or working overseas for international organizations from being eligible. He wondered how one would consider a person who has gone abroad for about 10 years to study, and said, if a person is not properly resident in Liberia he did not think people would vote for him.

'Commissioner Seyon said some of his colleagues felt that 15 years was too stringent and they would go along if the period was reduced. He said they would not insist on 15 years but were prepared to go down to fewer years. He therefore proposed 5 consecutive years. After some debates, the sponsors of the amendment withdrew their proposal.

It was moved and seconded that Section 21, Article V, be adopted as drafted. 17 voted in favor, 2 opposed, 1 abstained." See MINUTES OF THE NATIONAL CONSTITUTION COMMISSION MEETING HELD FRIDAY, AUGUST 20, 1982, over the signature of Mrs. Beryl Brewer.

Because the proposal was defeated, the provision was not included in the Draft Constitution submitted by the National Constitution Commission to the Peoples Redemption Council. Thus, the presidential eligibility requirements, which appeared in the Draft as Article 54, simply stated:

"No person shall be eligible to hold the office of President or Vice-President, unless that person is: (a) a natural born Liberian citizen of not less than 35 years of age; and (b) the owner of unencumbered real property valued at no less than twenty-five thousand dollars." See Draft Liberian Constitution, Article 54 (1983).

Our further perusal of the records of the constitution drafting process reveal additionally that upon the submission of the Draft Constitution to the Constitutional Advisory Assembly for its review of the document, the residency requirement was re-inserted into the document. The final document which therefore came out of the Assembly and which was submitted to the Peoples Redemption Council and to a referendum, and adopted by the People of Liberia, reads: "Article 52:No person shall be eligible to hold the office of president unless that persons is:

(a) A natural born Liberia citizen of not less than 35 years of age;

(b) The owner of unencumbered real property valued at not less than twenty-five thousand dollars; and

(c) Resident in the Republic ten years prior to his election...."

Thus, as if to remain faithful to this residency principle, Chapter V1, Article 52 (c) of the 1986 successor Constitution, now Liberia's governing constitution commands that a
Candidate shall be "...[r]esident in the Republic ten years prior to his [candidate's] election....".

There is one major notable difference between the two Liberian Constitutions, the erstwhile 1847 and the current 1986. Under the 1847 organic instrument, any citizen, born or naturalized, was eligible to run for President of Liberia upon satisfaction of the "twenty-five (25} years' residency" requirement. In contrast, eligibility as a candidate for president is strictly and exclusively confine under Article 52 (a) of the 1986 Constitution to "natural barn Liberian citizens....." Clearly, born citizenship as an eligibility requirement for the office of the President is a 1986 Constitutional creation.

Reflecting on the current controversy, two points must be considered: Firstly, the

interpretation by this Court of the constitutional phrase "ten years prior to his election" and secondly, the meaning of "residence".

During arguments before this Bench, the respondents took the position that the constitutional phrase "resident ten years prior to his election" was unclear, thereby lending itself to varying interpretations as to time specificity. The petitioners, on the other hand, argued that the provision meant "ten consecutive years", with no interruption. They have therefore urged an interpretation by this Court of Article S2(c). Where a constitutional or legislative provision, as in the instance of Article S2(c) of the Constitution, is susceptible to multiple plausible interpretations, the rule hoary with constitutional interpretation is to undertake an examination of the historical circumstances informing the writing and passage of that law and be guided by the intent of the framers of the law.

In this delicate exercise, we must state also that it is inconsistent with law and practice in this jurisdiction for any Court of law, the Supreme Court being no exception, to extrapolate the intent of the framers of the Constitution, and the legislature, in the case of a statute, beyond the specific wording of said provision of the constitution or statute. It must also be emphasized that the historical context in which a given law has evolved and/or was scripted is substantially critical to understanding the object of said legislation. Law writers generally call this the legislative intent. Thus, the overall principle guiding proper interpretation of a constitution is the intent of its framers.

In the case The Estate of the Late Frank E. Tolbert v. Gibson-Sonpon, 37 LLR 113, it was the opinion of this Court that:

"The various provisions of the Constitution must be construed reasonably to carry out the intention of the framers. It should not be construed to defeat the obvious intent of the framers. The intent should be gathered from both the letter and spirit of the document. The rule being that the written Constitution should be interpreted in the same spirit in which it was produced. The Court should put itself in the position of

the men and women who drafted this Constitution."

The Supreme Court of Liberia, as far back as 1936, espoused a similar view when in Brownell v. Brownell, S LLR 76, 79 (1936), this Court said:

"Every statute, it has been said, should be expounded, not according to the letter, but according to the meaning; for he who considers merely the letter of on instrument goes but skin deep into its meaning....Whenever the legislative intention con be discovered, it ought to be followed with reason and discretion in the construction of the statute, although such construction may seem contrary to the letter of the statute....." see also the case Massaquoi v. David and Sherman, 6 LLR 320 (1938).

The respondents have asked us to interpret article 52 (c) liberally. They have also asked this Court to reject the petitioners' call to reverse the decision rendered by 1st Respondent National Elections Commission, qualifying each of the third co-respondents candidates to contest the 2011 presidential election. By petitioners' interpretation, none of the third respondents satisfied the residency requirement and therefore must be barred by this Court from the Presidential contest.

As we have indicated above, consistent with law, we are guided by the intent of the framers of the Liberian Constitution (1986}. In this vein, we are persuaded by an instrument available with this Court, titled: "RATIONALE FOR ACTIONS TAKEN BY THE CONSTITUTIONAL ADVISORY ASSEMBLY ON THE DRAFT CONSTITUTION THE PEOPLE'S PALACE. 21 OCTOBER 1983. GBARNGA CITY. BONG COUNTY. REPUBLIC OF LIBERIA.

In explaining its "RATIONALE" for re-inserting the residency provision in the constitutional document and outlining what the provision meant or entailed, the Constitutional Advisory Assembly said, in the above mentioned document: "ARTICLE 54: Modified (Now Article 52 in Revised Draft)"

"The Assembly is of the opinion that any Liberian who intends to run for the Presidency should reside in Liberia for at least ten (10) years immediately prior to election. This would afford the citizens the opportunity to assess fully the qualities of the candidate. The provision that the President and the Vice-President should not came from the same county was added to discourage sectionalism." [Emphasis supplied].

In harmony with the intent of the drafters of the Liberian Constitution, we interpret Article 52(c) to mean that a candidate for President of Liberia shall be "resident" in the Republic of Liberia ten years immediately preceding his/her election. In our Opinion, the ten years' residency requirement for presidential candidature is neither cumulative nor any ten year period of residency in Liberia. It is the ten year period immediately to the presidential election. It was the wisdom of the drafters that the ten years' residency, immediately to the election, will provide the electorate an opportunity to assess the candidate's qualities during the immediate ten years precedent to the Presidential election.

Some of the respondents argue before this Court that as Article 52(c) does not use or include the qualifying adjective "consecutive" before the word "years" and after the word "ten", this Court should not apply that word into the meaning of the provision. They assert that the law in this jurisdiction is that what the law does not grant or specifies, it withholds. Hence, there was clearly no intent by the framers that the word "consecutive" should apply in determining the duration of the residency requirement stated in the provision. Rather, they say, in the absence of the word "consecutive" from the provision, the proper interpretation is that the drafters intended that "cumulative" should be applied. A few of the respondents go even a step further, asserting that the fact that proposition in the August 23, 2011 Referendum was rejected by the voters is a clear indication that the voters were not in favor of the "consecutive years" theory being advanced by the petitioners. Proposition 1 in the recently held referendum sought to reduce the residency requirement from ten to five years. However, in seeking this goal, the provision also stated that the five

year residency period should be "immediately" prior to the election. The respondents says that the fact that this proposition was rejected by the electorate clearly showed that they, the electorate, were opposed to the adoption of the "consecutive year" theory, and they state that this was or must have been the same position of the electorate when the Constitution was adopted. We disagree with that contention and hold that the records of the framers of the Constitution indicate the contrary to have been the case.

We hold accordingly that Article 52(c) means and requires that for a person to contest the presidency of the nation he or she must have resided at least ten consecutive years prior to the election in which he/she seeks to be elected to the presidency of the nation. There can be no other interpretation in view of the expressed clear intent of the drafters, made known in the quoted document, issued on 21 October 1983 at the Peoples Palace, Gbarnga, Bong County, the venue where the Assembly met for its deliberations on the Draft Liberian Constitution. See RATIONALE FOR ACTION TAKEN BY THE CONSTITUTIONAL ADVISORY ASSEMBLY ON THE DRAFT CONSTITUTION (21 October 1983);

Some may argue, and to which this Court could not be insensitive, that Article 52(c) bears exclusionary tendencies. This might be a valid argument, but be that as it may, this Court must be guided by its own Opinion delivered by Mr. Justice Russell some sixty-four (64) years ago, in 1947. Mr. Justice Russell, Speaking at the time for this Court, said:

" ...courts are not concerned with whether or not legislation is wise or unwise, oppressive or democratic; it is the special function of the courts to interpret the law. Any legislation considered pernicious, unwise, or oppressive may be remedied only by the people who, where the legislators refused to change the law, may change their representatives in the legislature from time to time until such repugnant legislation is repealed." Justice Russell continued:

"We are therefore of the opinion that the ground given, the injustice and inequity of the low...., is not within the province of the Court to pass upon, however the individual minds of its personnel may feel about it."

Clearly, the explanation advanced by the Assembly for the inclusion of the ten-year residency provision leaves no doubt that the drafters intended that the ten-year residency prior to election, referred to in Article 52(c), should be ten consecutive years prior to the election; otherwise they would not have stated in their rationale for the provision that they meant "ten (10) years immediately prior to election".

We are of the conviction that every legal scholar and every legal mind reading the Rationale Document of the Constitutional Advisory Assembly, will similarly, as this Court has done, not dispute that the intent of the drafters, underpinning Article 52(c), was that the period of ten years' residency included in the Constitution meant immediately precedent to the presidential election, and that it was a mandatory constitutional requirement for every presidential candidate of the Republic of Liberia. Hence, in holding as we have done, this Court is being faithful to that overriding intent of the venerated writers of the Liberian Constitution. By their intent, embodied in Article 52 (c), the drafters of the 1986 Liberian Constitution desired to render eligible only Liberian citizens who have resided in the Republic for ten years immediately before the conduct of a presidential election. And we so hold.

Notwithstanding this Court's interpretation of Article 52(c), it must now further decide what "residency" means within the context of the provision. For the purpose of the Electoral Law, including the interpretation of the constitutional provision on "residency", we hold that once residency is established, the temporary absence of a party from the jurisdiction does not thereby ipso facto incapacitate such person.

Residence, according to a respected legal authority, is: "1. [t]he act or fact of living in o given place for some time [a year's residence for example] in New Jersey. 2. [t]he place where one actually lives, as distinguished from a domicile... Residence usually just

means bodily presence as an inhabitant in a given place; domicile usually requires bodily presence plus an intention to make the place one's home. A person thus may have more than one residence at a time but only one domicile. Sometimes, though, the two terms are used synonymously.... (3) A house or other fixed abode; a dwelling.... A person customary place of residence, esp., a child's customary place of residence before being removed to some other place.

In determining whether a person is a resident of a country, there must be a showing that the person resided in the jurisdiction. In the instant case, there is no allegation that any of the respondent aspirants did not originally reside in the Republic. To the contrary, all of them have asserted, and the petitioners do not contest the fact, that they were born in Liberia, a fact that automatically made them residents of Liberia. The 1st respondent National Elections Commission, after examination of the instruments and answers provided to the Commission by the presidential aspirants on queries posed by the Commission, had determined that there was sufficient basis for the conclusion that the presidential aspirants had resided in Liberia for the period stipulated by Article 52© of the Constitution. What the petitioners contend is that within the ten years prior to the 2011 elections, the respondent aspirants had not resided in Liberia. The respondents, on the other hand, argued that in order for the petitioners argument to be sustained, there must be a demonstration by the petitioners that in addition to the presidential aspirants not having the attributes of "residents", which they said they had, the petitioners also had the burden of showing that the aspirants intended to abandon his/her residence. This burden, they say, the petitioners had failed to meet.

We are of the opinion, in agreement with the respondents, that a party asserting that a person has abandoned his residence and therefore does not meet the residency requirement, which is in effect the contention of the petitioners, has the burden of proving that the person intended to abandon his/her residence. There is no such proof presented by the petitioners in these proceedings to show that any of the respondents intended to abandon their residence In Liberia. We cannot act on the

mere allegation of the petitioners, without the appropriate proof. Otherwise, we would be setting a new lower standard that persons making allegations do not have to present proof to substantiate the allegations. We are not prepared to adopt such a course.

Additionally, the respondents contend that the provision cannot affect them because of the protracted state of civil war in the country. They assert, in support of their contention, that the drafters and framers of the provision of the Constitution did not anticipate at the time the provision was crafted that the nation would have become engulfed in a civil war. Under the circumstances, they say, this Constitutional Court should consider a fundamental question overridingly dispositive of the qualification question laid before us by the petitioners. Dealing with this contention of the respondent, this Court must now determine, as per the third issue stated herein, whether the writers of the 1986 Constitution contemplated a state of war and its devastating impositions and whether the intervening cause of the war in Liberia could justifiably exclude otherwise qualified Liberians from running for President in the 2011 general and Presidential Elections?

The Court Is of the opinion that during the drafting of the 1986 Constitution, especially the inclusion of Article 52(c) as a residency requirement for a presidential candidate, none of the drafters could have known, let alone considered the intervening cause of the devastating armed civil conflict and its implications on the lives Liberian citizens. It would be Illogic to insist that the writers contemplated or intended that Liberians, faced with the devastating civil war, would remain in Liberia because, at some point in the future they may want to run for the office of president or vice president.

It is public historical knowledge that since the adoption of our current Constitution on January 6, 1986, the Organic Document has been twice suspended in part: between 1990 and 1997, period of war, and from 2003 to January 6, 2006, another period of devastating civil conflict. Both suspensions of the Liberian Constitution were war imposed as the running of an orderly government system became a practical

impossibility. Indeed, it was the suspension of provisions of the Constitution that facilitated the establishment of the various transitional governments, deemed essential to restore peace and governance to the nation. We observe further that in order to ensure "proper functioning" of the Transitional Government, and in the exercise of its authority, granted under the CPA, the National Transitional Legislative Assembly (NTLA), as a law-making body of the National Transitional Government of Liberia (NTGL), specifically suspended a number of key provisions of the 1986 Constitution. Article 52(c), requiring ten years' residency as an eligibility criterion to run for president, was one of those provisions specifically suspended. This was a manifest necessity for the object of allowing for the participation of all otherwise qualified Liberians desirous of running for President of Liberia. [see: Electoral Reform Laws (2004)]. Clearly, as a matter of history for Liberia, it was the NTLA's suspension of the constitutional Article, subject of these prohibition proceedings, that provided for the legal regime and framework that facilitated not only the conduct of Presidential and General Elections in Liberia in November 2005,but which ushered in the current constitutional government, headed by Ellen Johnson Sirleaf. Those actions, though extra constitutional, was accepted both by Liberians and the international community as legitimate.

During argument before this Court, the petitioners questioned the constitutional propriety of the entire extra-constitutional arrangements, especially those of 2003 through January 6, 2006, which paved the way for the ushering of the current constitutional order. The argument ignores completely the fact that Liberia, in many respects during the course of our civil conflict, simply ceased to constitutionally exist. We wondered how, under these circumstances, the petitioners could make the argument that the Constitution should have been strictly followed, since such a position would even led to questioning the legality and legitimacy of the 1st petitioner itself. We hold that the circumstances at the time justified the course followed and that therefore the provision cannot be said to operate against the respondents. Indeed, given that it was only in January 2006 that constitutional order was restored to Liberia, the provision in question will become operative on in January 2016.

Further, as a matter of law, can a citizen be barred from contesting the 2011 presidential election on account of the suspended Article 52{c), a non-governing law during the periods of war as well as constitutional suspension, without offending the principle of Ex post facto articulated under Article 21 of the Liberian Constitution?

The ex post facto principle, articulated in Article 21(a) of the (1986) Constitution, says Inter alias: "No person shall be made subject to any law or punishment which was not in effect at the time of commission of an offence...." An authoritative legal source, Black's Law Dictionary, Sixth Edition, at page S80, defines ex post facto law as "[a] law passed after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed....". [Emphasis supplied).

Under the authority of section 40 of the General Construction Law, we take recourse to the case Smith et al. v. Doe et al., 538 U.S. 84 (2003), decided by the United States Supreme Court. In that case, respondents were convicted of aggravated sex offenses prior to the passage of the Alaska Sex Act. They were released from prison and completed rehabilitative programs for sex offenders. The facts indicate that although the respondents were convicted before the passage of this Act, the State sought to apply the Act to them, requiring them to register with local officials and provide information on their behavior.

Respondents brought an action seeking to declare the Act void as to them, relying on the Ex Post Facto Clause of the United States Constitution. [U. S. Const., Art. I, § 10, cl. 1). Summary judgment was granted the respondents by the District Court. The Ninth Circuit disagreed in relevant part, holding that, because the effects of the Alaska Sex Offender Registration Act were punitive, the Act violated the Ex Post Facto Clause.[our emphasis].

On appeal to the United States Supreme Court, the Court, speaking through Mr. Justice

Kennedy, held that although the Act was non-punitive and that its retroactive application did not violate the Ex Post Facto Clause of the United States Constitution, the Court set the standard that where the net effects of a legislation, applied retroactively, are punitive, the application is prohibited by the Ex Post Facto Clause.

Bringing this to the case at bar, we hold that it would be punitive and within the ex post facto prohibition were the presidential aspirants barred from participating in the 2011 Presidential and General Elections on account of Article 52(c), same having been suspended because of the civil war and which was restored only on January 16, 2006, the date of the inauguration of the newly elected constitutional government.

This position is in harmony with the decision handed down by this Court recently in the case African Construction and Financing Corporation v. National Social Security & Welfare Corporation, decided on August 31, 2010, to the effect that the statute of limitations tolled and was therefore inapplicable during the period of the Liberian civil conflict.

It would be ludicrous to hold that persons who fled Liberia because of the civil war be permitted to file their complaint before a court of law otherwise outside the statutory time period, but at the same time disallow similarly situated Liberian citizens from exercising their right to compete for the presidency on account of Article 52(c). Will doing so not amount, for all intents and purposes, to disparate treatment of individuals who are indeed similarly situated? It is our considered opinion that it does. This Court therefore dismisses the claim of the petitioners in respect of the attack against the presidential aspirants in reliance of Article 52(c).

We note further, and with great concern, that the petitioners, in making the allegation that the respondents presidential aspirants had failed to meet the requirements of Article 52(c) of the Constitution, had failed to provide any evidence to substantiate the claim. Our law is clear on the issue: He who makes an allegation has the burden of

proof and must meet that standard. This Court will not countenance and will not entertain any action wherein allegations are made and not substantiated, for this Court neither has the authority to provide advisory opinion or base its decision on the mere speculation of a party. The Court states that where there is such violation of the procedural requirements set forth in our laws, the Court will, in looking upon the allegation as mere speculation, will refuse to entertain the action. Counsels are therefore admonished that if they fail to meet that standard stated herein by providing the necessary evidence to substantiate the allegations made, their matters could form the basis for dismissal of the entire action.

Wherefore, and in view of the laws referenced herein and relied upon, and the facts and circumstances narrated in this Opinion, the petition is hereby denied and dismissed, the alternative writ of prohibition quashed, and the peremptory writ denied. Costs are disallowed. AND IT IS HEREBY SO ORDERED.

Petition denied.