

Justice and Public Interest Consortium Africa (JUPICA) of the City of Monrovia, Montserrado County, Republic of Liberia represented by its Case Management Director **E. Kartuson Norris** 1st PETITIONER, Honorable **Edwin K. Martin**, a Bona Fide Registered Voter of the Republic of Liberia and Resident of Paynesville City, Monrovia, Liberia, 2nd PETITIONER AND **Blamoh Nelson, J. Emmanuel Z. Bowier, Milton Nathaniel Barnes, Eminent** Citizens and Registered Voters and **John Ballon**, Registered Voter and Chairman of the **Movement For Progressive Change (MPC)** of the City of Monrovia, Montserrado County, Republic of Liberia, 3rd PETITIONER Versus **The National Elections Commission** by and thru its Chairman **Cllr. Jerome Korkoyah** and **Members of the Board of Commissioners including all Elections Magistrates**, Directors and Supervisors under their control of the City of Monrovia, Liberia, 1st RESPONDENT AND **The Government of Liberia** by and thru the Ministry Of Justice Represented by the Acting Minister, **All Deputy and Assistant Ministers** and the **Solicitor General** of the City of Monrovia, Liberia, 2nd RESPONDENT

LRSC 61

MR. JUSTICE BANKS DISSENTING IN PART AND CONCURRING IN PART

I have determined that I will concur in part with the Decision and Opinion of the Honourable Court in the instant case and dissent from other parts of the decision and opinion. I have made this determination because my conscience will not allow me to sacrifice the legal principles which I have stood for over the last several decades that a public institution can forfeit its responsibility and hide under the guise that the issue presented, growing of its non-compliance is a political issue and that the Court cannot therefore determine whether there has been a violation or not of protected rights.

I specifically differ with my majority colleagues that the matter presented in the case is one that is purely of a political or policy nature, with prerogative vested exclusively in the two political branches (the legislature and the Executive), and therefore beyond the purview of the Judicial Branch to review any elements connected with the events of which the petitioners have complained. I am of the considered view that the rationale for the decision not only ignores the legal duties and obligations imposed on the National Elections Commission but it also conveys the impression that any decision made by the two political Branches of the Government, which could have devastating legal consequences for the nation or be violative of the guaranteed rights of citizens, or even have the effect of destroying the entire nation and the entire people, could not be reviewed by the courts because to do so would have the courts get entangled in political and policy issues.

I believe, firstly, that there are limitations imposed on the two political Branches of the Government and that holding a narrow interpretation as the majority opinion does, and thereby

ignoring the rights granted the people of Liberia by the Constitution, defeats the intent and purpose of Article 2 of the Liberian Constitution. Article 2 of the Constitution states:

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. LIB. CONST., ART.2 (1986).

Clearly the provision quoted above vests in the Supreme Court the power to review acts and conduct of the Legislative and Executive Branches, and for that matter all bodies subordinate to the two Branches, and we cannot hide behind the veil that the Court is precluded from that review because the issue is one of a political nature and hence not justiciable by the Court. This is especially true in the instant case where my colleagues of the majority have stated that the underlining instrument which they characterize as political in nature, they also state is law, and that being law is enforceable and must be obeyed. I do not believe that the issues growing out of the controversy in the instant case, and especially the instrument which the majority state attained the realm of law, border on matters purely of politics or political actions and that they are therefore solely within the purview of the Executive and Legislative Branches. Hence, I have not joined my majority colleagues of the Court because I am of the conviction that they have failed to address the core issue, indeed the fundamental issue, of whether the National Elections Commission has put into place the constitutionally and statutorily expected required mechanisms for the conduct of a free, fair, transparent, healthy and free of the fear of death in the current Ebola environment for the holding of the 2014 Senatorial Election, which warrants the attention of the Court.

Let me say that with regard to the procedural issues dealt with by the Court in the majority opinion, I fully concur with the conclusions reached by the majority. I agree that when the Supreme Court directs the filing of a document in the nature of a pleading and states a time within which the document (i.e. pleading) should be filed, the parties are under a legal obligation to comply with the command or instructions of the Court and ensure that the document is filed within the time stipulated by the Court. I agree also that a failure to adhere to the directive of the Court renders that document not legally before the Court. Hence, as the majority state in the opinion, the Government of Liberia, whether by negligence or a deliberate disregard for the directive of the Court, determined to file its returns on a date chosen by it rather than the date directed by the Court, the pleading is not legally before the Court and therefore not cognizable by the Court.

In like manner, I concur with the majority of the Court that a pleading that is not properly verified, and which improper verification is of such magnitude that it cannot be seen or viewed as a mere harmless error, renders the pleading defective and exposes it to dismissal. The pleading filed by Counsellor Laveli Supuwood for the Movement for progressive Change suffered from such

defectiveness and hence, as the Court determined, is dismissible. I agree with the decision of the Court to dismiss the said pleading and therefore concur therewith. The action by the Court in dismissing the petition means that nothing was left before the Court for adjudication in regard to that particular petition.

I further agree with the Court that time lost by the consideration of these proceedings should be restored by the NEC, and that although it had dismissed the petition mentioned above on the ground of improper verification and that the dismissal rendered the petition and entire action not before the Court, it still had an obligation to address the issues raised in the other petition, although similar or identical to the issues raised in the dismissed petition. This then bring me to the issues raised in the petition, the subject of the opinion of the Court. I shall proceed directly to address what in my view is the core, indeed the fundamental, issue in the case. This requires, both to put the issue into it proper perspective and for the purpose of the analysis undertaken in this Opinion, that we outline the chronology of the facts in the case.

The underlining genesis of the case is traced to the first occurrence in Liberia of the deadly Ebola Virus Disease (EVD). This is said to have happened sometime in February, 2014. However, we have chosen to begin our chronology from March 24, 2014, the date on which Dr. Bernice Dahn, Liberia's Chief Medical Officer, held a press conference wherein she stated: "The disease is reported to be spreading along the border with Liberia, specifically in the communities and town close to Guinea towns of Geukedou, Nzerekore, Kissidougou and Mecenta". Dr. Dahn added: "as of this morning, the 24th of March 2014, six cases have been reported, of which five persons have already died, four female adults and one male child." The Doctor noted that all six suspected cases had come from Guinea for treatment at the hospitals in Foya and Zorzor districts in Lofa County.

On March 30, 2014, Dr. Walter Gwenigale, the then Minister of Health, confirmed that the deadly Ebola virus was indeed in Liberia, noting that the results of five blood samples sent to France confirmed that two of the persons whose blood had been sent had the virus. One of such persons, he said, had died and the other, who was the sister of the dead person, had been taking care of the deceased sister. It is noteworthy that the time, very little attention was paid to the outbreak and no serious or appreciable actions or steps were taken to prevent or contain the spread of the virus. Statements later made, by the Government acknowledged that because the disease was new to Liberia, its deadly nature and the rapid speed with which it overtook the nation caught the Government off guard. All of these seemed to have generated avenues for confusion, distrust, accusations of corruption, and exposure or displayed measures of incompetence in dealing with the crisis. No mechanism and no policy were in place to contain or curtail the spread of the virus and its devastating impact on the populace.

After a period of approximately two months in which there were no new registered cases in Liberia, on June 17, 2014, the virus was alleged to have hit Monrovia. The Deputy Health Minister,

Tolbert Nyenswah, while noting that this was a "worrying" development, stated that the virus was believed to have emerged again on May 30, 2014. By July 30, 2014, 329 cases were reported, out of which 156 was said to have died. On the same day, July 30, 2014, the President announced that all non-essential government employees should be placed on a mandatory 30 day leave period and that all schools be closed as well as the closure of markets at all border points, including the markets at Foya, Ganta and Bo waterside at the Grand Cape Mount County border with Sierra Leone.

Within a week, by August 6, 2014, the number of cases had jumped to 516, of which the death toll was placed at 282. On that date, the President pursuant to the powers granted her by Article 86 of the Liberian Constitution, declared the existence of a State of Emergency. The Declaration is quoted verbatim below:

My fellow Liberians, our nation is currently affected by the deadly Ebola Virus and the disease has now spread to eight counties. Liberia is among three countries experiencing an unprecedented outbreak of the virus, the largest ever since this virus was first discovered. It now poses serious risks to the health, safety, security and welfare of our nation. And beyond the public health risk, the disease is now undermining the economic stability of our country to the tune of millions of dollars in lost revenue, productivity and economic activity. The health care system in the country is now under immense strain and the Ebola epidemic is having a chilling effect on the overall health care delivery. Out of fear of being infected with the disease, health care practitioners are afraid to accept new patients, especially in community clinics across the country. Consequently, many common diseases which are especially prevalent during the rainy season, such as malaria, typhoid and common cold, are going untreated and may lead to unnecessary and preventable deaths.

The virus currently has no cure and has a fatality rate of up to 90 percent. The aggregate number of cases; confirmed, probable and suspected in Liberia has now exceeded 500 with about 271 cumulative deaths; with 32 deaths among health care workers. The death rate among citizens, especially among health workers is alarming.

Two weeks ago, I established a National Task Force, which I chair myself, to respond to this crisis. I instructed all non-essential government staff to stay home for 30 days, ordered the closure of schools, and authorized the fumigation of all public buildings. We have shut down markets in affected areas and have restricted movement in others. We have improved our response time and contact tracking and have begun coordinating with regional and international partners. Despite these and other continuing efforts, the threat continues to grow. Ignorance, poverty, as well as entrenched religious and cultural practices continue to exacerbate the spread of the disease especially in the counties. The actions allowed by statutes under the Public Health law are no longer adequate to deal with the Ebola epidemic in as comprehensive and holistic manner as the outbreak requires.

The scope and scale of the epidemic, the virulence and deadliness of the virus now exceed the capacity and statutory responsibility of any one government agency or ministry. The Ebola virus disease, the ramifications and consequences thereof, now constitute an unrest affecting the existence, security, and well-being of the Republic amounting to a clear and present danger. The Government and people of Liberia require extraordinary measures for the very survival of our state and for the protection of the lives of our people.

Therefore, and by the virtue of the powers vested in me as President of the Republic of Liberia, I, Ellen Johnson Sirleaf, President of the Republic of Liberia, and in keeping with Article 86(a) (b) of the Constitution of the Republic of Liberia, hereby declare a State of Emergency throughout the Republic of Liberia effective as of August 6, 2014 for a period of 90 days. Under this State of Emergency, the Government will institute extraordinary measures, including, if need be, the suspensions of certain in rights and privileges.

As mandated by the Constitution, I will immediately forward this Declaration of the State of Emergency to the National Legislature, accompanied by an explanation of the facts and circumstances leading to the Declaration.

May God Bless us all and preserve our great nation!

On the ensuing day, August 7, 2014, the Declaration was followed the following day, August 7, 2014 by identical letters addressed to the Honourable House of Senate and House of Representatives, through their respective leaderships, informing those bodies of the declaration and seeking the approval of the legislature. We deem it ant that the full content of the President's letter, as addressed to the President Pro-Tempore of the Senate, is reflected in this Opinion, and we therefore quote same in its entirety, as follows:

"EJS/MOS/RL/503/2014

REPUBLIC OF LIBERIA

AUGUST 7, 2014

The Honorable Gbehzohngar M. Findley

President Pro-Tempore and Members of the Liberian Senate (in Session) Capitol Hill

Monrovia, Liberia

Mr. President Pro-Tempore:

In March 2014, an outbreak of the Ebola Virus Disease was confirmed in Guinea, which subsequently spread to Sierra Leone and then to Liberia. The disease, a hemorrhagic fever, is a severe and often fatal illness, with a fatality rate of between 60 to 90%. The virus currently has no cure and is transmitted to people from wild animals and spreads through human to human transmission by exposure to the body fluids of persons in the latter stages of the disease.

To date, over 930 citizens and foreign residents in our three countries have already fallen to the disease. In Liberia, we have recorded over 516 EVD cases (121 suspected, 252 probable and 143 confirmed) and 282 deaths. Because of combination of factors, including some citizens' belief that EVD is not real, patient denial of EVD symptoms and a distrust of government and its international health partners, the virus has continued to spread faster than the Government of Liberia (the "Government") can respond. Along with the sheer number of lives EVD has taken and is continuing to take, the EVD outbreak has had the following negative effects on Liberia:

The epidemic has placed enormous strains on our health care, and the high number of deaths among health care professionals is making the fight even more difficult. There have been a total of 65 suspected, probable and confirmed cases among healthcare workers with 34 deaths. This is especially troubling since our healthcare systems are already significantly under-resourced and we simply cannot afford to lose anymore healthcare providers;

The presence of EVD is also having a chilling effect on the overall health care system in our country, as this is the rainy season, malaria, typhoid and common colds, while prevalent, are going untreated because (i) these illnesses have symptoms similar to those exhibited by EVD patients in the early stages of the disease and health practitioners at smaller community clinics and large hospitals, such as JFK and Redemption, are afraid to treat patients for fear of inadvertently catching EVD and (ii) patients are less likely to seek care for these illnesses out of fear that their symptoms will be confused for EVD symptoms and they will be taken from their families and put in quarantine. Both of these factors have led and will continue to lead to unnecessary and preventable deaths and urgent action is needed to prevent this from happening; EVD has caused civil unrest in affected communities. While most of our people have been cooperative, there are still segments of affected communities that have resisted cooperating with our national response. In some instances, healthcare workers have been threatened and attacked and their vehicles and equipment vandalized. This resistance hampers the Government's response and further places the country and the population at risk;

British Airways recently suspended flights to Liberia because of the outbreak of the virus. This follows two other regional carriers who earlier cancelled services to Liberia. Development projects are now being delayed for fear of infection and entire areas where there have been outbreaks may not be able to support any economic activity, investors and contractors are assessing the possibility of putting projects on hold. The cost in lost revenue, lost productivity, delays in the delivery of projects will be in the millions of dollars. As a result of this slowdown, the Ministry of Finance and the International Monetary Fund are working to revise downward the country's anticipated rate of growth for 2014. To allow this disease to continue to spread at the current rate is to completely undermine the economic successes we have achieved over the last eight years.

Honorable Legislators, significant efforts are being made to prevent and contain the spread of the disease, and sensitize our people of the consequences thereof. Two weeks ago I established a

National Task Force, which I chair, to coordinate response to the epidemic. I have since instructed all non-essential government employees to remain at home for a month, ordered the closure of schools and authorized the fumigation of all public buildings. I have instructed the Ministry of Justice to restrict movement in the affected areas. We have shut down markets and trading areas in epicenters of the outbreak. We have sought and are receiving some international assistance and are coordinating our response with the Republics of Sierra Leone and Guinea, other affected States.

Notwithstanding these efforts, ignorance, poverty, as well as entrenched religious and cultural practices continue to exacerbate the spread of the disease especially in the counties. The actions provided by statute under the Public Health law are not adequate to deal with the Ebola situation in a comprehensive and holistic manner.

Honorable legislators, the scope and scale of the epidemic, the virulence and deadliness of the virus, make it clear that the mission to contain EVD now exceeds the capacity and statutory responsibility of anyone government agency or ministry. The Ebola virus disease, the ramifications and consequences thereof, now constitute an unrest affecting the existence, security, and well-being of the Republic amounting to a clear and present danger. The Government and people of Liberia require extraordinary measures for the very survival of our state and for the protection of the lives of our people. Critical to this, is the containment of the Ebola virus, prevention of new cases and administering proper health care to the afflicted and most importantly, the protection of our health care workers from contracting the virus and from physical attacks in affected communities.

Consequently, and by virtue of the powers vested in me as President of the Republic of Liberia, I, Ellen Johnson Sirleaf, President of the Republic of Liberia, in keeping with Article 86(a)(b) of the Constitution of the Republic of Liberia, declared a State of Emergency throughout the Republic of Liberia effective as of August 6, 2014 for a period of 90 days. In keeping with the Constitution of the Republic of Liberia and in consonance with relevant provisions of statutory laws, during this State of Emergency, we will institute extraordinary measure, including, if need be, the suspensions of certain rights and privileges. These measures will include:

- a) Quarantine of persons confirmed to have EVD;
- b) Removal of persons suspected of having EVD and subjecting them to testing, tracking and, if necessary, quarantine;
- c) Restriction of movement in and out areas affected by EVD;
- d) Restriction of movement into areas not yet affected by EVD in order to prevent its spread;
- e) Ensuring that neither the print, electronic or social media undermines the response with sensationalist, false or inaccurate reporting that could spread panic

While this is not an exhaustive list of measures that will be required to end the EVD epidemic, it is our intent to regularly update you on measures we will take to tackle this Issue.

It is my hope that in the spirit of cooperation that exist amongst our three branches and the gravity of the situation at hand, the National legislature will concur on the institution of this State of Emergency.

Sincerely yours,

Ellen Johnson-Sirleaf

Both of the above quoted instruments (i.e. the Declaration of the State of Emergency and the letter to the Legislature informing that body of the declaration of the State of Emergency and seeking their approval) showed, at least from the Executive Government's perspective, the state of the virus and the response of the Government to the devastating toll which the disease was having on the Liberian nation state and the Liberian people. The Legislature, recognizing the magnitude of the problem and the President's characterization of the virus as presenting a clear and present danger, endorsed the declaration and approved of the State of Emergency.

We have also taken judicial notice of the fact that the magnitude of the problem was further captured by the President in her letter, a public document, written to the President of the United States of America. We believe that in order to further focus on the context in which the elections were subsequently scheduled to be held, we see what the Liberian President said to the President of the United States of America. We therefore herewith recite the three page letter, as follows:

September 9, 2014

Mr. President:

I bring you greetings from the people of Liberia and in my own name. let me first express our gratitude for the support you have given to us in the Mano River Union as we battle this unprecedented outbreak of the Ebola Virus Disease. Your announcement that further resources will be made available for the effort was welcome news for us.

Mr. President, as you know the outbreak has overwhelmed the containment and treatment measures we have attempted thus far. Our already limited resources have been stretched to the breaking point and up to now only a private charity, Medicins Sans Frontier (MSF), has responded robustly in all the affected countries. But. they have reached their limits. Without more direct help from your government, we will lose this battle against Ebola. A WHO investigation conducted with other partners and our own Ministry of Health and Social Welfare projects thousands of cases over the next three weeks.

The virus spreading at an exponential rate and we have limited time window to arrest it. Mr. President, well over 40% of total cases occurred in the last 18 days. Our message has gotten out and our citizens are self-reporting or bringing in their relatives. But our treatment centers are

overwhelmed. MSF is now running a 160 bed unit that will expand even further. This is the largest ever Ebola Treatment Unit in the history of the disease and even that is inadequate. To break the chain of transmission, we need to isolate the sick from their families and the communities. I am being honest with you when I say that at this rate, we will never break the transmission chain and the virus will overwhelm us.

With blanket travel bans, border closures and interactions on vessels berthing at our ports, this has become more than a humanitarian emergency. In a country that has barely emerged from a 30-year period of civil and political unrest, with the presence of a large youthful (mainly unemployed) population, some of whom were child soldiers-this health emergency threatens civil order. What is even more heartbreaking is that we are unable to reopen our basic and secondary health facilities because terrified health workers, who have watched colleagues die, are afraid to return to work.

To date about 153 health workers have become infected and 79 have died. There is now a recurrence of children dying of malaria because mothers could not find a health facility that would admit them. Diseases that were treated with relative ease pre-Ebola now take lives because of the pall that Ebola has cast over our health system.

We need to provide up to 1500 beds in Ebola Treatment Units in Monrovia. We also need to create 10 additional sites in the outlying affected counties. This is beyond anything we are able to address on our own. Unless we significantly increase our capacity to isolate infected persons- their families and communities remain vulnerable and the transmission chain remains unbroken. With our own resources we can only support and manage one (1) one-hundred bed treatment facility. Medicins Sans Frontiers will scale up to 400 beds, leaving a very significant gap.

Mr. President, Liberia's peace and significant economic gains over the last 10 years have come at a great cost. Throughout this process, the United States has been a steadfast friend and partner.

As impressive as our gains have been they remain fragile and this outbreak now threatens to undermine those gains and reverse our progress. In view of this I am directly appealing to you and the American people for the following:

A). That the US government sets up and operates at least one Ebola Treatment Unit (ETU) in Monrovia. Mr. President at the current rate of infections; governments like yours have the resources and assets to deploy at the pace required to arrest the spread. Branches of your military and civilian institutions already have the expertise in dealing with biohazard, infectious disease and chemical agents. They already understand appropriate infection control protocols and we saw these assets were deployed in Aceh after the Tsunami and in Haiti after the earthquake. It is in appreciation of the difference in kind of disaster, that we requesting assistance from units with expertise in managing biohazards.

B) That the U.S. government assists in restoring regular basic and secondary health services at least 10 non-Ebola hospitals. We have been told by health care workers on the frontline that only 80% of patients presenting symptoms at ETUs are infected with the virus. The other 20% needs to be treated at non-Ebola health facilities. However, we need appropriate infection control protocols and testing facilities to protect health care workers and non-Ebola patients in these facilities. Currently, in Monrovia there are 8 hospitals ranging from 50 to 418 beds. Across the rest of the country we need to reopen at least one large public health facility to prevent deaths from treatable diseases and prevent maternal and infant mortality.

Maintenance of air bridges during the course of the response. With airlines servicing the country down to two from a pre-Ebola total of 11, movement of personnel with expertise and equipment into the country is becoming increasingly difficult. Until private air service returns, we will require assistance with air bridges to respond to the crisis.

It is important to note, Mr. President that since the beginning of the outbreak, MSF now has over 400 beds of Ebola patients in the region and not a single staff- medical or support has ever gotten infected in those centers. MSF has made their protocols and template available to the CDC, Save the Children, International Rescue Committee and International Medical Corps. But none of these private charities will be able to deploy on the scale and at the speed required to arrest the spread of the Ebola virus disease (EVD).

Once again, on behalf of the people of Liberia and in my own name, I want to express our sincerest gratitude for the longstanding friendship and partnership between our two countries and peoples."

The quoted letter explained the environment that existed at the time and which necessitated the declaration of the State of Emergency. It should be emphasized also that under the State of Emergency instrument, as endorsed by the legislature, the President was not only granted the powers enumerated in the documents, but she was also granted the right to suspend any and all other rights in which she deemed necessary and appropriate to contain and defeat the virus. This was clearly supported by Article 86 of the Constitution which vested in the President of the Nation the power to declare a state of emergency in the first place. Notwithstanding though, and while there was therefore no further need for a request of additional powers to suspend any other rights not listed in the two documents, those being the Declaration of the State of Emergency and the President's letter to the legislature, as the legislature had already granted to the President the power to suspend any rights necessary to contain the virus, the President, on the 1st day of October, A. D. 2014, sought further endorsement from the legislature regarding powers not specifically enumerated in the documents.

This was contained in the instrument quoted herein below:

REPUBLIC OF LIBERIA

October 1, 2014

THE PRESIDENT EJS/MOS/RL/536/2014

Hon. Gbehzohngar Findley

President Pro-Tempore & Members of the House of Senate (In Session)

Capitol Building

Monrovia, Liberia

Dear Mr. President Pro-Tempore:

As a follow up to my communications dated August 7, 2014 laying before you the facts and circumstances necessitating the declaration of the state of emergency, and in exercise of the emergency powers granted and in keeping with the need for emergency powers granted under Article 86 (a) and (b) which are imperative to contain the spread and bring an end to the Ebola epidemic, please find below measures being undertaken restricting/suspending certain fundamental rights of Liberian citizens.

This letter constitutes our formal request to the legislature approving these Measures:

1. Article 1 of the Liberian Constitution (1986). Alteration of Election Time and Manner. The President may, by proclamation, alter the period and manner provided for under the constitution for elections, by which the people cause their public servants to leave office or to fill vacancies. Provided, however, that no deviation from the constitutionally prescribed period shall cause the extension or reduction of any term of office therein prescribed;
2. Article 12 of the Liberian Constitution (1986). Labor. The President may, by proclamation, procure certain labor or services during this state of emergency;
3. Article 13 of the Liberian Constitution (1986). Free Movement. The President may, by proclamation, limit the movements of certain individuals; groups or communities as the case may be to prevent the further spread or contain the epidemic in certain areas;
4. Article 14 of the Liberian Constitution (1986). Religious Restriction. The President may, by proclamation, restrict certain religious practices, generally or specifically, if she finds that such practice further endangers the public health and contributes to the spread of the virus;
5. Article 15 of the Liberian Constitution (1986). Restriction on speech. The President may, by proclamation or 'executive action, prevent any citizen, groups of citizens or any entity protected under Article 15 of the constitution from making any public statement in person, by print or electronic, which may have the tendency of undermining the State of Emergency, confusing the public on the nature of the healthcare threat, or otherwise causing a state of panic about the health care or security condition of the nation;

6. Article 17 of the Liberian Constitution (1986). Assembly. The President may, by proclamation, limit the right, to assembly for any reason;

7. Article 24 of the Liberian Constitution (1986). Appropriation of Property. The President may, by proclamation, appropriate any private property or prevents the use thereof in order to protect the public health and safety during the state of emergency without payment, of any kind or any further judicial process. Provided however, that the property will be released to the rightful owners upon the end of the state of emergency and that the Government pays for any damages thereto.

Sincerely,

Ellen Johnson Sirleaf

On October 4, 2014, only three days following the request to the Legislature for the grant of additional powers to suspend rights not specifically enumerated in the Declaration of the State of Emergency and the August 7, 2014 letters for the two Houses of the Legislature, and twelve days to the 2014 constitutional date for the holding of the Mid-Term Senatorial elections, as mandated by Article 46 of the Constitution, the President, by Proclamation, suspended the holding of the 2014 Senatorial Elections on the date stipulated in Article 83(a) of the Constitution. We herein capture verbatim the Proclamation suspending the holding of the Senatorial Mid-Term Elections:

A PROCLAMATION BY THE PRESIDENT

WHEREAS, in order to combat the deadly and dreaded Ebola virus affecting our Nation and its people and to eradicate the virus from the Republic, the President of Liberia, on August 6, 2014, acting pursuant to the powers vested in her under Article 86 (a) and (b) of the Constitution of the Republic of Liberia, declared a State of Emergency throughout the Nation, which action was subsequently approved by the legislature of Liberia as stipulated under Article 86 of the Constitution.

WHEREAS, under the Constitution and the mentioned Declaration of the State of Emergency, the President is vested with the power and clothed with the authority to suspend, during the period of the State of Emergency, any and all rights ordinarily exercised, enjoyed and guaranteed to citizens and residents of the Republic in normal periods, limited only by specific exceptions stipulated by the Constitution.

WHEREAS, the continued spread of the Virus, with enormous loss of lives, human tragedies, and impairment of the health, safety and security of citizens and residents of the Republic, and the grave risk posed to the existence and sovereignty of the nation, thereby necessitating, under the mentioned State of Emergency, the suspension by the Government of rights, inclusive of the right of freedom of movement, certain rights of assembly and large public gatherings which would involve person to person contact, the closure of schools and public entertainment centers whose activities could impair efforts at effectively combating the Virus and in fact aid the spread of the virus.

WHEREAS, as a consequence of the measures taken by the Government under the State of Emergency to contain the spread and eradicate the virus, the continued prevalence of the Virus, and other self-surviving measures taken by the people in restricting their travel and contacts, necessary for a free, open and transparent political atmosphere, the National Elections Commission, the Institution cloth e d with the authority to conduct elections in Liberia, has informed the Government that it has been unable to undertake several of the processes that are pre-requisites to conducting the pending 2014. Senatorial election s, including the deployment of staff in the field to conduct civic/voter education, the recruitment and deployment of the required polling staff a t polling centers, the importation of basic, essential and sensitive electoral materials due to the suspension of flights to Liberia, the requisite campaigning by senatorial candidates and the monitoring of the process and activities by the NEC ensure that there are no violations of The Elections Law and that violations are adequately addressed.

WHEREAS, the Government is convinced that the conduct of elections in this period of the Ebola Virus crisis would not only be inimical to the nation and to its people, but would create greater problems for the stability of the nation and a lack of credibility in the results of such elections by the people and the international community under the current crisis situation.

NOW, THEREFORE, by virtue of the power and authority vested in me, both by the constitution and the Declaration of the State of Emergency under authority of the Constitution, I, Ellen Johnson Sirleaf, President of the Republic of Liberia, do order and declare that the October 14, 2014 Senatorial Elections and all the voting rights associated therewith and connected thereto are hereby declared suspended.

The National Elections Commission, the agency of Government authorized to hold general and special elections, is directed to immediately commence consultations and discussions with all recognized and accredited political parties, independent candidates, and civil society organizations and other stakeholders, as well as national and international health authorities on a new date for holding the Special Senatorial Elections.

May God Bless us all and save and preserve our great nation!

GIVEN UNDER MY HAND AND SEAL OF THE REPUBLIC OF LIBERIA, IN THE CITY OF MONROVIA, COUNTY OF MONTSERRADO, THIS 4th DAY OF OCTOBER, IN THE YEAR OF OUR LORD 2014.

ELLEN JOHNSON SIRLEAF

PRESIDENT OF THE REPUBLIC OF LIBERIA"

The Proclamation of the President suspending the holding of the 2014 Senatorial Elections was laid before the Legislature for that Body's endorsement and approval, which following legislative deliberations, was approved and adopted, with the proviso that the elections be schedule f or not

later than December 20, 2014. We believe that it is also important that we quote the said Resolution, which we do herein below:

A JOINT RESOLUTION #002/2014 ADOPTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE 53RD LEGISLATURE OF THE REPUBLIC OF LIBERIA ENDORSING AND APPROVING A PROCLAMATION ISSUED BY THE PRESIDENT OF THE REPUBLIC OF LIBERIA DECLARING THE SUSPENSION OF THE ELECTION EXERCISES OF THE SENATORIAL ELECTION SCHEDULED ON OCTOBER 14, 2014; AND ALL THE VOTING RIGHTS ASSOCIATED THEREWITH AND CONNECTED THERETO.

Whereas, Article 83 (a) of the Constitution of the Republic of Liberia (1986) states that "'voting for the President, Vice-President, members of the Senate and members of the House of Representatives shall be conducted throughout the Republic on the second Tues day in October of each election year"; Recalling, that the second Tuesday of this election year falls on October 14, 2014, which also falls within the scope of the State of Emergency declared by the President of Liberia and approved by the legislature;

Cognizant, that the Constitution of the Republic of Liberia provides that voting n the Senatorial Election shall b e held on the Second Tuesday in October, same being October 14,2014;

Being aware, that the State of Emergency declared, grows out of the attack by the deadly Ebola virus which has engulfed Liberia and other countries in the sub-region killing thousands of our citizens thereby undermining the security of the State, threatening the economy and other social fabrics of the nation-state;

Acknowledging, that measures taken by the President under the State of Emergency to contain the spread and eradicate the virus and self-surviving measures taken by the people and residents of Liberia, in restricting their travel and contact; the necessary environment for a free, open and transparent political atmosphere became impossible. That today, such conditions and state of affairs continue. As a result, the National Elections Commission (NEC) has informed of its inability to undertake several of the processes that pre-requisite to conducting the 2014 Senatorial Elections. Convinced, that the Proclamation issued by the President of the Republic of Liberia on October 4, 2014 declaring the suspension of the election exercises and all the voting rights associated therewith and connected thereto, for the Senatorial election on October 14, 2014; is sanctioned and authorized by Article 88 (a) and (b) of the Constitution of Liberia (1986).

NOW THEREFORE;

It is resolved by the Senate and House of Representatives of the 53rd legislature of the Republic of Liberia in Extra-ordinary Session assembled:

1. That immediately upon and after the adoption of this Resolution # 002/2014, the proclamation by the President of the Republic on October 4, 2014 declaring the suspension of all election

exercises for the Senatorial election of October 14, 2014 and all the voting rights associated therewith and connected thereto, is hereby endorsed and approved.

2. The National Elections Commission, the agency of Government authorized to hold general and special elections, is, hereby accordingly directed to immediately commence consultations and discussions with all recognized and accredited political parties, independent candidates, civil society organizations and other stakeholders, as well as national and international health authorities on a new date for the holding of the Senatorial election for 2014: not later than December 20, 2014, pending the approval of the Legislature.

Done this 10th day of October A.D. 2014 in Legislature Assembled, Capitol Building in the City of Monrovia, County of Montserrado, Republic of Liberia.

It isn't clear what the basis was for the setting of the new date by the legislature since, at the time there was no clear picture as to when the virus might be sufficiently contained such that citizens, the voters, could be deemed safe enough to gather or assemble, either for purposes of campaigning or for voting. However, that is not at issue at this point. What is clear is that on October 19, 2014, a mere nine days after the legislature adopted a new outer limit date for the holding of the senatorial elections, the President wrote a letter, directed at the world, explaining the situation in Liberia. As this is also a public document, we see the need, not only to take judicial notice of same, but also to quote the said instrument, which we do herein below:

October 19, 2014

Dear World:

In just over six months, Ebola has managed to bring my country to a standstill. We have lost over 2,000 Liberians. Some are children struck down in the prime of their youth. Some were fathers, mothers, brothers or best friends. Many were brave health workers that risked their lives to save others, or simply offer victims comfort in their final moments.

There is no coincidence Ebola has taken hold in three fragile states - Liberia, Sierra Leone and Guinea - all battling to overcome the effects of interconnected wars. In Liberia, our civil war ended only eleven years ago. It destroyed our public infrastructure, crushed our economy and led to an exodus of educated professionals. A country that had some 3,000 qualified doctors at the start of the war was dependent by its end on barely three dozen. In the last few years, Liberia was bouncing back. We realized there was a long way to go, but the future was looking bright.

Now Ebola threatens to erase that hard work. Our economy was set to be larger and stronger this year, offering more jobs to Liberians and raising living standards. Ebola is not just a health crisis across West Africa, a generation of young people risk being lost to an economic catastrophe as harvests are missed, markets are shut and borders are closed.

The virus has been able to spread so rapidly because of the insufficient strength of the emergency, medical and military services that remain under-resourced and without the preparedness to confront such a challenge. This would have been the case whether the confrontation was with Ebola, another infectious disease, or a natural disaster.

But one thing is clear. This is a fight in which the whole world has a stake. This disease respects no borders. The damage it is causing in West Africa, whether in public health, the economy or within communities - is already reverberating throughout the region and across the world.

The international reaction to this crisis was initially inconsistent and lacking in clear direction or urgency. Now finally, the world has woken up. The community of nations has realized they cannot simply pull up the drawbridge and wish this situation away.

This fight requires a commitment from every nation that has the capacity to help whether that is with emergency funds, medical supplies or clinical expertise.

I have every faith in our resilience as Liberians, and our capacity as global citizens, to face down this disease, beat it and rebuild. History has shown that when a people are at their darkest hour, humanity has an enviable ability to act with bravery, compassion and selflessness for the benefit of those most in need. From governments to international organizations, financial institutions to NGOs, politicians to ordinary people on the street in any corner of the world, we all have a stake in the battle against Ebola. It is the duty of all of us, as global citizens, to send a message that we will not leave millions of West Africans to fend for themselves against an enemy that they do not know, and against whom they have little defense.

The time for talking or theorizing is over. Only concerted action will save my country, and our neighbors, from experiencing another national tragedy. The words of Henrik Ibsen have never been truer: 'A thousand words leave not the same deep impression as does a single deed.'

Yours sincerely,

Ellen Johnson Sirleaf

It was within the context of all of the above that the NEC commenced the task that was entrusted to it by the legislature in the Joint Resolution of October 10, 2014. It was in furtherance of that task that the NEC, on November 3, 2014, barely fifteen days after the President's letter alerting the world to the bleak state of affairs in Liberia, informed the legislature that it had determined that the Senatorial Elections should be held on December 16, 2014. We herewith quote the said letter:

Republic of Liberia

NATIONAL ELECTIONS COMMISSION

TUBMAN BOULEVARD, 9TH & 10TH STREETS, SINKOR

P.O. BOX 2044

MONROVIA, LI BER IA.

Email: info @ necliberia.org

FAX:23177226245

3rd November 2014

RL/NEC/JGK/212/'14

Hon. Gbehzohngar M. Findley

President Pro Tempore of the Liberian Senate

Capitol Building

Capitol Hill

Monrovia, Liberia

Dear Hon. Findley:

I have the honor to present sincere compliments on behalf of the National Elections Commission (NEC), and herein take the opportunity to thank the Honorable, the Liberian Senate for its action on the Commission's recommendation proposing the suspension of the Special Senatorial Election date of October 14, 2014.

In compliance with the Joint Resolution adopted by the National Legislature and approved by the President, in which the Commission was mandated to conduct the Special Senatorial Election no later than December 20, 2014, and to hold consultations with relevant stakeholders to set a new date for the conduct of said election, I am pleased to inform the Honorable Liberian Senate, that the NEC has concluded those consultations, and the following are the Institutions and individuals consulted:

1. All Registered Political Parties and Independent Candidates;
2. Civil Society Organizations;
3. Inter Religious Council of Liberia (Umbrella Organization);
National Muslim Council of Liberia (Separately);
Liberia Council of Churches (Separately);
4. National Traditional Council of Liberia;
5. The Press Union of Liberia;
6. Youth and Student Groups (Federation of Liberian Youth and Liberian National Student Union);
7. National and International Health Experts (MoH, CDC and the WHO);

8. Representatives of International Development Partners (AU, ECOWAS, EU, UNDP, UNMIL);

9. United States Ambassador to Liberia;

10. Citizens and traditional leaders in the fifteen counties;

I am further pleased to inform you, and through you, the Honorable Liberia Senate that an overwhelming majority of those consulted proposed, and the Commission has concurred, that the Special Senatorial Election be conducted on December 16, 2014. Those consulted further recommended that the timeline for conduct of the Special election on December 16, 2014, should include an alternative plan whereby, in the case of an upsurge of the Ebola virus in a particular county at the time of election, the election in such affected county should be deferred and treated as a by-election as provided for under Article 37 of the Constitution of Liberia.

Accordingly, I am pleased to submit the date of December 16, 2014, proposed by stakeholders consulted as the new date for the conduct of the Special Senatorial Election for approval by the Honorable legislature, as required by the Joint Resolution. The Commission further requests that the Honorable Senate will include in its approval, the alternative plan proposed by those consulted as described in the paragraph immediately preceding.

We have attached under cover of this letter, for your information, a copy of the report from the consultations held with stakeholders. The report reflects summary of the views expressed by stakeholders consulted.

Based on the proposed date, the Commission has revised its timeline to reflect the change and is also pleased to submit a copy thereof for your information. Because of the compressed time in which the Commission is required to conduct this election, as indicated on the enclosed timeline, I respectfully request the Honorable legislature to urgently approve the new date so that the Commission can get its work underway.

It is worth noting Mr. President Pro-Tempore that Ebola factor has triggered additional cost for the conduct of the election which has not originally anticipated. The Commission wishes to notify you that the said additional cost will be submitted shortly for your timely approval.

With sentiments of my highest consideration and esteem, I remain.

Sincerely yours,

Jerome G. Korkoya, JD

CHAIRMAN

It is also important for the purpose of this opinion and analysis made herein that we recite the Report made by the NEC to the Legislature and which formed the basis of the Commission's

conclusion that acting pursuant to the legislative directive that the elections be held no later than December 20, 2014, the said elections should be held on December 16, 2014:

Encl: As stated.

Report from Public Consultations with Stakeholders to set a New Date for the Conduct of the 2014 Special Senatorial Election.

Introduction

The National Elections Commission (NEC), acting pursuant to Resolution #002/2014 adopted by the 53rd Legislature of the Republic of Liberia on October 10, 2014 directing the NEC to hold public consultations with stakeholders in the electoral process to set a new date for the conduct of the 2014 Special Senatorial Election no later than December 20, 2014, approved by the President of Liberia, has completed consultations as mandated. The institutions consulted include:

1. Political Parties and Independent Candidates;
2. Civil Society Organizations;
3. Inter Religious Council of Liberia (National Muslim Council of Liberia and Liberia Council of Churches);
4. National Traditional Council of Liberia;
5. The Press Union of Liberia;
6. Youth and Student Groups (Federation of Liberian Youth and Liberian National Student Union);
7. National and International Health Experts (MoH, CDC and the WHO);
8. Representatives of International Development Partners (AU, ECOWAS, EU, UNDP, UNMIL)
9. United States Ambassador to Liberia;

In addition to meeting with the national and international institutions mentioned above, the Commission also met with local and traditional leaders across the country.

This report summarizes the results of those consultations and recommendations made by participants for consideration by the Honorable National Legislature.

Background

In the wake of the second outbreak of the Ebola virus in the country with all its attending intensity, impact and confusion, the NEC informed the Government of Liberia that the conduct of a free fair and credible Special Senatorial Election would not be prudent on October 14, 2014 as required

by law. The Commission therefore recommended to the Government to take the necessary legal actions to postpone the conduct of the election.

Predicated on the Commission's recommendation to the Government of Liberia, the National legislature adopted a resolution, which was approved by the President of Liberia, suspending the conduct of the Special Senatorial Election on October 14, 2014 and directed the NEC to hold consultations and discussions with relevant stakeholders in the electoral process to set a new date for the conduct of the election, subject to approval by the National legislature.

Predicated on the Commission's recommendation to the Government of Liberia, the National legislature adopted a resolution, which was approved by the President of Liberia, suspending the conduct of the Special Senatorial Election on October 14, 2014 and directed the NEC to hold consultations and discussions with relevant stakeholders in the electoral process to set a new date for the conduct of the election, subject to approval by the National legislature .

Based on this directive, the NEC, between October 12 and 28, 2014, consulted relevant stakeholders in the electoral process to set a new date for the conduct of the election. The following pages summarize proceedings at those consultative meetings.

International Partners and Friendly Governments and Organizations

Prior to the issuance of the directive from the National Legislature, the NEC met with representatives of international partners friendly governments and organizations. While they were not opposed to the conduct of the Special Senatorial Election, they emphasized the public health factor.

Individual Political Parties

To commence the implementation of the directive from the National Legislature, the Commission held separate meetings with leaders of 11 of the 16 registered political parties in the country. In each meeting, the NEC explained the mandate from the National Legislature contained in its resolution and solicited suggestions on a suitable date for the conduct of the Special Senatorial Election.

In separate remarks, political parties wanted to know from the Commission's technical perspective a suitable date for the conduct of the election. Responding, the NEC Chairman pointed out that, holding all things constant, December 16 would be ideal to conduct the Senatorial Election. Providing background to the NEC's preference for December 16, Chairman Korkoya emphasized that the said date would provide ample time for the Commission to assemble all its logistics, majority of which are imported into the country. Additionally, the NEC observed that election on the 16th of December will provide time for the Commission to adjudicate cases coming out of the election, and enable would be aggrieved parties to seek redress at the Supreme Court before the seating of senators-elect as required by law. The separate meetings with political parties were precursor meetings to the bigger political party meeting which was held on October 20, 2014.

Traditional Council of Liberia

On October 16, 2014, the Board of Commissioners of the National Elections Commission met with Chief Zanzan Karwor and the Traditional Council of Liberia at the council's headquarters on 25th Street, Sinkor to discuss the selection of a date for the conduct of the Special Senatorial Election.

In that meeting, the NEC Chairman explained the mandate received from the National Legislature and sought suggestions from the council.

In response, Chiefs were unanimous that the Special Senatorial Election be held in December as mandated by the Legislature. They underscored the need to abide by the provisions of the Constitution in order not to interrupt the current dispensation of democratic governance. They also suggested that in the event of a prevalence of the Ebola virus at the time of the election in certain county/ies, election in the affected county/ies should be deferred and conducted as provided under Article 37 of the Constitution of Liberia .

On the question of the date suitable for the conduct of the election, they concurred with the Commission that the election be held on December 16, 2014.

Inter-Religious, Council of Liberia

The Commission's meeting with the Inter-Religious Council followed similar pattern as the one with the National Traditional Council. Some members of the council supported the conduct of election on December 16 as proposed by the Commission while others questioned the urgency of holding election at this time. Following the meeting with the Inter-Religious Council, the Liberia Council of Churches requested a separate meeting with the Commission. The NEC accepted this request and, in the spirit of fairness, the Commission availed similar opportunity to the National Muslim Council of Liberia.

National Muslim Council of Liberia and the Liberia Council of Churches

As a follow-up to the earlier meeting with representatives of the Inter-Religious council and in respect to the request by the Liberian Council of Churches for a separate meeting, the Board of Commissioners of the NEC met separately with officials of the National Muslim Council of Liberia and the Liberia Council of Churches on October 28, 2014.

While expressing support for the conduct of the election on December 16, 2014, the National Muslim Council advised that the Commission puts into place all necessary preventive measures at the various polling places to avoid possible spreading of the Ebola virus in the country. They complained of discrimination against their members during electoral process based on their names and called on the Commission to educate its staff both permanent and temporary on the laws.

Members of the Liberia Council of Churches for their part sought clarification on a number of issues relating to the conduct of the election. Individual members however did not express support or opposition to the holding of the election but asked for time to discuss the matter with their members and come up with a position on the matter.

Youth and Student Groupings

In continuation of its consultation with stakeholders to set a new date for the conduct of the Special Senatorial Election, the Board of Commissioners of the NEC on -October 17, 2014, met with representatives of the Federation of Liberian Youths (FLY) and the Liberia National Student Union (LINSU). All but one of the Participants in attendance supported the Conduct of election on December 16, 2014 as proposed by the Commission. The only one member in opposition to the holding of election on December 16, 2014, questioned the rationale of conducting the election at the time when children are out of school and government employees are not going to work.

On the question of deriving a fallback position if there is an upsurge of the Ebola virus at the time of the election, the youth community recommended that should such incident present itself, election in affected should be deferred and conducted as by-election under provisions of Article 37 of the Constitution of Liberia.

The Press Union of Liberia

Following the meeting with youth and student groupings on October 17, 2014, the Commission also met with the Press Union of Liberia. During the meeting, opinions were split among members of the union in attendance. Some members supported the conduct of election in December, while others questioned the urgency to hold election in the midst of the prevailing Ebola epidemic. Those who questioned the urgency of the election proposed that a national conference be convened to select senators to replace those whose tenure will be expiring in January.

Political Parties and Independent Candidates

As a follow up to separate meetings held with political parties, the Commission convened general meeting of all registered political parties and independent candidates who have been certified by the Commission to the Special Senatorial Election. Generally, political parties and independent candidates supported the conduct of the Special Senatorial Election on December 16, 2014. Additionally, they proposed that in the event of an upsurge in the Ebola situation at the time of the election, election in counties with high prevalence of the virus be deferred and conducted under provisions of Article 37 of the Constitution of Liberia. They however suggested that the determination to defer election in a particular county should be based on report and advice from health authorities.

Conversely, two political parties and an independent candidate registered their disapproval to the conduct of election in December. They argued that the mandate from the legislature was

unconstitutional in the first place and called for a "sovereign national conference" to select replacement for outgoing senators.

Civil Society Organizations (CSO)

The meeting with civil society organizations was quite interactive. Though participants neither supported nor opposed the conduct of election on December 16, they inquired if the conditions that necessitated the postponement of the election no longer exist. They were also concerned about the availability of the needed resources to the Commission to conduct the election in a relatively short time. The CSOs promised to document their position on the matter to the NEC.

In a communication dated October 22, 2014, the civil society organizations supported the conduct of the Special Senatorial Election and recommended, among other things, that the election be conducted on December 30, 2014 to enable the Commission prepare adequately.

Ministry of Health for Social Welfare (MoH), Center for Disease Control (CDC) and World Health Organization (WHO)

As required by the resolution from the National legislature, the NEC also met with representatives of the MoH, the CDC and the WHO. In separate presentations, each health authority gave an outlook of the public health situation in the country. Generally, they all painted a positive picture of the health situation, underscoring that the Ebola virus is "bending the curve" which means there is a decrease in the spread and attending consequences.

When asked for advice on whether or not the Commission should proceed to conduct the Special Senatorial Election in December, health experts did not present a definite position. As public health practitioners, they instead preferred to emphasize the fight against Ebola.

The Center for Disease Control (CDC), however advised that if it becomes imperative to hold the election, the following preventive measures among others, should be observed:

1. That voters on election-day be advised to stand at least three feet apart;
2. That mass migration of voters be restricted and;
3. That the NEC be very careful with the participation of sick people in the election;

The WHO for its part advised that the public health situation be prioritized.

Clarifying on previous projection on the increase of the virus, the Ministry of Health maintained that the projections were based on figures generated at the time the prevalence of the virus was at its height and on condition that the various interventions would not be made.

Regional Consultations

In an effort to broaden the public consultations and incorporate views from local and traditional leaders, the NEC held regional consultations across the country.

The country was divided into four regions as follows:

1. Region I delegates were drawn from Bomi, Gbarpolu, Grand Cape Mount and Montserrado Counties with Tubmanburg serving as the venue.
2. Region II consisted of delegates from Bong, Lofa and Nimba Counties.

The venue for this region consultation was Gbarnga, Bong County.

October 10, 2014, and approved by the President of the Republic of Liberia, mandating the Commission to conduct the Special Senatorial Election no later than December 20, 2014 and further directing It to hold consultations and discussions with relevant stakeholders in the electoral process, the NEC has completed consultations as directed. The Commission is also pleased to report, Honorable members of the National legislature, that majority of stakeholders consulted proposed that the Special Senatorial Election be conducted on December 16, 2014.

Meanwhile, stakeholders recommended, among other things, that the 53rd legislature provides the necessary legal framework that in case of an upsurge of the Ebola virus in a particular county at the time of election, the election in the affected county be deferred and treated as by-election as provided for under Article 37 of the Constitution of the Republic of Liberia.

The foregoing presents the background to the petitions filed before the Justice in Chambers seeking a stay of the elections until appropriate mechanisms have been put into place to protect the citizens against the Ebola Virus Disease during the electoral campaign process. I have chosen not to recite the various documents filed by the parties, firstly because of time factor; secondly, because I have commented on concurring with the majority opinion on the procedural issues; and thirdly because I believe that some of the issues presented do not warrant being addressed, as for example the suggestion that a conference consisting of eminent citizens with political parties and civil society organization, the legislature and the President be held to determine the date for the holding of the elections. This would clearly be in direct violation of the Constitution and a misreading of Article 1 of the Constitution, and as such need not consume energy which can be utilized on the more important issue presented, which is whether in the wake of the Ebola virus crises the conditions which led to the Declaration of the State of Emergency are no longer present such that elections can be proceeded with and in that connection whether the National Elections Commission put into place the required mechanisms needed to protect the citizenry from contact with the virus.

We note that in submitting the report quoted above, and the letter to the Legislature suggesting the date of December 16, 2014, as the date on which the 2014 Senatorial Elections should be held, the NEC did not submit to the Legislature a blueprint that outlined a plan that it would follow or which it would require political parties to follow, either in the course of campaigning over the campaign period or in the course of voting on the day of voting; it laid out no standard which political parties and candidates would be required to adhere to in order to safeguard the citizens

from contracting the Ebola virus; and it laid out no penalties for violations which could or would have the effect of exposing the electorate or persons involved with or appearing at campaign rallies to the Ebola virus, and thereby aiding the spread of the virus to the community and the nation. It failed to take into consideration that it was the appearance of a single affected person that has caused, up to the date of this ruling, the death of more than three thousand Liberian citizens and several foreign health personnel who had come to aid the Liberian people and nation in the fight against the disease, or of those who continue to come, both at the behest of their governments and of international organizations and who continue to put themselves at risk for the Liberian people and nation.

At best, the NEC demonstrated a callous disregard for the health and safety of the Liberian people. All it concerned itself with was meeting the mandate of the Legislature to hold the 2014 Senatorial Elections not later than December 20, 2014, regardless of what the legal and other consequences would be if the appropriate mechanisms were not put into place to give comfort to the people that they would campaign and vote, and would appear at rallies in an atmosphere of calm, safety and security; it coordinated with no institution responsible either for the health or safety of the Liberian people, except to state in the report . that it had conferred with several organizations in reaching the conclusion that it would conduct the elections on December 16, 2014, within the timeframe set by the legislature.

Yet, our majority colleagues would have us accept that the National Elections Commission was under no such obligation and that to assert that such obligation exists would be tantamount to involving the Court into politics and policy decisions which are strictly within the realm of the Executive and the legislature. Indeed, the majority not only do not admit to such obligation by the National Elections Commission, but this begs the Commission, as a favor, to kindly consider putting into place measures that may safeguard the lives of the Liberian people in the course of any campaigning or on whatever date the Commission sets for conducting the elections. This is where I differ with my colleagues. The Constitution in entrusting the electoral process to the National Elections Commission anticipates that in conducting elections, the Commission would put into place not merely guidelines and rules for the conduct of the elections, but also the appropriate mechanisms that would ensure that elections are conducted in an atmosphere that engenders fairness, transparency, safety, security and the like; the Legislature, in passing the Elections law envisaged that the Commission would similarly have such measures put into place; and the appearance of the Ebola virus in our country dictated that the Commission would, before proceeding to announce the opening of campaigning, would have put into place the necessary mechanisms that would protect the Liberian people from the further exposure to the disease.

Yet, none of these were done. Instead, as if in an afterthought, and when asked by the Justice in Chambers, at the conference held in regard to the petitions if it even had guidelines and rules for the conduct of the elections, submitted subsequently a document which seemed to have been prepared as an afterthought, since it is dated five days after political campaigning had commenced

as per the announcement of the Commission for campaigning. The document, critical as it should be, and for whatever reason or reasons (such as the absence of a commissioner, a disagreement by a commissioner, etc.), was not even signed by all of the Commissioners. Notwithstanding this, my colleagues of the majority would have us believe that this is a political question and therefore the Court is without the authority' to enquire into the absence of measures or mechanisms that needed to be in place for the holding of fair, transparent and health and security safe elections. I disagree. The President's appeal to the world and to other nations to sacrifice their citizens for our cause and to expend their countries' resources to save and secure the lives and health of our people, threatened with extinction by the Ebola virus, was not a matter of or for politics; the declaration of the state of Emergency was not a matter of politics, it was a legal action taken out of necessity for the safety and security of the nation; the suspension of the rights of our people had legal consequences for them and for the nation, not a matter of politics; and the death of more than three thousands Liberians (and counting) and a number of our foreign health workers is not a matter of politics, it is a matter of the survival of our people. But the arguments by the Government, subscribed to by the majority of the Court, put the blame for the spread on the Liberian people and not on the failure of the Government to take the adequate measures to contain the spread of the virus. Hence, although no mechanisms are put into place to ensure the campaigns do not lose control such as would pose a danger to the health and security of the nation, the Government, and the majority would have the Liberian people, and the world at large, believe that if the campaigns result into any increase of the virus and cause hundreds of our citizens to succumb to the virus, it will be the fault of the citizens, and that we can say nothing of or about the failure since the matter of what goes into the elections and the conditions under which the elections are held are a matter of politics, and that the Court is forbidden from engaging in politics. I disagree with that theory and that conclusion. That is a sacrifice I am not prepared to make at the possible costs of thousands of the citizens of Liberia.

Nor am I prepared to accept the theory that the display of ignorance, incompetence or outright deliberate callousness by the NEC in putting into place the necessary safeguards and health mechanisms, especially for monitoring the compliance of the regulations which the NEC claims to have in place can be excused under the guise of politics. While I submit that the matter of when elections should be held and the campaigning by politicians are matters of politics and for the political machineries, I refuse to subscribe to the theory or conclusion that the health and safety of the Liberian people against the Ebola virus thereby becomes a matter of politics for the legislature and the Executive, regardless of the legal and health consequences to the people.

I do not, by the position I have taken, subscribe to the proposition that this Court should indulge in determining the wisdom of executive or legislative political decisions or politics. To the contrary, I acknowledge that this Court cannot protrude into such matters, as is recognized not only internationally by democracies having the same system of government as Liberia, but also as

acknowledged by this Court when confronted with such matters. Indeed, this Court, several decades ago, in the case *Massaquoi v. The Republic*, 3 LLR 411(1933), clearly stated the position of the Court on the Issue of whether the Court can delve into political questions or issues. This is what Mr. Justice Karnga, speaking for the Court said:

"Matters which are by their nature solely politics should be confined within the realm of politics. There is a vital difference between justiciable matters and matters political. Courts of law and instituted for the purpose of deciding only such questions as are susceptible of determination by the application of well recognized rules of law or equity. Political questions cannot, however, be determined by courts of law because there are no principles of either law or equity by which they can be decided. The only rule applicable to the adjustment of such question is the rule of conciliation or compromise; and when a court of law embarks on such turbulent seas, it immediately loses its office as a judicial tribunal and abdicates its forum where pettifogging politicians resort to ventilate their little minds.

The Court could not have put the matter more eloquently, and my majority colleagues cite the quoted opinion as the basis for its conclusion. I recognize fully the holding in the *Massaquoi* case and other cases decided thereafter. I do not believe, however that the principle stated in the *Massaquoi* is relevant or applicable to the instant case; and most certain the example given by the majority to support their position Is not analogous to the facts in this case. I believe accordingly that my colleagues of the majority have misinterpreted and misapplied the principle enunciated in the *Massaquoi* case.

Firstly, while the majority opinion refers to the resolution passed by the Legislature and approved by the President as politics and policy political decision, it at the same time states that the resolution, upon publication, become and attained the status of law, and as such was not only enforceable but had to be obeyed. I submit that if the instrument became l a w, it transcended the political and policy realm, and thereby became subject to the command of Article of Article 2 of the Constitution. This meant that the law became reviewable by the Supreme Court. Again, this is what Article 2 of the Constitution says: "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." LIB. CONST., ART.2 (1986). The Constitution is very clear in its command: All laws passed by the legislature, if challenged, as every citizen affected by such laws has the right to do, are reviewable by the Supreme Court. Article 26 of the Constitution states: "Where any person or any association alleges that any of the rights granted under this Constitution or any legislation or directives are constitutionally contravened, that person or association may invoke the privilege and benefit of court direction, order or writ, including a judgment of unconstitutionality...." [LIB. CONST., ART 26 (1986)]

My review of the Constitution, in its entirety, has revealed no exceptions to the Supreme Court's authority to review Acts of the legislature or any other laws, whether emanating from the legislature or from the Executive. To the contrary, the reverse is declared by the Constitution at Article 56, wherein it 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, autonomous agencies or any other authority, both as to law and fact except cases involving ambassadors, ministers, or cases in which a county is a party. In all such cases, the Supreme Court shall exercise original jurisdiction. The legislature shall make no law nor create any exceptions as would deprive the Supreme Court of any of the powers granted herein." [LIB. CONST., ART. 66] Thus, not only is the principle relative to the Supreme Court not reviewing political act or decisions not applicable, but the Supreme Court itself is not allowed to restrict or limits its review of Acts passed by the legislature, assuming that all of the steps prescribed by law for review have been met.

Further, the majority opinion, in citing incidents of the president's establishment of diplomatic relationship with other countries as support for the application of the principle is not only a further misreading of the principle relied upon by the majority but it ignores the fact that the establishment of diplomatic relationship with another country or the decision to establish or not to establish such diplomatic relationship with another nation is strictly a political decision, a policy issue for the Executive, and is neither law nor does it have the force of law; and, being a direct political prerogative vested in the president by Article 57 of the Constitution does not require legislative approval, except where the President concludes a treaty or other agreements. [LIB. CONST., ART.57 (1986)]. Thus, the example of the political principle doctrine is not only not applicable in the instant case where the majority speaks of a document that is law and has the force of law, unless they admit to an error in referring to the instrument as law, but accentuates the majority opinion's confusion between politics, political or policy matter and law. A mere policy matter does not carry with it the mandatory enforcement and obedience as does a law, and the one (the law) has a superior standing to the other (the policy).

In the instant case, the Constitution clearly mandates that the legislature passes Elections law and that the National Elections Commission enforces the law and conducts elections under and within an environment that ensures that the citizens are protected in the enjoyment of the right granted by the Constitution. The failure by the legislature or the NEC to protect those constitutionally guaranteed rights cannot be said to be a matter for politics, and Article 2 of the Constitution does not contemplate that the protection of rights shall be made a matter of politics; otherwise, the Article would clearly have stated that the Supreme Court is without the authority to probe into the violation of rights.

Moreover, it cannot be said that the fact that the Legislature passed a Resolution, which was later approved by the President, and which upon publication became law, provides political cover for the failures of the NEC to put into place the mechanisms for regulating and monitoring the

electoral process in the current Ebola environment or to excuse it for adopting an attitude of apathy and indifference to the rights of citizens in Its performance of what is clearly a legal duty imposed on it by the Constitution, the Elections law and the Resolution passed by the legislature, subject of these prohibition proceedings. As a matter of fact, the President's approval strengthens my contention that this Court can properly exercise judicial review of the holding of the election as the President's signature gave the Resolution the effect of law, which the majority of my colleagues recognize when, in the majority opinion, they wrote, "Both Houses of the Legislature passed a joint resolution authorizing the holding of the elections on December 16, 2014 and the Joint Resolution was signed into law by the President.

Therefore, since Article II of the Constitution empowers this Court to review, *inter alia*, any law, this Court has the authority to ask the question whether the Joint Resolution, signed by the President, which set the election date correspond with the Government's Constitutional duty to protect the public health of its citizens. The National Elections Commission must know and accept that the conduct of elections is more than just the printing of ballot papers, the transportation of ballot boxes, the training of persons to oversee the actual voting, or the counting of votes. It entailed ensuring that the guaranteed rights of the people are exercised and enjoyed in a most healthy environment.

Nothing in the records reveal that even in the state of scenarios outlined by the NEC, any action was taken or directives given regarding measures that must be in place in the event of an upsurge of the Ebola virus in any of the electoral areas, growing out of the electoral process or caused by the electoral undertakings by the NEC. The NEC, rather than making concrete proposals as to measures to be taken, and taking concrete measures to ensure that any rules and regulations are adhered to in such eventuality, chose instead to place the burden on the Legislature to design the system or mechanism that should be put into place to take care of the eventuality pointed out by the NEC. Notwithstanding, the Legislature approved of the recommendation of the NEC and scheduled the Senatorial Elections for December 16, 2014. Again, I should emphasize that my focus is not on the date of the elections; rather it is on what the NEC and the Government have put into place to deal with the conduct of the elections in the environment of the Ebola disease.

Thus, the issue before the Court is not about holding elections. Elections must be held. That is dictated by the Constitution and is a constitutional mandate, and all Liberians and Liberian institutions, including the political branches of the Government, must and are expected to adhere to that constitutional command. Instead, the question is whether elections must be held at all cost if the nation is stricken by a deadly disease which poses a threat to the electoral process if the latter is not properly regulated and monitored in ways that protect the life and health of the Liberian people. The latest statistics show that the virus is still within the nation and the various pronouncements by the President and the relevant functionaries of the Executive Branch admit and acknowledge that the virus is still present although on a substantially reduced level.

Notwithstanding all of the above, the Supreme Court has chosen to accept and adopt the position of the Executive Branch of Government takes the position, however, that the question is a political question, not a legal question, and hence, in effect, the Supreme Court should not determine if any of the rights guaranteed the citizens by the Constitution are being infringed upon or are likely to be infringed upon, in the circumstances of this case, by the continued presence of the Ebola virus; and that by such inaction by this Court, that we turn a blind eye to the almost complete lack of any protective mechanism to protect people appearing at political gatherings and rallies against acts or actions which could spread the virus. I believe that the current electoral process is so poorly regulated and monitored by the National Elections Commission, with no mechanisms put in place by the NEC to protect the citizenry against the virus and to guide against the conditions that would enable or facilitate the spread of the virus that a real threat is posed by the virus. I submit that the demonstrated inability by the National Elections Commission to ensure that the voting rights guaranteed citizens can be openly enjoyed is not a political question.

We are told that our citizens must make a choice between the exercise of the constitutional right to life and the exercise of the constitutional right to vote, each citizen being personally responsible for the choice he or she makes. If he or she chooses the right to life (i.e. to guard against contracting the Ebola virus), then he or she must forfeit the right to vote; . or, in the alternative, if the citizen chooses the right to vote, then you must runs the uncontrolled risk of contracting the virus, for which the citizen must hold himself or herself personally responsible. I do not believe that given the failures of the NEC and the demonstrated incompetence to deal adequately with the situation with which it is presented, that the matter is a political question. For me, the question is not whether the Legislature has the right to pass resolutions and whether the President has the authority to approve of such resolution and whether such resolution becomes law after publication. That authority is granted by the Constitution and the Legislature cannot divorce itself from the exercise of that power In the interest of the Liberian people. The question is whether the Resolution passed by the legislature and approved by the President, and which has the force of law, presupposes that the National Elections Commission, in the exercise of the mandate imposed upon it by the Resolution, is under a legal duty and obligation to ensure that the constitutional right to life and to vote, guaranteed our citizens, are accorded equally to our citizens, and that all measures are in place that would not present for the citizen the choice of whether to live or to vote and run the severe risk to the loss of life.

Put into an alternative context, the fact that the Legislature passes such resolution and the President approves of the resolution which upon publication is said to have given it the force of law, does not ipso facto vest in the National Elections Commission the right or the authority to deprive any Liberian of the right to life or the right to vote under the guise that it has been mandated by the legislature to conduct the elections by a given date; nor does it vest in the NEC the right to subject the citizens to making a choice of whether to live or whether to vote. The decision as to whether the NEC should put into place the safeguards and protective mechanisms

to ensure that the elections are free, fair, peaceful and competitive, and conducted in an atmosphere in which every citizen has the opportunity and can enjoy the right to vote without fearing, and the fear is real, that he or she will come into contact with a deadly virus, is not a political question or decision and is not one that should be opened to debate. The duty is imposed on the NEC by both the Constitution and the statutory laws of the land. The enjoyment of the right is not one that is within the discretion of the NEC; no such discretion is granted by the Constitution or by the Elections law, and no such discretion, was within the contemplation of the framers of those laws. It cannot therefore be a matter of discretion for the NEC.

The Constitution is very clear in its grant to the people that every citizen of the right to life. It states at Article 11, sub-section (a) that: " All persons are born equally free and independent and have certain natural, inherent and inalienable rights, among which are the right of enjoying and defending life and liberty, of pursuing and maintaining the security of the person and of acquiring, possessing and protecting property, subject to such qualifications as provided for in this Constitution. That sacred document also grants to every citizen the right to vote. Article 77(b) states: "All elections shall be by secret ballot as may be determined by the Elections Commission, and every Liberian citizen not less than 18 years of age shall have the right to be registered as a voter and to vote in public elections and referenda under this Constitution. The legislature shall enact laws indicating the category of Liberians who shall not form or become members of political parties.

The two separate Articles of the Constitution grant two separate and distinct rights, subject only to conditions and restrictions set forth in the Constitution. Nothing in those provisions state that a citizen can only enjoy one of the rights if he or she sacrifices the enjoyment of the other; and nothing contained in them vests in the NEC the power to determine or prescribe, by regulation or by conduct, that a citizen must sacrifice the one right in order to enjoy the other. Yet, the NEC believes that such is or should be the case. A citizen who has met the requirements as a voter, the NEC injects, by its conduct, must decide whether he or she cares sufficiently for life to make the determination not to appear at election gatherings and rallies and at election polling centers, or that he or she believes that the right to vote is so sacred that he or she is prepared to sacrifice life in order to vote or to attend election gatherings and rallies.

This view of the NEC was clearly evidenced at the hearing before the this Court, when its counsel, asked whether in the face of the launching by the Congress for Democratic Change for its candidate for the senatorial seat for Montserrado County, held on November 28, 2014, the NEC had put into place any mechanism to prevent a repeat of such occurrences at the campaign rally, responded that the NEC was working on monitoring and other measures. Counsel for the Government gave the same response to a similar question. Indeed, the returns filed by the Government not only acknowledged the deficiency of the measures which the Government said the NEC had put into place but added that the NEC was working on additional measures to address the issues of concern expressed growing out of the November 28, 2014 experience and

that the President had even gone the extra mile by the issuance of Executive Order No. 65, designed to address the issues of concern.

The constitutionality of that Order is currently before the Supreme Court for its disposition, and we take judicial notice of the fact that the Justice in Chambers suspended the enforcement of the Order until the Supreme Court has had the opportunity to pass on its constitutionality. However, this then begs the question again, what has the National Elections Commission plan to have in place the required protective measures and mechanisms to not only regulate the behavior of political parties and candidates in the electoral process as would ensure that citizens are not exposed anew to the disease and thereby cause its spread, but also that behavior can be monitored of persons at such rallies and campaigns and that violations will subject to prescribed penalties. None were presented to the Court and the Court is unaware that any have been promulgated, in addition to the rules and regulations submitted to the Court but which fell far short of required action needed for the holding of the elections in the present Ebola environment.

But my even greater concern is what would be the basis for the Supreme Court to entertain any complaint relating to elections violations, either by candidates, political parties, or the National Elections Commission, since under the decision of the majority, any such violations, although growing out of the law grow of elections matters determined by the legislature and the Executive Branches, and that as such they are political in nature and involves political decision, and hence are beyond the purview of the Court to review and ascertain, even if they violate the Constitution, any of the rights granted by the Constitution, or the Elections Law. I do not believe that the interpretation is correct and hence I have decided not to append my name and signature to the majority opinion and judgment.

As I have thoroughly reviewed the records in the case, the most I have seen is an instrument which the NEC terms as "Guidelines to Prevent the Spread of Ebola Virus Disease (EVD) During the Conduct of the 2014 Special Senatorial Election." The Guidelines state, at sections 1 thru 5, that:

Section 1

Scope, of Application

1. These Guidelines shall apply throughout the Republic of Liberia
2. All laws of the Republic of Liberia, including the Public Health law, health and transportation regulations, presidential edicts, and Ebola preventative measures put in place by the Government are incorporated herein.

Section 2

Town Hall Meetings, Political Rally, and other Campaign Activities

1. All Political Parties, Alliances, Coalitions, Independent Candidates and their supporters shall be required to provide Ebola Preventive Measures, such as hand washing corners and temperature monitoring equipment at all town hall meetings, political rallies, and other campaign activities. These Ebola prevention measures shall be instituted at the point of entry/commencement of such campaign gatherings. Any person with a temperature greater than 37.5C or 98.6 F shall be excluded and the public health authority notified.

2. Every attendee to a town hall meeting, political rally, or other campaign activities is required to follow the Ebola prevention and sanitary measures, such as washing of hands, having his or her temperature tested, and observing and maintaining a non-contact distance of at least three {3} feet between and amongst attendees.

3. The National Elections Commission requires that all political rallies be held outdoor, utilizing indoor facilities when such is the only available option, as dictated by the circumstances. In such a case, all EVD measures must be adhered to.

Section 3

Mass transportation of People

1. In line with Regulation No. 002/2014 of the Ministry of Transport governing the transportation of people in mass; the transportation of people in mass by candidates, political parties, or their supporters for electoral purposes, including town hall meetings, political rallies, parades, voting, or other campaign activities is hereby prohibited.

Section 4

Medical Quarantine

1. In the event a polling center is placed under medical quarantine on or before December 16, 2014, the National Elections Commission shall suspend all electoral/voting activities in that center until the site is disinfected and medical quarantine is lifted by the Government.

Section 5

NEC's Civic Voters and Gender Outreach Activities

Civic Education and Gender Outreach Activities constitute those portions of the Commission's larger voter education and public information programs. These activities most often include the organization and conduct of road shows, Street theatres, and mass community meetings with voters. In line with national measures to prevent the spread of the Ebola Virus Disease, all community mass meetings to include all civic and voter education outreach activities shall have a maximum of one hundred and fifty to two hundred persons and shall:

I. Start with hands- washing;

II. Provide for maintaining a reasonable distance of at least three (3) feet between and amongst attendees, so as to control physical or bodily contacts;

III. Ensure, that participants meet normal temperature measure of 37.5C or 98.6F. Any person with a temperature greater than 37.5C or 98.6F shall be excluded and the public health authority notified."

While the Guidelines quoted above may seem good on paper, it is of no significance where, as the National Elections Commission has determined, and stated by its Chairman in his response to a question posed by the Justice at the conference held before the Justice in Chambers on whether the writ should be issued or not issued that it is not its responsibility to monitor rallies and campaigns to see if the Guidelines are being followed or adhered to, or whether the measures it had directed be undertaken had actually been undertaken by political parties and candidates. How else was the NEC to determine whether violations had occurred or not. The November 28, 2014 rally held by the Congress for Democratic Change, which revealed a complete disregard for any health measures, clearly showed the flaws in the process which the NEC was pursuing and in the belated Guidelines prepared by the NEC, and the threats which those flaws posed for the Liberian people in the still prevailing Ebola environment.

When the Constitution was drafted the framers did not have in mind that the nation would be faced with the kind and level of onslaught that engulfed and consumed it as was done by the Ebola Virus Disease (EVD), whose attack threatened the very fabric of the Liberian Society. The level and measure of the attack were clearly evidenced by the President's letter to the United States President, Mr. Barack Obama. It was a plea from what seemingly at the time was a tearful President, frightened that her country and its people were on the brink of extinction, and if help was not forthcoming immediately, Liberia would become a nation that no longer existed, and its people except for those who chose to stay without, an extinct people.

I submit that while the framers of our Constitution may have foreseen that the Liberian nation state could face situations that would necessitate the Declaration of a State of Emergency, I do not believe that they could have foreseen that the nation would face the magnitude of the crisis brought about by the Ebola Virus Disease. And even if it did, that those charged with the responsibility of safeguarding the life of the nation and its people, would not opt for sacrificing them in the interest of securing political positions; or that those charged with conducting the elections would not care whether safeguards are in place or not as long as they conducted the elections with which the Legislature had mandated should be undertaken.

Again, let me stress that the Legislature believed that it was performing its duty in determining that elections be held not later than December 20, 2014, and empowering thereby the National Elections Commission to undertake the task. The Liberian Constitution whichever way it is interpreted, vests in the legislature such power. However, I do not believe that the intent of the legislature, in the exercise of that power, was that the NEC would proceed regardless of whether it had put into place the required mechanisms that would ensure that the elections were held under an environment that

provided the maximum protection against the Ebola virus. The exercise of these elections by the NEC is not a theoretical or a classroom exercise. It borders on the protection of real lives, the lives of the Liberian people, and those lives should not be played with by the Commission. If the Commission felt that it was unable or could not put into place the necessary mechanisms for the conduct of the elections within the time frame provided by the legislature or that it could not have the appropriate monitoring devices in place to ensure the safety and protection of the citizenry, it owed the legislature and the Liberian people a duty to have informed the Legislature of the difficulty and not determine, for whatever reason or reasons, that it would conduct the elections regardless of the legal and other ramifications. Such action was disingenuous on the part of the Commission.

A careful review of the report submitted by the NEC to the Legislature wherein it suggested that December 16, 2014 was appropriate for the holding of the elections seems to convey clearly that the health care community whom the legislature had mandated be consulted did not seem to agree that the timing was right for the holding of the elections. The Commission, in the report, states that the United States Center for Disease Control, for example, says that if elections were to be held, than certain measures must be put into place and be scrupulously adhered to. The use of the word "if" clearly implies that the institution involved was of the opinion that it was not appropriate to hold the elections on the date proposed by NEC. But, it said that if the NEC insisted on holding the elections on the proposed date, then the recommended measures should be put into place. The NEC went ahead with what seemed to be its prearranged plan. Yet, the most that the NEC did was to pass belatedly rules and regulations which failed to address any of the concerns of the CDC or other health institutions involved in the fight against the deadly Ebola disease. It put no mechanisms in place to ensure that the guidelines and rules would be adhered to. This was evidenced by the fact that a mere three days after the belated regulations were put into place by the NEC, there was almost complete chaos and lack of order in the streets of Monrovia during the Congress for Democratic Change rally that occurred on November 28, 2014. When asked whether it had such mechanisms in place do deal with such events or to prevent a repeat of the occurrence, which could be a prime contributor to the resurgence of the Ebola Virus in Monrovia and other places, the only response was that NEC will put such measures and mechanisms in place. Given its track record in , dealing with the problem, there is little room for comfort that such mechanisms will ever be put into place. Yet, my colleagues would have me believe that such issue is of a political nature and that therefore this Court cannot address it. I wonder, under the current circumstances, what is the utility of Article 2 of the Liberian Constitution. Perhaps maybe we should call for the scrapping of the provision. In such a case then, the NEC can have the comfort it needs in refusing to see its duty in the context of including not just bringing in ballot papers, training workers to count votes and establishing electoral precincts, but also ensuring that the conditions for free, fair and transparent election exist for elections to be undertaken and for every citizen to make a free choice of whether to vote or not to vote.

The argument finds further faults in the fact that it leads to the assumption that it too dangerous for children to have an education because of the presence of the virus but that it is not dangerous for the

same children to indulge in political campaigning, without any mechanisms in place to guide, regulate and monitor their conduct to ensure that the virus is not further spread in the communities. The Government must take every measure and put into place every mechanism to avoid the appearance that could clearly infer a double standard.

For the reasons stated above, I have decided to concur in part with the decision of my majority colleagues and to dissent in part from other elements of the decision. However, before closing this dissent, I believe that it is important to disabuse the counsels for the National Elections Commission of the argument that unless the elections are held on December 16, 2014, the nation runs the risk of an interim government, and that the Supreme Court or its current membership would by its decision be putting themselves out of office. The argument shows the littleness of the mind of the arguers and their lack of acquaintance with the workings of the Constitution. Firstly, the Constitution itself recognizes that there may be times when it may not be possible for any one of the Houses of the Legislature to not have a quorum for the conduct of business. In such a case, the Constitution states, the membership of the Body, constituting less than a quorum, will adjourn the Body pending a quorum. But more than that, the argument makes the assumption that the elections will either be called off or cancelled rather than that it will only being postponed until the NEC has put into place the required mechanisms and monitoring devices that will ensure that citizens can freely exercise their constitutionally guaranteed right to vote in an atmosphere that give protection against the Ebola virus.

My reading of the response of the NEC is that it had failed in carrying out that mandate. The Commission announced that campaigning would begin on November 20, 2014; yet, during the conference that was held to determine whether the writ of prohibition should be issued, when asked for copy of the rules and guidelines which the NEC claimed to have put into place, the response was that the Commission had forgotten to bring a copy of the rules and guidelines to this Honourable Court. On the request of the Justice in Chambers, the rules and guidelines were forwarded by the Commission to the Court, and it was at that point this Court noted that, although the Commission had announced that campaigning would begin on November 20, 2014, the rules and guidelines were not executed or promulgated until November 25, 2014, as if this was an afterthought by the Commission after threats made by persons and institutions that they would take the Commission to court.

The conduct of elections by the National Elections Commission is not a mere perfunctory exercise, as the Commission seems to believe. This is evidenced by the fact that the Commission believes that because the elections were ordered by the Legislature in a Resolution to conduct the 2014 Senatorial Elections and the resolution placed an outer limit date within which the elections were to be conducted, the sole duty of the NEC is to proceed to the conduct of the elections regardless of the consequences and/or regardless of whether it had put into place the necessary procedures, safeguards and mechanisms to ensure that the citizens involved in the process are not only ensured that the process is free, fair and healthy.

In any event, as stated before, the question is not whether elections should be held; it is only to ensure that the NEC has in place the necessary mechanisms to ensure that the elections are free, fair and conducted in a healthy environment. In that connection, I believe that with the decision that the elections should proceed, the NEC will put into place the required mechanisms and that the time lost as a result of these proceedings will be added to the electoral period so that all of the candidates will have the opportunity for exposure to the people so that the choice of a winner is an informed one. Further, I can only hope that as the majority has decided that the elections be proceeded without any recognition that the National Elections Commission has a legal duty and responsibility to have in place the required guidelines and monitoring mechanisms and devices to ensure that the Ebola Virus is not contracted or spread as a result of the campaigning and elections, the NEC will in fact see and recognize that it has the constitutional and statutory such duty and responsibility to conduct the elections in a safe, healthy and disease free environment; that this Court's majority decision does not relieve it of its constitutional and statutory duty, and will it therefore accordingly put into place the guidelines and mechanisms that will prevent the exposure of the people to any greater risks of contracting the deadly and revolting Ebola disease.

For the reasons stated above, I have withheld my signature from the opinion of the majority colleagues of the Court.