



SECOND EDITION

RULE OF LAW

Newsletter

2023 EDITION

VOL. 1 #2

The Rule of Law Newsletter is published by the Liberian National Bar Association

PRICE \$5.00USD

“We Must Not Bend the Law and Think Constitutional Democracy Will Blossom Seamslessly”

- Cllr. Negbalee Warner Cautions



 **PG 5**

Cllr. T. Negbalee Warner



*Her Honor Sie-A-Nyene G. Yuoh
Chief Justice, Republic of Liberia*

FROM THE PEN OF THE CHIEF JUSTICE

— Maiden Debut

 **PG 2**

INSIDE THIS EDITION

-  **Violence and the Rule of Law: Striking a Delicate Balance - EDITORIAL pg4**
-  **Alternative Dispute Resolution, ADR: A viable Alternative for Access to Justice in Liberia pg8**
-  **A War and Economic Crimes Court: A Necessary Precedent to a Sustained Democracy, A Deterrent for Future Generations pg12**
-  **We do not want any violence this election, that's all" pg13**
- legal luminary dissects a lay person's words
-  **Equal Rights Under the Law: AFELL President Philomena Williams Calls out President Weah pg14**
-  **Liberia's 2023 Elections: Violence and the Rule of Law pg15**
The Adverse Effect of Soft-pedaling the Rule of Law
- Liberia's 2023 Elections: Violence and the Rule of Law pg16**

Adherence To The Rule of Law

“LIBERIA’S 2023 ELECTIONS: VIOLENCE AND THE RULE OF LAW”



Her Honor Sie-A-Nyene G. Yuoh
Chief Justice, Republic of Liberia

Conventionally, an elections year elicits heightened expectations and tensions amongst stakeholders in the election process, especially during campaign period, which sometimes lead to unnecessary hostilities and confrontations.

Taking judicial cognizance that Liberia’s General and Presidential Elections day is approximately 56 days away; and as a part of the process, the National Elections Commission (NEC) published the 2023 Campaign Guidelines, indicating therein that official campaign activities throughout the country will commence as of the 5th day of August, 2023 and end on the 8th day of October, 2023.

In my Address as Chief Justice, during the formal Opening of the March Term, 2023, of the Supreme Court, I reminded all stakeholders to the electoral process, to include political parties, independent candidates, registered voters, and the NEC as follows:

“...It is an undeniable fact that our election calendars are the most tumultuous and tedious times in the history of the Supreme Court. Hence, even in these quiet moments, the storms of election cases/challenges are quietly brewing and gathering strength at the National Elections Commission and elsewhere, and is preparing to dash upon the shore of the Supreme Court’s dockets like a monstrous wave.

But be that as it may, the Supreme Court, like a light tower in the midst of a storm is well fortified and judicially poised to hear and dispose of all and any elections disputes regardless of the magnitude or underlying currents. We are resolved to dispense justice evenly without fear or favor. All we ask is that party-litigants, political parties or independent candidates safe guard themselves with the best and astute lawyers who will exert their very best in prosecuting or defending a candidate’s/political party’s interests. This instruction is in consonance with the Opinions of the Supreme Court which state as follows:

“...It is incumbent on a candidate in an election to ensure that he has in place a qualified legal team so that in the event he believes that an election violation has occurred, he would be in the position to adequately take advantage of the law, especially with the timeframe prescribed by the law for asserting a challenge and timely appealing from any decision related to the challenge since electoral challenges are special proceedings which must be heard expeditiously. *Jonathon Boye Charles Sogbie v. NEC*, Supreme Court Opinion, October Term A.D. 2016; *Kamara v. NEC*, Supreme Court Opinion March Term, A.D. 2017.”

Also in that Address, I further ‘cautioned all political candidates that if their lawyers fail to perfect their appeal, the Supreme Court, via a motion from the opposing party, will dismiss the appeal; if the case is shrouded with mere allegations, speculations, and doubts, rather than evidence, the Supreme Court will reject the claim. As the elections draw closer, let it be known that the Yuoh Bench will only be moved by strong and convincing evidence and not political ideologies, crowds or the recently created political slang of ‘strongholds’. The Supreme Court has consistently held that “the concept of a candidate claiming ‘stronghold’ over a particular election geographical locale, finds no factual or legal basis in judicial proceedings as it is completely doubtful, uncertain, and speculative in that only the electorates via their valid votes cast can determine whether or not a candidate is widely influential within a particular locale. Hence, this allegation being speculative and uncertain is untenable as voting in elections within our jurisdiction is done by secret ballot”. *Liberia Reconstruction Party v. NEC*, Supreme Court Opinion October Term A.D. 2011; *Koah v. Domah and NEC*, Supreme Court Opinion October Term A.D. 2017; *Collaborating Political Party v. NEC*, Supreme Court Opinion October Term A.D. 2020.

The Supreme Court will continuously uphold principles of law in deciding elections cases and will confirm or reject election results based upon evidence and nothing more, all of which is in consonance with the Court’s Creed which states:

“...the law makes no distinction between men when before it; the high and low here are both on an equal level. The law, while just, has no sympathy; it neither makes men rich nor poor; hence the claim to be rich can have no influence with it; and to plead poverty can awaken no sympathy.” *East African Company v. Dunbar* 1LLR 279, 280 (1895). And I add thereto: ‘that to plead ignorance of the law will not constitute an excuse’.

As to the NEC, the Supreme Court has mandated that the NEC accords due process to all parties appearing before it, as this is a fundamental constitutional protection, for which no person can be deprived by any agency of the Government; that the NEC must ensure that a hearing is conducted on a specified date, time and venue, duly recorded, and that parties be given the opportunity to testify and secure witnesses; *Kamara v. NEC*, Supreme Court Opinion, March Term, A. D. 2017; *Coalition for Democratic Change (CDC) v. Morias*, Supreme Court Opinion, Special Session, A. D. 2020. That all administrative agencies that are clad with quasi-judicial authority as the NEC, are, and should be fact finding fora where legal technicalities are dispensed with, given that the findings or rulings therefrom are reviewable through the process of judicial review before a competent court having jurisdiction.

More important, the final decisions by the Board of Commissioners of the NEC should be endorsed by any five members, to include the Chairman, which is in strict compliance with Section 2.4 of the Elections Law, which states as follows:

“...Any five (5) members, including the Chairman, shall constitute a quorum for the transaction of business of the Commission...”

Let us all remember that adherence to the rule of law, and not violence, is the foundation of all civilized societies.

REBRANDING THE IMAGE OF THE JUDICIARY BY EVERY ONE DOING HIS/HER WORK, FOR THE TIME OF WARNINGS IS OVER!

MESSAGE FROM THE NATIONAL PRESIDENT



LNBA Boss, Cllr. Sylvester D. Rennie

As National President of the Liberian National Bar Association, it is my great pleasure to once more congratulate your efforts on the publication of this second edition of the LNBA Newsletter, which focuses on the upcoming presidential and general elections in Liberia and the critical role of the rule of law in ensuring free, fair, and transparent elections.

Colleagues of the Black Gown aristocracy, as we approach the crucial elections scheduled for October of this year, I find it imperative to address a matter of great significance that resonates deeply with the values we, as legal professionals, hold dear: the intertwined dynamics of violence and the rule of law. Our nation stands at a crossroads, and it is our collective responsibility to guide it toward a future that upholds the principles of justice, fairness, and stability.

The Role of the Legal Fraternity: Upholding the Rule of Law

Our profession is rooted in the rule of law, a cornerstone of any thriving democracy. The upcoming elections provide an opportunity for us, as legal practitioners, to actively promote and safeguard this fundamental principle. It is our duty to ensure that all stages of the electoral process are conducted with transparency, integrity, and respect for the rule of law. We must be vigilant in addressing any legal challenges that may arise, while also educating the public about their rights and responsibilities.

As we approach the elections, it is essential to reflect on the importance of the rule of law in our democratic society. The rule of law represents a fundamental principle of governance that ensures that no one, including those in positions of power, is above the law. It is a principle that guarantees justice, fairness, and equality for all citizens, regardless of their social status or political affiliation.

At this critical juncture in our nation's history, it is imperative that we renew

our commitment to upholding the rule of law and protecting our democratic institutions. The upcoming elections present a unique opportunity for us to demonstrate our unwavering dedication to these values.

As members of the Liberia National Bar Association, we must stand united against any attempts to subvert the rule of law for personal gain or political expediency. We must encourage open dialogue, respect for dissenting opinions, and peaceful resolution of disputes. Our actions should set an example for the entire nation, demonstrating that the legal community is committed to upholding the highest standards of ethics and professionalism.

Countering Violence: A Collective Endeavor

As we consider the issues that will shape our electoral process, we must also remember that the rule of law extends beyond the election cycle. It is a principle that must be upheld throughout the entire democratic process, from the registration of voters to the announcement of results.

We must also recognize that the rule of law is not a static concept. It evolves and adapts to changing circumstances and challenges. As such, it is essential that we continue to engage in dialogue and cooperation to strengthen our legal system and ensure that it remains relevant and effective.

In the face of political tensions, history has shown us that violence can undermine the very fabric of our society. Let us remember the scars of our past and the countless lives disrupted by conflict. It is incumbent upon us to ensure that the upcoming elections are conducted in an atmosphere free from intimidation, coercion, and violence.

I implore each and every one of us to take a proactive stance against any form of violence. We can achieve this by providing legal aid to victims, monitoring for any signs of electoral violence, and engaging with relevant stakeholders to foster an environment of peace and respect. Our nation looks to us for guidance, and our actions will undoubtedly influence the behavior of others.

Conclusion: Shaping Liberia's Future Together

As Liberia stands on the threshold of another electoral cycle, we have an unprecedented opportunity to shape the trajectory of our nation. Our commitment to the rule of law, ethical conduct, and peaceful resolution of disputes will resonate far beyond our legal community. Let us carry the banner of justice and fairness high, and let our voices be heard as a unifying force in the midst of uncertainty.

I call upon you, my esteemed colleagues, to embrace this challenge with unwavering dedication and a profound sense of duty. Let us continue to work together to ensure that our democracy thrives, and that the rule of law prevails. As members of the Liberia National Bar Association, our collective efforts can serve as a beacon of hope, guiding Liberia toward a brighter and more harmonious future.

In conclusion, I earnestly call on us to reflect on the critical role of the rule of law in ensuring free, fair, and transparent elections. Let us recommit ourselves to upholding the rule of law and protecting our democratic institutions, both during the election cycle and beyond. Together, we can ensure a brighter future for our nation and its citizens.

With the deepest respect for your commitment and contributions to our noble profession,

Your National President
Cllr. Sylvester Dorbor Rennie

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EDITORIAL

Violence and the Rule of Law:
Striking a Delicate Balance

IN A WORLD that is often fraught with conflict and strife, the rule of law provides a framework for resolving disputes and ensuring that justice is served. However, maintaining this framework can be a delicate balancing act, particularly when it comes to dealing with violence.

ON THE ONE hand, the rule of law requires that acts of violence be met with swift and decisive punishment. This serves as a deterrent to others who might be tempted to engage in similar behaviour, and helps to maintain order and stability in society. But on the other hand, the use of force must be tempered with a sense of proportionality and fairness, so as to avoid descending into a cycle of violence and retribution.

UNFORTUNATELY, ALL TOO often we see examples of this delicate balance being upset. Police brutality, extrajudicial killings, and other forms of violence perpetrated by those in positions of power can erode public trust in the rule of law, and undermine the very foundations of a just and equitable society. Conversely, the failure to respond effectively to acts of violence can embolden those who seek to challenge the rule of law, and lead to further escalation.

SO HOW DO we strike the right balance? One key element is ensuring that those responsible for enforcing the law are held accountable for their actions. This means establishing clear standards for the use of force, providing appropriate training and oversight, and enforcing penalties when those standards are violated. It also means ensuring that those who are victims of violence are able to seek justice through fair and impartial legal channels, rather than resorting to vigilante justice or other forms of retaliation.

AT THE SAME time, it is important to recognize that the rule of law is not a static concept, but one that must evolve and adapt over time. This means listening to the concerns of marginalized communities, and working to address the root causes of violence through social and economic policies that promote equality and justice for all.

ULTIMATELY, MAINTAINING THE delicate balance between violence and the rule of law requires a commitment to fairness, accountability, and transparency. Only by upholding these principles can we hope to build a society that is truly just and equitable for all.

CONGRATULATIONS, LNBA, YOU HAVE done it again!

Licensed Lawyers of the
Liberia National Bar Association

Counselors-at-law:
Males: 155; Females: 28

Attorneys-at-law:
Males: 127; Females: 17

Total number of licensed lawyers: 327

SPEECH DELIVERED BY CLLR. T. NEGBALEE WARNER,

SENIOR PARTNER, HERITAGE PARTNERS & ASSOCIATES, LLC., & FORMER DEAN OF THE LOUIS ARTHUR GRIMES SCHOOL OF LAW, UNIVERSITY OF LIBERIA
AT PROGRAM MARKING LAW DAY CELEBRATION HELD AT THE EJS MINISTERIAL COMPLEX, TUBMAN BOULEVARD, OLDEST CONGO TOWN, MONTSERRADO COUNTY, LIBERIA
MAY 5, 2023



Cllr. T. Negbalee Warner

Her Honor, Sie-A-Nyene Gyapay Yuoh, Chief Justice of the Honorable Supreme Court of the Republic of Liberia;

Associate Justices of the Honorable Supreme Court of Liberia

Former Chief Justices and Former Associate Justices of the Honorable Supreme Court of Liberia;

Her Honor Nancy Sammy, President of the National Association of Trial Judges of Liberia, and Officers and Members of the NTJAL;

Cllr. Sylvester Rennie, President of the Liberia National Bar Associations, and officers of the LNBA;

Cllr. Dr. Jallah Barbu, Dean of the Louis Arthur Grimes School of Law, University of Liberia (UL);

Platform Guests, Fellow Lawyers Students at law

Distinguished Ladies and Gentlemen:

Three days ago on May 2, 2023, I received and accepted the invitation of the Leadership of the Liberia National Bar Association (LNBA) to serve as the Keynote Speaker of this auspicious occasion marking the LNBA 2023 Law Day celebration on the theme: Episodes of Electoral Violence and Prospects for Constitutional Democracy in Liberia.”

Despite the obvious time constraint presented by the short notice and my limited practice of elections law, I gladly accepted the invitation because the theme is topical and grounded on constitutional law which every lawyer engages with every day, and must remain engaged with through out his/her practice.

Episodes of electoral violence come in various forms and shapes, including physical, verbal, and psychological. They have also been seen in varying degrees in nearly all our recent elections, and this is worth bearing in mind as we approach the October 10, 2023 elections.

Fellow colleagues, the October 10, 2023 polls are significant for a number of reasons,

including the fact that they represent the first post-war general elections to be solely managed by Liberians. We have heard and read about some confusions, disputes and clashes here and there, but overall the electoral process has been good thus far. We must therefore applaud the National Elections Commission and the Government of Liberia as well as all Liberians and our international partners for the good job done thus far in managing the electoral process and ensuring a violence-free electoral process.

But risks of electoral violence remain. These risks should engage our attention. Hence, the timeliness of the theme of this year Law Day.

Distinguished ladies and gentlemen, violence is not inevitable nor is it generally spontaneous. I also reject the idea that people engage in violence mainly because they choose to. Instead, I believe violence is caused. The cause may be immediate, but most often it consists of a series of actions and inactions. Hence, electoral violence—like political violence, military violence, or violence of any kind—is caused by the little things and big things we do or fail to do as a people, a government, an electoral body, a legislature, a judiciary, or an association of people such as the Bar. A study carried out by an organization called the American Friends Service Committee (AFSC) into what it called “Electoral Violence: Causes and Prevention”, found that “electoral violence is more likely when...political systems are based on patronage and clientelism” and when “Electoral management bodies, such as electoral commissions, are weak.” www.afsc.org/electoralviolencereport Other studies have similarly linked electoral violence to preventable causes known and ought to be known by those responsible to prevent them.

For these reasons and more, I have opted to discuss the risks and actual cases of electoral violence in the context of how to identify and address or preventing such electoral violence, as contrasted with describing the awful details of destruction caused, properties damaged, and lives lost on account of electoral violence.

When and where the rule of law is promoted, better communications had, and the right of every person is recognized, the causes of electoral violence are diminished and the prospects of constitutional democracy are substantially enhanced. Stated in other words, constitutional democracy based on the rule of law is in part both a cure and a prevention of electoral violence. Accordingly, I will focus my brief remarks on the topic: Preventing Electoral Violence through Demonstrated Commitment to Constitutional Democracy.

Distinguished ladies and gentlemen, constitutional democracy is premised on and sustained by free and fair elections, which in turn are based on the rule of law. Indeed, democracy, as a government by the people, cannot exist

unless by and through the existence and conduct of elections. It is for this reason that Article 1 of the Liberian Constitution, like similar provisions in the constitutions of many democracies—declares that:

1. all power is inherent in, and all free governments are instituted by, the people; and

2. that “in order to ensure democratic government which responds to the wishes of the governed, the people shall have the right ...in such manner as provided for under this Constitution, to cause their public servants to leave office and to fill vacancies by regular elections”.

Free and fair periodic elections are therefore the life blood of a constitutional democracy. In order to constitute the free, fair and democracy-sustaining elections “provided for under this [Liberian] Constitution”, the elections must conform to the fundamental principles and specific provisions set forth in the Constitution. Some of the key principles set forth in the Constitution include the following:

1. “All persons are equal before the law and are therefore entitled to the equal protection of the law.” Art. 11 (c);

2. “No person shall be held in slavery ...nor shall any citizen of Liberia nor any person resident therein deal in slaves or subject any other person to forced labor, debt bondage, or peonage”;

3. “Every person shall have the right to be registered in a constituency, and to vote in public elections ONLY in the constituency where registered...provided that such person shall have the right to change his voting constituency as may be prescribed by the Legislature.” Article 80 (d);

4. {E} every constituency shall have as close to the same population as possible”. Article 80 (e);

5. “The Elections Commission shall have the Power to examine into and order certified audits of the financial transactions of political parties and independent candidates and their organization” and the audit shall be “by a certified chartered public accountant, not a member of any political”

I submit to you that the legality and democratic quality of all our national elections are proportional to their level of compliance with the fundamental principles and specific mandates of the Constitution. The democratic quality of elections diminishes as the elections fail one or more of the key principles and requirements of the Constitution. I further submit to you that the upcoming October 2023 elections might rank as one of the least constitutional, democratic, legal, and/or free and fair elections unless all Liberians, including especially this Bar and the Bench, contribute to promoting enforcement of and compliance with

CONT'D ON PAGE 6

SPEECH DELIVERED BY CLLR. T. NEGBALEE WARNER

the explicit and implied requirements of the constitutional principles of equality under the law, one man, one vote, prohibition against slavery, and free and fair competition/process.

I will discuss at least three areas in which we lawyers-the bench and bar- have a critical role to play in supporting all other stakeholders to promote the integrity and legality of the upcoming elections as some positive ways of preventing electoral violence and enhancing constitutional democracy in Liberia.

1. Combatting Voters Trucking that Degrades Voters and Votes

It is an open secret that the phenomenon of transporting significant number of voters from one area to another area solely for the purpose of having them register and vote in the area for the transporter is widespread, and seems accepted by Liberians. What does not appear to be appreciated, and ought to be noted, is that such practice is unlawful and/or unfair.

Trucking of voters is by its nature at the request of and for the benefit of the transporter. It is therefore not much different from human trafficking, which is defined by Black's Law Dictionary as "the illegal recruitment, transportation, transfer, harboring, or receipt of a person...with the intent to hold the person captive for or exploit the person for labor, services, or body part." Black's law Dictionary, 10th ed (2009). The definition and nature of human trafficking indicate that there are three (3) key elements to a finding of human trafficking:

1. Transportation of person(s)
2. "intent to hold the person captive OR exploit the person"; and
3. The ultimate goal of transporting the person is for the person's body part, services, or right, including the right to vote.

Certainly, each of the three (3) essential elements of human trafficking are present in the current mass trucking or transportation of voters by candidate(s) for obtaining their services-which are basically to register where they are transported and then return to vote for the candidate(s). To those who may argue that the practice of voters trucking does not equate to trafficking because the voters transported do agree, the response is that consent is not a defense to the offense of trafficking. If consent was a defense, we would not have problem with a poor person being transported to donate their body parts. Further, and even if consent was a defense, it should be noted that the law focuses on effective, free consent, and not consent that is coerced by monetary reward or an indecent promise to keep a public office.

Obviously, a non-insignificant number of the voters trucked have no effective choice in being transported and/or to register and vote where they have been transported. And if there is still any doubt about the absence of effective and free choice by the voters trucked, the doubter(s) should consider evidence of the additional, related practice whereby every transporter of voters reportedly (i) seizes the voting card(s) of the transported; and (ii) also requires proof of

the transported person having voted for him or her before paying the person the balance of the consideration-for procuring the person's vote.

I would think that a person seizing another person's voter registration card is no different from seizure of a passport in other human trafficking cases. I also think that the practice of requiring proof of voting is sufficient evidence of the person being exploited for their voting services.

In summary, trucking of voters is nothing but trafficking of voters, which is a form of human trafficking. It is also a form of modern-day slavery, which is prohibited by Article 12 of the Liberian Constitution, which says that "no person shall be held in slavery ...nor shall any citizen of Liberia nor any person resident therein deal in slaves or subject any other person to forced labor, debt bondage, or peonage".

Voters trucking is human trafficking. The sooner we start to see and treat trucking of voters for what it is-i.e., as an act of human trafficking and modern-day slavery- the sooner we will appreciate the need to deal with it urgently and holistically. Besides investigating and prosecuting it as a criminal offense, one way to combat voters trafficking it is to make it less profitable by disabling the transporter/trafficker from being able to know how the transported voters actually voted. This can be achieved simply by prohibiting the carrying in the polling place of phone or any other electronic device that is likely to be used to take photo of completed ballots. Another well-established means to deal with voters trafficking is to implement the procedure the Liberian Constitution established in part to deal with the menace of this unlawful practice-i.e. establish appropriate, stringent procedures for change of constituency. The regulation of change of constituency is mandated by Article 80 (c) of the Liberian Constitution, which states that a "citizens shall have the right the right to change his voting constituency as may be prescribed by the Legislature."

2. Illegal Campaign Financing Violates the Principle of Free and Fair Elections

Contributing to, but independent of voters trafficking is the massive commercialization of the Liberian electoral process by uncontrollable and unaudited flows of huge sum of money to campaigns and candidates. It is again no secret that some candidates spent more than ten (10) times their annual income, as disclosed and presumably taxed. Almost all political parties also spent far beyond their known means, and some political parties spent tens of millions of dollars with no indication of the source(s) of such funds.

Our constitution clearly recognizes the ills and destructive effects of illegal campaign financing, and provides some good measures to combat this menace. Article 82 (c) of the Constitution provides that "the Elections Commission shall have the Power to examine into and order certified audits of the financial transactions of political parties and independent candidates and their organization" and the audit shall be "by a certified chartered public accountant, not a member of any political party."

The Liberia Anti-Corruption Commission (LACC) also has within its mandate the right to investigate unknown (and presumably illegally sourced) campaign funds received and/or used by candidates.

Unfortunately, there is hardly any evidence of investigation(s) that were ordered conducted and/or carried out into the campaign finances of candidates and political parties. I am also not aware, and have no evidence, of a public audit ever commissioned or conducted into the finances of a political party by the National Elections Commission pursuant to its constitutional mandate and right.

Illegal campaign financing undermines the integrity of electoral processes, and offends the principle of free and fair elections. Where money is used to get an unfair advantage in any contest, it undermines fair competition. This principle equally applies in nearly all sports where fair-play rules are designed and implemented by sports management bodies to combat what we in Liberia commonly called "money violence" or "cash violence".

3. Upholding the Principle of One man, One Vote

The principle of one person, one vote is the cornerstone of constitutional, representative democracy. It means equal value of every vote such that my vote has the same weight as your one vote; 500 votes are equal to another set of 500 votes in one area, and 20,000 votes in one area are similarly equal to 20,000 votes in another area. The other side of one man, one vote is equal representation, which means that, in representative democracy such as ours, a law maker represents the same population as much as possible. This means that where a population of 40, 000 has two votes when a population of 35,000 has one vote is unfair and unconstitutional for reason that the 40,000 has almost as twice the representation of the 35,000. (To be explained briefly).

To realize the principle of one man, one vote, the idea of constituency was developed and is established in the Liberian constitution. It is solely for the purpose of ensuring that every person is entitled to one vote, and that there is equal representation of people in the Legislature that Article 80 (c) provides that "every constituency shall have as to the same population as possible." Provision similar to Article 80 (c) is found in Article 3 of the US Constitution, which states, in part, as follows:

"The Number of Representatives shall not exceed one for every thirty thousand, but each State shall have at Least one Representative".

The principle of one man, one vote or equal representation was interpreted by the US Supreme Court in a case brought by voters of Fulton County in the state of Georgia Fifth Electoral District where a single congressman represented "from two to three times as many Fifth District Voters as are represented by each of the congressmen from the other Georgian congressional districts." Claiming that "these population disparities deprived them... to have their votes for Congressmen given the same weight as the as the votes of others Georgians",

CONT'D ON PAGE 7

SPEECH DELIVERED BY CLLR. T. NEGBALEE WARNER

the voters asked that the challenged 1931 Georgian congressional apportionment statute be invalidated and the electoral authorities of Georgia be enjoined from conducting elections under the statute. Agreeing with the Georgian Fifth Electoral District voters, the US Supreme Court held that equality of votes and voting -one person, one vote- “means that, as nearly as practicable, one person’s vote in a congressional election is to be worth as much as another’s.” *Wesberry v. Sanders*, 376 U.S. 1 (1964).

The Court also concluded in *Wesberry* as follows: “While it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution’s plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives. That is the high standard of justice and common sense which the Founders set for us.” Several decisions of the US Supreme Court before and after *Wesberry* have all held similarly. See, for example, *Harris v. Arizona Independent Redistricting Commission*, 578 U.S. (2016); and *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016).

Applied to Liberia, the limited case law on the principle of one man, one vote as reflected in Article 80 of the Constitution has been less than responsive. The first known case on the subject was brought by Cllr. Marcus Jones and others in 2010 wherein they asked the Supreme Court “to determine whether or not the Legislature can ignore or set aside the results of a national census conducted to determine population growth and movements in Liberia and at the same time apportion seats to counties rather than setting a threshold as mandated by Article 80 (d) of the 1986 Constitution?” Despite the clear and significant issue it raised, the Supreme Court dismissed the petition on ground of raising a political question.

The second case was *Liberty Party v. NEC*, (decided 14 June 2011) which was a petition for a writ of prohibition filed against the NEC reapportioning constituencies in all counties although the joint legislative resolution under which it was acting had decreed that all the existing constituencies be maintained and only nine (9) additional constituencies be added in only six

(6) named counties. The Supreme Court acknowledged at the beginning of its ruling that the 52nd Legislature attempted to set aside a threshold to enable the NEC “reapportion electoral constituencies for the conduct of the ensuing... elections, but to no avail” and “twice passed threshold bills, which were sent to the President but twice vetoed”. Notwithstanding the foregoing and the obvious fact that the joint resolution was intended to circumvent the establishment of the required threshold, the Supreme Court ruled that the Joint Resolution LEG: 002 (2010) was clear and needed no further statutory interpretation by the Supreme Court, and that the NEC, pursuant to the said Joint Resolution, was authorized by the Legislature to reapportion all the constituencies

inclusive of the newly created nine (9) constituencies.

In the third and most recently decided case on the same matter-*In Re: The Constitutionality of the National Elections Commission Planned Conduct of the Voters Registration without the Demarcation of the Constitutional Electoral Constituencies*, the Supreme Court held that while the NEC indeed has a duty under Article 80 (e) to reapportion constituencies, the said duty is not self-executing. The duty to reapportion constituencies can only be executed based upon the preconditions stated supra, viz, a concluded national Census Report, the Legislature’s threshold, then the NEC’s duty to reapportion the constituencies pursuant to Article 80 (e). The Court held that absent the preconditions, NEC is not at fault, and will not be enjoined.

Without attempting a critique of the decisions-which cannot be done meaningfully in these short remarks-it has to be noted that the Supreme Court’s decision in each case was formalistic, and not reflective of due regards to the significant constitutional issues raised. The decision in the first case is curious because there is hardly any justiciable matter than that asserting noncompliance with a constitutional mandate or determining the constitutionality of a given public act.

The second case is also very procedural in that the Court acknowledged the constitutional requirement for establishing a numerical threshold to be used by NEC to reapportion constituencies and that the joint resolution in question did not set such threshold, but only decreed the maintenance of existing constituencies and the addition of nine new ones not based on any precise numerical figure to ensure equal representation. Yet, the Court ruled that (i) “we will not pass on the legality of Joint Resolution LEG-002:”; and (ii) the resolution “is clear on its face” and “this court has held that where the statute is clear on its face no further construction or interpretation is needed”. It does not seem to me that the focus was on the ambiguity of the resolution. Even if that was the sole issue raised by the petitioners regarding where reapportionment could take place, the implied issue that was also raised is whether constituencies could be established and/or reapportioned without establishing and faithfully adhering to the constitutional requirement for a numerical threshold that would ensure the population in each constituency be the same as in all others.

The third case is not much different from the others. Like the *Liberty Party* case, the Court correctly observed in this case that the precondition to the performance of NEC had not been done by those responsible-the Legislature. While this conclusion seems to indicate that NEC should therefore not engage or undertake a process for which the preconditions had not been satisfied, the Court declined to enjoin from doing commencing voter registration without established constituencies, notwithstanding the admitted and explicit recognition that the foundation for such voters registration has not been laid. This particular decision of the Court could be

interpreted to excuse any administrative agency from performing a constitutional or statutory duty if a precondition to the performance of the agency has not happened irrespective of the cause or motivation for the nonperformance. It could also encourage the Legislature and other duty bearers to avoid doing what will trigger implementation of a legal requirement they do not wish to be implemented.

In any case, the point is that having electoral constituencies not based on equal number of voters as much as practicable is illegal, and unconstitutional, irrespective of who is at fault. A constitutional court, as is the Supreme Court, may well have been expected by others to have used one of the previous decided cases to see how a remedy could have been fashioned to address the evident and continuing illegality. I could also go on to mention exclusionary practices, rules and laws like the Code of Conduct. Of particular note is the Code of Conduct, which jurisprudence has gone from a full throttle affirmation of the two-year prior resignation requirement to an “egregious breach” test, coupled with a reduction of the period of the prior resignation from two years to one year, and now to a few months. While I have to avoid any detailed discussions about the Code of Conduct for reason of not running afoul of sub judice rules, the general point is that we as a people and particularly lawyers ought to affirm and protect the constitutional principles of equal protection, equal representation, inclusion, and fairness through liberal construction of the applicable constitutional provisions while rejecting or giving strict interpretation of discriminatory statutes and rules that benefit mainly a few especially those make such laws and rules.

Distinguished ladies and gentlemen, for constitutional democracy to thrive, it would require the collective effort of everyone, particularly for us lawyers, who are presumed to be the gatekeepers of society. A lot depends on our judgement and inputs – our sense of equity, our advocacy for liberal or strict interpretations of law, and our support for sound public policy.

Apart from those in the active practice of law, some of us lawyers are legislators as well as judges and should have it in us, for the sake of upholding the constitution, to equitably put up the fight in our various areas of influence in order to ensure constitutional democracy is sustained based on rule of law, inclusion, and equal treatment under the law.

Constitutional democracy is one of justice and fairness; it gives power to the people; it upholds people’s rights to life, liberty and property; it makes mother Justitia proud. With hearts and hands, lawyers must defend this democratic space; we must put our education and expertise at the service of the country. We must not bend the law and think constitutional democracy will blossom seamlessly.

In the words of the poem “Songs of the Deal” by our own Edwin J. Barclay, “When they see their prospects open, first and foremost, – on they rush!” Let us rush at the prospect of upholding constitutional democracy in our beloved country, as it is that silver lining – the path of which we must follow.

Alternative Dispute Resolution, ADR: A viable Alternative for Access to Justice in Liberia



Cllr. Bornor M. Varmah BSC, LLB, LLM,

The International Chambers of Commerce (ICC), describes Alternative Dispute Resolution ADR, as any means of settling disputes outside litigation. (ADR) typically includes early neutral evaluation, negotiation, conciliation, mediation, and arbitration. As burgeoning court queues, rising costs of litigation, and time delays continue to plague litigants, more jurisdictions have begun experimenting with ADR programs. Some of these programs are voluntary; others are mandatory.

In 2022, Associate Supreme Court Justice Yussif D. Kaba, serving as a presenter at one of the Liberian National Bar Association LNBA, Continuing Legal Education (CLE) sessions at the Temple of Justice, called upon members of the Bar to proffer pragmatic recommendations to engender strategic reform of the Liberian judiciary. The Liberian judiciary is bedeviled with multiple challenges that must be tackled with a multi-pronged approach. Some of these prevalent challenges include: inadequate justice delivery facilities and infrastructure, unaffordability of justice, lack of speedy trials, over crowdedness of prisons (both convicts and pre-trial detainees) as well as court dockets becoming overwhelmed. These justice-related challenges have not only undermined effective justice delivery, as “justice delayed is justice denied”, but have also had human rights implications and the attending consequences thereof, contributing to conflicts in Liberia.

One clear cut approach to address these issues will be demonstrated in our drive to accelerate a holistic ADR mechanism to address a multiplicity of issues currently faced by the Liberian Judiciary. Justice Kaba’s presentation centered on Arbitration which is a major form of Alternative Dispute

Resolution mechanism.

It has been stated overtime and acknowledged by legal luminaries that state-centric approaches to strengthening access to justice have failed to address the needs of populations in fragile or conflict-affected countries. The state is often absent, and, if justice is delivered, it is often delayed and ineffective. Limited success of state systems enforces reasons why people resort to alternative sources of justice such as ADR (UNDP Report on Liberia’s Informal Justice System 2019).

Since the cessation of hostilities in Liberia, there have been multiple interventions by both successive Liberian governments and international partners to improve the formal justice system which include: hiring and training of judges, magistrates, prosecutors, public defenders, construction of new court complexes, renovating court buildings and regularizing salaries. The benefits of these interventions have not trickled down to ordinary Liberians. This has placed ordinary Liberians in a conundrum where access to justice has become illusive. According to a Study commissioned by the United Nations Development Program in 2019 to determine the extent to which Liberians utilize both the formal and informal justice systems, it was reported that up to 80% of all disputes in Liberia are being disposed of through traditional or customary justice system. This sets the tune and rationale to place premium on traditional or informal justice system and imposes a compelling need for a viable and complementary alternative to increase access to justice through a mechanism other than the traditional court room system. This is not an attempt to mix informal or customary justice with Alternative Dispute Resolution. I am aware that the two are distinct and offer different services to ordinary citizens. My focus is to elevate strategic discussions around issues of ADR and ensure it is brought parallel to traditional court room litigation in Liberia. This I believe, can be achieved through collaboration and partnership among justice actors, civil society and international partners.

Despite tremendous progress, pundits say the formal justice sector remains constrained by dysfunctional systems, corruption, nepotism and favoritism that continue to undermine public trust and confidence. The system is also challenged by limited capacity of the judicial actors to sufficiently address attending concerns, cumbersome jury trial procedures, limited logistical capacity to bring witnesses and victims to appear in court, poor capacity of prosecutors and public defenders, high absenteeism rates of judicial

actors during court terms, rudimentary and flawed case management and tracking systems, and lack of accountability for performance, high fees in filing cases, reported bribery and the perceived lack of transparency.

In direct response to Associate Justice Kaba’s call, one would articulate and aver that a pragmatic recommendation would be, to ensure that a viable ADR mechanism is an imperative and would serve as the basis for competition among ordinary citizens in the Liberian legal system. This competition will serve as a catalyst to increase access to justice for ordinary Liberians.

A basic rationale is, Alternative Dispute Resolution mechanisms present legitimacy in the eyes of local populations, providing a pathway to justice where there might not be one otherwise. They offer benefits relating to cost, accessibility, physical proximity, and swift justice delivery.

Current initiative to institutionalize Alternative Dispute Resolution mechanism in Liberia, for example, aims to strengthen the linkages between both the formal and informal justice systems and improve access to justice of vulnerable people by promoting the mutual recognition of the two systems and the adoption of minimum human rights standards. These efforts start from the premise that ADR would play an important role in the everyday lives of many ordinary Liberians.

Strategically, primary reasons parties may prefer ADR proceedings are that, unlike adversarial litigation, ADR procedures are often collaborative and allow the parties to understand each other’s positions. ADR also allows the parties to come up with more creative solutions that a court may not be legally allowed to impose. Additionally, ADR processes are cost-effective and the process is quicker which reduces time, thereby avoiding long-drawn litigation costs. The results of the ADR process can be kept confidential if the parties so choose. Let it be stated that a major advantage and rationale for parties to revert to ADR is that, there is no appeal system which normally delays the disposition of cases in the formal court room litigation mechanism. The entire concept connotes voluntarism and willingness of parties to dispute to revert to ADR for disposition. Parties must agree before subjecting themselves to an ADR process and whatever decision emanating from such proceedings is binding on them.

In shifting the paradigm in legal reform; especially opting for a viable and complementary option to the current court

CONT’D ON PAGE 9

Alternative Dispute Resolution, ADR:

room litigation system and In the context of post-conflict national renewal in Liberia, the Ministry of Justice, under the leadership of the Minister and Attorney General, Cllr. Frank Musa Dean Jr, has engendered a roadmap to fully institutionalize Alternative Dispute Resolution ADR, within Liberia’s jurisdiction. The Ministry of Justice, working with the Governance Commission, Carter Center, Liberian National Bar Association LNBA, UNDP and other Civil Society organizations under the aegis of a Technical Working Group TWG, has since embarked on a nationwide consultation process which might lead to the formulation of a national draft policy on Alternative Dispute Resolution.

This national policy prescription on ADR must be well articulated to inform a comprehensive ADR national Act which would consummate a legal framework to benefit parties under varying situations. Thus, the systems and avenues for access to justice in Liberia, both litigation and non-litigation, shall be an all-inclusive, integrated, holistic and coordinated legal regime, where the two (litigation and ADR) become mutually complementary, reinforcing each other for the over-all good of society. While we embrace this unprecedented laudable effort of the Attorney General and partners, we encourage the process to attract the rightful expertise for the singular purpose of allowing the entire roadmap to be in conformity with international best practices. While we might be in desperate need to derive a national legitimate initiative, we must remain meticulously cautious that the practice of ADR is complemented by international rules and regulations. For instance, besides the development of national rules, the rules of the International Chamber of Commerce in Paris have served as sources of law for many countries in the Africa region. The International Chamber of Commerce was founded in 1919 to serve world business by promoting trade and investment, open markets for goods and services, and the free flow of capital. The ICC’s International Court of Arbitration was created in 1923. The ICC releases revised rules on mediation and arbitration annually. The ICC’s rules on mediation and arbitration released annually, assist countries around the world to formulate national rules on ADR.

Moreover, Liberia is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention. This Convention was adopted by the United Nations diplomatic conference on 10 June 1958 and entered into force on 7 June 1959. This Convention requires contracting states to give effect to private agreements to

arbitrate and to recognize and enforce arbitration awards made in other contracting states. For Liberia to legitimize its own national framework on ADR, it must also reference said convention and conform to its requirements.

It further means that the National Policy on ADR must seek not to harmonize, but to recognize and accept the two distinct systems of justice delivery as expressly stipulated and guaranteed under our laws, and that they shall peacefully co-exist and complement each other as co-equal systems of justice providers – ADR and Litigation

All of what is being envisaged as a holistic mechanism must inform the drafting of an Alternative Dispute Resolution Act which shall provide for the settlement of disputes by negotiation, conciliation mediation, customary arbitration and arbitration in general. My sense is that such an Act shall establish an Alternative Dispute Resolution Center in Liberia which shall be an institution with primary responsibility to superintend ADR approach generally. It is perceived that the Alternative Dispute Resolution Center shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name. The Liberian ADR Center shall provide facilities for the settlement of disputes through arbitration, mediation and other voluntary dispute resolution procedures. The center shall exercise any power for alternative dispute resolution conferred on it by parties to a dispute, but shall not be involved in actual resolution of the dispute. A major challenge faced by developing countries who ascribe to ADR is the fact that most ADR systems lack the mechanism to preserve a register for a pool of trained practitioners to include mediators and arbitrators where ADR Centers in those countries could reference to constitute arbitral tribunals that ultimately preside over ADR hearings. A prime function of such a center will be to create and preserve a register of arbitrators and mediators. Let me articulate the independence of such center which in my thinking, must not be under the direction and control of any person or authority in the performance of its functions.

In projecting a viable institutional arrangement for ADR in Liberia, it is perceived that such must be an autonomous

and independent body with a governing Board composed of a chairperson who is a Lawyer of not less than 15 years standing. The Board shall be legally allowed to perform the functions of the center in keeping with national rules and international best practices. Activities of the ADR Center shall be concentrated at both regional, county and district levels. This will allow Liberians outside Monrovia to benefit from the service delivery.

For the purpose of sustainability, there shall be an establishment of an Alternative Dispute Resolution Fund. The sources of money for the fund will be from grants from the Government for the development of alternative dispute resolution, charges and fees collected by the ADR Center in the performance of it functions and donations and gifts from the general public, institutions and organizations.

In conclusion, the need for an institutionalized policy and legal framework for alternative dispute resolution to serve as a viable option to the traditional court room litigation in Liberia cannot be overemphasized. Despite huge support to Liberia’s formal justice system over the years, there are still gaps which have undermined access to justice for ordinary Liberians. An institutionalized holistic policy and legal framework for ADR in the Liberian context, incorporating international best practices will provide competition and freedom of choice for ordinary Liberians as far as resolution to disputes is concerned. This will lead to a major paradigm shift in both policy and legal reforms in Liberia.

About the Author: Cllr. Bornor M. Varmah BSC, LLB, LLM, is a practicing Liberian Lawyer and member of the Supreme Court Bar with 15 years of standing. He holds a Master of Laws in International Trade Law from the University of Turin, Italy. He is both a policy and governance architect and currently serves the Governance as its Program Manager for National Integrity Systems. He is currently the National Secretary General of the Liberian National Bar Association, LNBA and a former Vice President of the University of Liberia Student Union, ULSU.

CONT'D FROM PAGE 15

Liberia’s 2023 Elections:
The Adverse Effect of Soft-pedaling the Rule of Law

lowest for the sake of survival.

Lest we forget, Liberia suffered this fate when it underwent fourteen years of civil war. This year (2023) marks the 20th anniversary of the Accra Peace Accord, which brought an end to hostilities and - with the help of the international community - consolidated the peace and re-established the

rule of law.

Think about it: what benchmarks are we setting for the next 20 years of democracy and the rule of law in Liberia? Well, it is said that "staying put means falling behind". Similarly, by soft-pedaling the rule of law, those in charge of governance risk retarding the gains of the last two decades of progress.

LNBA ACTIVITIES



IN PICTURES

A WAR AND ECONOMIC CRIMES COURT: A NECESSARY PRECEDENT TO A SUSTAINED DEMOCRACY, A DETERRENT FOR FUTURE GENERATIONS



Ade Wede W. Kekuleh (Cllr.)

Introduction (Liberia today)

Almost 20 years later, the Liberian Civil War has become history, which we will tell our children and children's children, and to generations to come. Liberia has come a long way since the war finally ended in August 2003, from handing the reins of power to Africa's first woman president to a peaceful transition to a world-renowned footballer, known globally for his prowess on the field of play.

The Immunity Act of August 8, 2003

In August 2003, the sitting government of Charles Taylor hurriedly crafted what is called "An Act to Grant Immunity from Both Civil and Criminal Proceeding against All Persons within the Jurisdiction of the Republic of Liberia From Acts or Crimes Committed During the Civil War From December 1989 to August 2003." This Act seemed to have run through both Houses of the Legislature like lightning, and printed into handbill, thereby becoming law on August 8, 2003.

Following several preambles, the Act has only two sections, stated below:

Section I

That from and immediately after the passage of this Act, immunity is hereby granted from both civil and criminal proceedings against persons, officials of government, representatives of warring factions and combatants within the jurisdiction of the Republic of Liberia from all acts, and/or crimes committed by them during the 13 (thirteen) years and 8 (eight) months of civil wars covering from December 1989 to August 2003.

Section II

This Act shall take effect immediately upon publication in handbill. (www.frontpageafricaonline, updated 25 May 2021).

Section I says in simple terms, everyone that committed atrocities such as rape, murders, massacres and tortures during the country's 14 year civil war get to walk away freely, with

absolutely no punishment. The Act in its entirety, falls short of stating why there arose the need for such a law. Preambles are usually stated to justify the need for a particular law being put forth; however, the preamble for this Act basically restates the country's history, concisely, I must say. In other words, it did not say why the law came into being.

Section II, on the other hand, says the Act becomes law immediately upon the printing into handbill(s) (emphasis mine). So if five copies were printed, the law was satisfied. No wonder to find a copy of this Act is like searching for a very rare gem. This also speaks to the many instances where the law is silent as to some salient issues; anyway, that is another topic for another day.

Also, the irony is not lost on us that the Act was printed into handbill just three days before then President Charles G. Taylor was forced to leave Liberia for exile in Calabar, Nigeria.

Now, this Act is apparently being used to justify in some circles why the War and Economic Crimes Court cannot be set up in Liberia. Pundits argue that the Act is law, and should be followed. Really. It is amazing that the government saw fit to protect warlords but did not deem it expedient to render justice to those suffering and living with the trauma of the 14-year war, which I often say was fought only because a handful of people wanted to be greedy at the detriment of the masses, who most times have nobody to speak for them. Because, if the tables were turned and survivors were in the position to make that decision, we would probably be trying those responsible for atrocities committed during the war, and those accused of stealing public funds by now. Is it in light of this Act that Liberia should allow perpetrators to walk away with impunity? The culture of impunity in this country must end; people should be held accountable for their actions, especially war era atrocities. Otherwise, what premise are we laying for our children? Are we telling them, 'O you can do anything, even kill people; just write an act saying you should walk away with impunity for doing so, and you will be just fine'. Seriously?

Why a War and Economic Crimes Court for Liberia

The civil war in Liberia, which lasted from 1989 to 2003, left an indelible mark on the country's history. It claimed the lives of over 200,000 people and left countless others displaced and traumatized. During the conflict, various warlords and militias committed numerous atrocities, including mass killings, rape, and torture. Despite the end of the war, many of these crimes have gone unpunished, and the culture of impunity continues to thrive in Liberia. To address this issue, and bring an end to the culture of impunity, many people, Liberians and non-Liberians alike, believe that a

War and Economic Crimes Court is the most prudent way forward. In this article, we will explore why a War and Economic Crimes Court in Liberia is necessary, and why this generation must set a precedent for future generations.

The Need for Justice, Accountability and Trust

First and foremost, a War and Economic Crimes Court would ensure that those responsible for atrocities committed during the civil war are held accountable for their actions. For too long, many individuals have been able to act with impunity, knowing that they will never be brought to justice. This sends a message to other potential war criminals, especially generations unborn, that they too can act without fear of reprisal. This culture of impunity must come to an end if Liberia is to develop as a stable and peaceful nation. Survivors are still hurting, deeply. They want to see justice prevail, for them and their loved ones that lost their lives. Not giving them justice is wrong; it has to stop. Justice is for all, rich or poor, not a select few.

The War and Economic Crimes Court will guarantee justice for the victims and survivors of the Liberian Civil War. Many of those who committed atrocities during the conflict have gone unpunished, leaving the victims and their families wondering if impunity would ever end. The establishment of the Court will send a message that impunity for those crimes will not be tolerated, and that those responsible will be held accountable.

Secondly, a War and Economic Crimes Court would provide a sense of closure and justice for victims, survivors, and their families. Many people who suffered during the war have been unable to find closure or move on with their lives. Justice must be served for these individuals to find peace and ensure that the country does not repeat the same mistakes in the future, and continues on an irreversible path to recovery and development.

Thirdly, a War and Economic Crimes Court would help to rebuild trust in the justice system. The current justice system in Liberia leaves much to be desired. The creation of such a specialized court would demonstrate the government's commitment to the rule of law and the protection of human rights, essential tools to building confidence in the justice system, which is cardinal for a stable and democratic society.

The Importance of Accountability

The establishment of the War and Economic Crimes Court is important not only for justice, but also for accountability. Holding those who committed atrocities and those who stole public funds accountable is crucial to ensuring that such crimes are not repeated. When individuals

CONT'D ON PAGE 13

“We do not want any violence this election, that’s all”

- legal luminary dissects a lay person’s words



Atty. Facia B. Harris, Esq.
International Woman of Courage

The quest for non-violent elections seems to be an overriding desire by most Liberians that is expressed in different ways across sectors as the country rapidly moves toward another historic election.

This desire is reminiscent of many Liberians who endured the brutal civil war, to the point that it has become a mantra, ‘We do not want any violence this election, that’s all’.

This is an opportunity for the Rule of Law to flourish in its firmness as expected in clamping down on perpetrators of electoral violence, knowing that violence could serve as an attractive option to influence election processes and outcomes.

In Liberia’s recent history, there have been

several reported acts of election violence that did not get conclusive investigations and yet remain concerning to the public. In this regard, impunity again may just be another prompter to stir up violence. Thus, the need for public assurance through legal actions against all forms of election violence.

Liberia’s 2023 Presidential and Legislative Elections present yet another milestone in the country’s postwar story, as the country is no longer considered a fragile state but rather moving steadily to strengthen its democracy.

All resources, logistics, and an enabling and safe environment for the conduct of a free, fair, transparent, and accountable election are unavoidable elements that must be employed to ascertain the credibility of the election. According to the ECOWAS 2001 Protocol on Governance and Democracy, Chapter 1–Section One Article 1 b & d provides that every accession to power must be made through free, fair, and transparent elections, and popular participation in decision-making, strict adherence to democratic principles and decentralization of power at all levels of governance.

Elections are key elements of democratic processes, providing for a more transparent and peaceful change of government and the distribution of power. This current state of Liberia is pivotal to lasting peace and stability, with each person being a stakeholder, and the Rule of Law a driving force and one last guarantee of ensuring a strong deterrent to violent perpetrators. The timely and effective application of the Rule of Law is cardinal to managing election-related violence, essentially, one of the best ways to enhance long-term efforts to build a strong, democratic, and

peaceful society that is accountable and transparent. The adherence to the Rule of Law throughout the elections cycles is a major yardstick to determine the legitimacy of the election and the expected leadership direction of the government.

To ensure the fair appreciation of the Rule of Law and violence-free elections, access to information is very important; the National Elections Commission and the joint security must act expeditiously to have the public informed in a timely manner to avoid rumors, misinformation, and disinformation which eventually triggers electoral violence.

Article 10.25 of the New Elections Law provides that any person who attempts, assists, or conspires with another person to conduct an election offense is guilty of an election offense. This is the Law. Its application cannot be discretionary. The hope and confidence of the people as expressed in this quote, “We do not want any violence this election, that’s all” can only become a reality if the law is applied.

Clause 10.24 (i) of the New Elections Law further provides that “creating disorder” is one of the election offenses. Also, Section 10.25 of the same law grants the National Elections Commission the right to sua sponte take cognizance of offenders and impose civil punishment if an alleged offender is determined to have committed an election infraction. Failure to exert said authority ascribed by law is a disregard for the Rule of Law. “We do not want any violence this election, that’s all” will but be a mere wishful aspiration.

The conduct of an Election without any form of violence is the right thing to do, and regard and respect for the Rule of Law propel peace, stability, and national development.

Respect the Rule of Law and have Peaceful Elections!

Adherence To The Rule of Law

A WAR AND ECONOMIC CRIMES COURT:

CONT’D FROM PAGE 12

are held accountable for their actions, it serves as a deterrent for others who may consider engaging in similar acts. The establishment of the Court will therefore help to prevent future conflicts and ensure that the rule of law is upheld.

Future Generations and the International Community

The establishment of the War and Economic Crimes Court is also crucial for future generations. It will set a precedent for future generations of Liberians, showing them that people must be held accountable when they commit atrocities, or steal public money. This will help create a culture of accountability and respect for the rule of law, which is essential for the long-term stability and development of any country, Liberia included.

Finally, a War and Economic Crimes Court would send a message to the international community that Liberia is committed to upholding human rights and the rule of law. Liberia has been working hard to rebuild its reputation on the international stage, but the lack of accountability for war and economic crimes undermines these efforts. A War and Economic Crimes Court would demonstrate Liberia’s commitment to justice and human rights and help to restore the country’s standing in the international community.

Conclusion

In conclusion, the importance of setting up a War and Economic Crimes Court in Liberia cannot be overemphasized. It would ensure that those responsible for atrocities committed during the civil war are held accountable for their actions, that people who steal public funds for their own benefits are brought to book, tried, and if found guilty, punished, as a deterrent to

would-be rogues. It would provide a sense of closure and justice for victims and their families, help rebuild trust in the justice system, and send a message to the international community that Liberia remains committed to upholding human rights and the rule of law. It is high time that Liberia takes this important step towards a more peaceful, stable and democratic future.

Our children should bear in mind that punishment awaits them if they commit any crime; setting up the Court would set a precedent for future generations. The War and Economic Crimes Court will ensure that those responsible for the atrocities committed during the Liberian Civil War are held accountable for their actions, and will help prevent future conflicts. It would also deter people from stealing public monies to the detriment of the masses. The culture of impunity in this country has to end!

Equal Rights Under the Law: AFELL President Philomena Williams *Calls out President Weah*



Philomena Williams
AFELL President

We believe we are all troubled by the accelerating wave of violence being perpetrated throughout the length and breadth of Liberia, and hasten to add that such practice needs immediate recourse of action. It is important that we are reminded and mindful, that if we are not careful, as we approach the electoral period, any attempt to encourage violence by our actions and silence, will no doubt plunge us into an unwarranted civil crisis that will take us to a dreadful twenty or more years back. What do we want?

It is imperative that we recognize and deeply appreciate someone who has promoted human rights and endeavor to end violence against women and children in Liberia, His Excellency, Michael McCarthy, the outgoing Ambassador of the United States of America accredited to Liberia. Again, AFELL is saddened by the news of the imminent departure of Ambassador McCarthy, a servant of the people who has exhibited the highest professional commitment to his mission in Liberia. Ambassador McCarthy worked with the Executive, Legislature, Judiciary, and Civil Society organizations to ensure responsible performance and promote and advance peace and security in our nation. He is quick to recognize and applaud the government in its achievements and does not hesitate or waver to condemn acts of corruption, violence, and other obstacles that impede and undermine development in Liberia. AFELL will definitely miss Ambassador McCarthy for impacting the lives of women and children in Liberia. Thank

you so highly Mr. Ambassador. We trust that your successor, Mark Christopher Toner, when and if confirmed will walk the path of goodwill and assist Liberia.

Reflecting on the Theme: “Beyond Rhetoric and impunity: Law, Governance and the 2023 elections – The basis for democratic necessity in Liberia”, AFELL expresses disappointment in the President, His Excellency George Manneh Weah’s response to the New Elections Law, specifically Section 4.5, 30% affirmative gender representation. Our Chief feminist said “The country is just seven months away to the 2023 general and presidential elections; as such, certain changes in the elections law at a time so close would tend to send mixed signals to the electorates and present the potential to cause delays in elections processes”.

Your Excellency, President Weah, we are taken aback and want you to rationalize the gigantic inequality gap of women in politics and leadership in Liberia and the need for complimentary laws that mirror and are in consonance with the Constitution.

AFELL is delighted and congratulates our sisters, the women of Sierra Leone for a milestone achievement against disproportionate representation of employment in politics and leadership.

Cognizant of the Constitutional provision under Chapter III, Article 18, which states “All Liberian citizens shall have equal opportunity for work and employment regardless of sex, creed, religion, ethnic background, place of origin or political affiliation, and all shall be entitled to equal pay for equal work.”

Similarly, the Constitution of the Republic of Sierra Leone, Specific to employment rights Section 8 (3) (a) states that “the State shall direct its policy towards ensuring that - every citizen, without discrimination on any grounds whatsoever, shall have the opportunity for securing adequate means of livelihood as well as adequate opportunities to secure suitable employment”.

To complement the Constitution and tackle gender inequality in Sierra Leone, in January

2023, as close as five months to the general elections scheduled to be held in June 2023, Sierra Leone’s President Julius Maada Bio signed the 30% quota Gender Equality and Women’s Empowerment Act, referred to as a ‘landmark legislation’. The Sierra Leonean President stated “We, men, have yet to see or acknowledge women’s rightful position fully, and this law will give us tools to correct that.” He further stated that now that we have a stable and peaceful Sierra Leone, we cannot afford to have women, who make up 52% of the population, not featuring prominently”.

Like Sierra Leone, according to Mr. Lawrence George, Acting Director, LISGIS, The De facto population in Liberia on Census Night, 10/11/2022...female population accounts for 49.6%. Statistics also reflect that gender inequality cuts over all circles of life in Liberia, and women are disproportionately represented in all areas of employment in politics and leadership.

Let us note that President Bio signed the 30% quota affirmative act in January 2023, as close as five months to the general and presidential elections scheduled to be held in June 2023. Liberia’s elections is seven months to presidential and general elections. The present cause of delays in the elections processes, we believe are due to multiplicity of reasons. To name a few- 1) a single computer assigned at registration centers to ensure timely and adequate registration, 2) the two hours shut down in the system at registration centers, and 3) the very poor awareness for voter registration.

Mr. President, your action, does not reflect the terminology of Feminist in Chief and/or He for She. Therefore, Mr. President, AFELL recommends for your office a female legal advisor on women and children matters to enhance and positively address women and children empowerment and to ensure that the nomenclature of Feminist in Chief and/or He for She as assigned to you is “Beyond Rhetoric” consistent with the theme of this gathering.

Finally, we encourage the electorates to register and vote. We are urging politicians and citizens to stop election violence and all forms of violence and channel elections disputes peacefully and save Liberia. AFELL’s message is

“Having electoral constituencies not based on equal number of voters is illegal, and unconstitutional, irrespective of who is at fault”

- Cllr. T. Negbalee Warner (Law Day Keynote Address)

Liberia's 2023 Elections: Violence & the Rule of Law

The Adverse Effect of Soft-pedaling the Rule of Law



Cllr. P. Beryl Best, BA, LLB, MPA

Introduction

There are three cardinal promises to which every government that professes democracy must subscribe, in deeds and words. These constitute the balance of power, equal protection under the law, and equal access to opportunity for all.

In Liberia, Africa's oldest democracy, these three promises have stood the test of time across numerous iterations of our Constitution, the organic law of the land. They underpin every legal instrument that follows — whether enacted by the Legislature, created by executive order or policy, or through the opinion of the Supreme Court. They are so fundamental to the structure of the Republic that violation of any of these promises requires structural redress, by correcting either the necessary legal instrument(s) or the person(s) responsible for upholding them.

This is where the rubber meets the road — where the rule of law regulates the actions of all members of society, in and out of government. There are, of course, ongoing debates over whether certain actions adhere to the letter of the law versus the spirit of it. Those are largely reserved for the courts of law and, in some cases, the court of public opinion — a discussion for another time.

Violence

The Black's Law Dictionary defines violence as “the use of physical force, usually accompanied by fury, vehemence or outrage; especially physical force unlawfully exercised with the intent to harm.” By this definition, the issue of violence is pretty unambiguous as far as the rule of law is concerned. Essentially, the use of such physically harmful or destructive force by anyone — whether civilian or state actors — must be legally warranted in order to be justified. If not, the rule of law must take its course via due process.

We take these pains to establish the operative principles and terms concerning violence and the rule of law because, in our dispensation, too many rights abuse — some rather subtle, others

absolutely blatant — are allowed to go unpunished. Based on the trends of election-based violence over the last five years in Liberia, there is a glaring pattern that could render the upcoming presidential and legislative elections quite predictable, if those charged with managing the structures of governance and rule of law do not change the trajectory.

So here's the question: does anyone in this day and age — and in their right mind — need another lecture on the “adverse effect of soft-pedaling the rule of law”, especially during elections? The answer is both affirmative and negative. Let me explain.

The Affirmative

As long as election-based violence in Liberia continues, often unabated and with impunity, the answer is an apparent ‘yes’. This is for those who don't know and need to be informed, as well as those who apparently need a memory refresher.

Election-based violence can be perpetrated by members of the electorate, motivated by the perceptions and allegations of fraud on the part of those managing the electoral process. This primarily happens in the absence of transparency and adequate voter education and awareness campaigns.

When the electorates are uninformed or misinformed about their role in the democratic process, especially concerning the election of their leaders, what follows is agitation driven by allegations of impropriety at one level or another. From there on, it only takes a critical mass of angry voters to ‘storm the Bastille’ and let the chips (or ballots) fall where they may.

But the election-based violence that most Africans, especially Liberians, are familiar with is the kind motivated by greed for state power — in part or in whole — by means of threat and intimidation. Instances of this kind are still fresh in our collective memory and are primarily perpetrated by political incumbents who leverage their access to and control over the human, financial, and other material resources of the Republic to entrench themselves in power for as long as they can.

The Negative

Acts of election-based violence, whether isolated or concerted, are often premeditated and have a sinister message to convey from the perpetrators and masterminds.

And if the answer to our key question is in the negative, our attention must also incorporate the enablers of election-based violence. Enablers could be private individuals who lend their financial and material resources to the perpetrators.

But perhaps the most dangerous enablers are those who sit in privileged positions of state power — members of the national governance structure — and conveniently ‘soft pedal’ (turn a blind eye) when acts of election-based violence are perpetrated on citizens whose only crime

has been to exercise their constitutional rights to freely assemble and express their views.

Private and state enablers alike know all too well the exuberance of the youth, which are often exploited, using misinformation, manipulating their thirst for meaningful participation into a weaponized force to perpetrate all kinds of violence. This is usually the result of the absence of adequate civic education — where each person (especially the youth) learns of their roles, their rights, and their responsibilities as citizens of the Republic.

If those who are tasked with managing the governance and security of the state allow wanton acts of violence — especially during elections — to be perpetrated against peaceful citizens exercising their constitutional rights, are they not setting a dangerous precedent that could seriously erode our emergent democracy?

This is why our Minister of Justice is required to be a licensed counsellor-at-law because he/she must be knowledgeable of the law and its workings in the interest of preserving the sanctity and security of the Republic. Also, it is expected that those manning the security sector are highly trained and qualified in disciplines corresponding to their respective portfolios. Even the National Elections Commission, which is considered an “integrity institution” of the Republic, being the umpire and regulator of the electoral process, runs the risk of being an enabler of election-based violence when it fails to demonstrate neutrality and meticulously organize the electoral process/activities in a manner that is transparent, credible and inclusive.

This is why, upon commissioning, all these officials swear an oath to protect, uphold and defend the Constitution of the Republic of Liberia, which encompasses the three cardinal promises — the balance of power, equal protection under the law, and equal access to opportunity for all.

We ask again: Do we need another lecture on the “adverse effect of soft-pedaling the rule of law”, especially during elections?

Certainly not.

Suffice it to say that soft-pedaling the rule of law leaves the society defenseless, believing that their government fails to ensure equal protection, equal justice, and equal opportunity for all, regardless of their political affiliations.

This soft-pedaling creates an environment of impunity by not punishing or deterring those guilty of breaking the law. Without the fear of punishment, people are more likely to break the law, abuse power, and violate others' inalienable rights to freedom of expression and political affiliation, as they feel that they will not be held accountable for their actions.

This can lead to a breakdown in societal order (chaos), as those who feel that they can get away with violent/criminal activities are more likely to engage in them. Defenseless citizens will subsequently invoke the law of self-preservation, debasing themselves to their

CONT'D ON PAGE 9

Liberia's 2023 Elections: Violence and the Rule of Law

By: Numene T.H Bartekwa, Jr. Esq.



On October 10, 2023, Liberians 18 years and above who are duly registered voters, will be expected to show up at the polls to exercise their constitutional franchise by voting in the Presidential and Legislative Elections.

These elections are in fulfillment of Article 83 (a) of the 1986 Constitution, which mandates voting for the President, Vice-President, Members of the Senate, and of the House of Representatives throughout the Republic on the second Tuesday in October of each election year. The October 10 polls will bring to four successive constitutional and democratic Presidential and General elections since the expiration of the National Transitional Government of Liberia which came as the result of the signing of the Comprehensive Peace Agreement of August 18, 2003. It signified the cessation of hostilities, and ending of nearly two decades of the brutal civil conflict that ravaged the nation, and led to the deaths of over two hundred and fifty thousand of our compatriots.

Like the preceding elections of 2005, 2011, and 2017, the conduct of a peaceful and violence-free election is the number one concern of most people of interest, both at home and abroad, citizens and non-citizens alike. This concern most definitely represents the greatest threats and challenge to determining the conduct of a successful election. The success of these elections is consequential to the effect that they could either lead to the peaceful transfer of state power to the opposition, or continuation of the mandate of the ruling administration.

Election violence is a broad term that encompasses vote-rigging, riots or protests, repression by security forces, intimidation, vandalism, targeted killing, terrorism, sexual violence, full-scale anti-regime insurgency, etc. Elections violence do not happen in a vacuum, it happens before, during and after the elections.

Historical perspective of Liberia's post-war elections and violence

In 2005, Former Supreme Court Chief Justice Frances Johnson-Morris (now Allison)

was selected by the Chairman of the National Transitional Government of Liberia (NTGL), Mr. Charles Gyude Bryant to head the Elections Commission. Madam Johnson-Morris attributed the trust many Liberians placed in her to her efforts to speak "in the national interest with a sense of duty".

The elections were conducted and "few incidents of violence accompanied the initial vote in October 2005, in which more than 700 candidates, mostly from 21 political parties but including some independents, ran for office. Procedures on Election Day were transparent and left little question in voters' minds that their ballots had been counted. A handful of violent incidents occurred immediately after the results of a presidential run-off ballot in November". Local and international observers all regarded the elections as one of the best conducted elections in the country's history. Thomas Du, a senior program officer at the Liberia Office of the National Democratic Institute, a Washington-based non-governmental organization that works to strengthen democratic institutions, stated, "Unbelievably, Liberia had elections that proved to be very remarkable, with little violence".

In 2011, the elections were conducted under different circumstances from that of 2005. By October 2011, Liberia had enjoyed six (6) years of democratic rule under the leadership of Madam Ellen Johnson-Sirleaf as President, and with the presence of the United Nations Peacekeeping Force (UNMIL). Sixteen (16) candidates, including incumbent President Ellen Johnson-Sirleaf, ran in the first round, with no one winning the necessary 50 per cent plus one of the total votes as required by Article 83 (b) of the 1986 Constitution of Liberia which states that "All elections of public officers shall be determined by an absolute majority of the votes cast. If no candidate obtains an absolute majority in the first ballot, a second ballot shall be conducted on the second Tuesday following. The two candidates who received the greatest numbers of votes on the first ballot shall be designated to participate in the runoff election".

On the eve of the November 2011 presidential run-off, "violence erupted at the headquarters of the Congress for Democratic Change (CDC) where supporters of the CDC clashed with police and one person was reported dead". The incident was later calmed by the United Nations peacekeeping forces and the Liberia National Police. The Standard Bearer of the CDC, Mr. Winston Tubman, went on to call upon his supporters to boycott the November 2011 polls. The runoff was conducted, and Madam Ellen Johnson-Sirleaf was declared winner by the National Elections Commission on November 15, 2011, with 90.7% of the votes.

The 2017 Presidential and general elections were a test to Liberia's democracy. For the first time in 70 years, Liberia had an opportunity to peacefully transfer power from one elected

president to another, and it was the first post-war elections after the drawdown of the United Nations Mission in Liberia (UNMIL) which placed Liberia's security back in its own hands. With the fear of not repeating the November 2011 incident where supporters of the CDC clashed with police and one person was reported dead and knowing the significance of the 2017 elections to Liberia's democracy, the government of Liberia along with 20 (twenty) registered political parties signed what is dubbed as the "Farmington River Declaration" in June of 2017. The parties committed that their political campaign activities would be conducted in such a manner that would not only preserve, but also enhance and maintain the peace and unity of Liberia.

The elections were conducted, and soccer legend George Manneh Weah of the Congress for Democratic Change (CDC) defeated former Vice President Joseph Nyumah Boakai of the Unity Party in the December 26, 2017, presidential run-off. Though there were minor incidences of violence and a contested first round results by Cllr. Charles Walker Brumskine of the Liberty Party at the Supreme Court of Liberia, however, Liberians and political parties demonstrated an admirable commitment to the rule of law.

Moving towards the October 2023 polls

There is reason for optimism as Liberia prepares for its October 10 elections. Thus far, the run-up to the vote has been calm and peaceful, with the conduct of the National Population and Housing Census completed and the Biometric Voter Registration (BVR) on-going. Efforts to prevent election violence, including domestic and international election observations have begun with Liberia's traditional ally, the United States of America dispatching 200 election monitors in the country. Additionally, the government of Liberia and political parties have signed the second "Farmington River Declaration" with representatives of 26 political parties recommitting themselves to conduct peaceful campaign rallies.

Notwithstanding these efforts, issues that tend to create doubts in the capacity of the National Elections Commission (NEC) to conduct a free, fair and transparent election are concerning. Most concerning are budget gaps and the lack of institutional strength that could prevent the National Elections Commission from providing adequate election administration. The Board of Commissioners of the National Elections Commission, appearing before the Plenary of the Liberian Senate on March 9, 2023, indicated that "the Government of Liberia has adjusted its US\$91 million election budget to US\$33 million". The NEC Board of Commissioners and the Government of Liberia should note that any technical mistakes or delays by the National Elections Commission, any real or perceived fraud, and a close or tense race may encourage

CONT'D ON PAGE 9

RESOLUTION OF THE LIBERIAN NATIONAL BAR ASSOCIATION AT ITS ANNUAL ASSEMBLY

HELD FROM MARCH 31ST TO 1ST APRIL 2023, AT ELLEN JOHNSON SIRLEAF MINISTERIAL COMPLEX IN OLDEST CONGO TOWN, MONTSERRADO COUNTY, REPUBLIC OF LIBERIA

PREAMBLE

WHEREAS, pursuant to the Constitution of the Liberian National Bar Association which requires the holding of an Annual Assembly each year, members of the Liberian National Bar Association (LNBA) convened at the Ellen Johnson Sirleaf Ministerial Complex in Oldest Congo Town, Montserrado County, for the holding of its Annual Assembly for the year 2023,

WHEREAS, the theme for the 2023 Assembly is: “Beyond Rhetoric and Impunity, Law, Governance and the 2023 Elections – the basis for Democratic Necessary in Liberia”;

WHEREAS, delegates attending the Annual Assembly of 2023 noted with satisfaction the presence of:

Her Honor Sie-A-Nyene G. Youh Chief Justice, Honorable Supreme Court of the Republic of Liberia;

Her Excellency Christine N. Umutoni, United Nations Resident Coordinator in Liberia

Ambassador Godfrey A.E. Odudigbo, Embassy of the Federal Republic of Nigeria;

Ambassador Beng'yela Augustine Gang, Embassy of Cameroon;

Ambassador Kwabena Okubi-Appiah, Embassy of the Republic of Ghana;

Commissioner Boakai Dukuly, National Elections Commission

Atty. Philomena T. Williams; President, Association of Female Lawyers of Liberia;

His Honor A. Blamo Dixon, First Vice President, National Association of Trial Judges of Liberia (NATJL)

Cllr. Lamii Kpargoi, The Carter Center Liberia

WHEREAS, the National President, Cllr. Sylvester D. Rennie officially convened the Meeting at 10:00 and presented the agenda for the Assembly, which was adopted as presented;

WHEREAS, complimentary greetings and special remarks were made to some invited guests and esteemed members of the National Bar to include Her Honor, Sie-A-Nyene G. Youh, Chief Justice of the Honorable Supreme Court of Liberia, Ambassador Godfrey A.E. Odudigbo, Embassy of the Federal Republic of Nigeria; Ambassador Beng'yela Augustine Gang, Embassy of Cameroon; Ambassador Kwabena Okubi-Appiah, Embassy of the Republic of Ghana; Commissioner Boakai Dukuly, National Elections Commission; Atty. Philomena T. Williams; President, Association of Female Lawyers of Liberia; His Honor A. Blamo Dixon, First Vice President, National Association of Trial Judges of Liberia (NATJL); Cllr. Lamii Kpargoi, Senior Program Officer, Rule of Law Program, The Carter Center Liberia.

WHEREAS, Commissioner Boakai Dukuly, National Elections Commission of Liberia commended the Bar Association for the level of support the commission has been receiving from the Bar especially in terms of the Civic and Voter's education, evident by the adoption of the

topics bordering on the key issues on elections, especially the hearing process at its Assembly.

WHEREAS, Ambassador Beng'yela Augustine Gang of the Embassy of Cameroon emphasized that the theme of the Assembly ‘Beyond Rhetoric and Impunity’ admonishes all, primarily political stakeholders to demonstrate with urgency, maturity and patriotic love for country, while admonishing legal and judicial actors in Liberia to assume and demonstrate their inescapable and prime role in ensuring adherence to the rule of law especially in the ensuing elections.

WHEREAS, Ambassador Gang speaking to the significance of the 2023 Assembly theme, propounded that he sees the scourge of dangerous rhetoric at two levels: firstly, the bellicose, defiant, partisan rhetoric prevailing in some fringes of the media. He highlighted that the inflammatory strategies are observable among too many political opinions. He submitted that such leaders with impunity threaten others by their choice of words.

WHEREAS, Ambassador Gang speaking to the second level of rhetoric says he sees the dangers of institutional rhetoric without action and the impunity among political associates, legal or administrative institutions charged with the duty of monitoring of dissuading and of repressing partisan suspected of mob incident. He said one must sympathize with the social pressures on the shoulders of all enforcers in a closed knitted society as Liberia and Africa at large.

WHEREAS, His Excellency Kwabena Okubi-Appiah, Embassy of the Republic of Ghana; conveyed his appreciation for the invite from the LNBA and devotion toward upholding the Constitution of the Republic. He urged the legal fraternity to be resolute in delivering justice as and when the need arises. He submitted it was time that the legal structure in Liberia uphold its duties and responsibilities to the Constitution of the Republic of Liberia and maintain strong principles of rule of law, equality, fairness and justice to its people.

WHEREAS, Atty. Philomena T. Williams; President, Association of Female Lawyers of Liberia (AFELL) Atty. Philomena expressed disappointment in the President, His Excellency George Manneh Weah's veto of the New Elections Law, Section 4.5 on the thirty (30%) gender representation. She further asserted that as Chief Feminist, his reason that the country is just seven months away to the 2023 general and presidential elections, as such certain changes in the elections law at a time so close would trend to send mixed signals to the electorate, and present the potential to cause delays in the election process; need a gigantic rationalization of the inequality gap of women in politics and leadership in Liberia.

WHEREAS, the AFELL President Williams recommended to the Liberian President for the establishment of a female legal advisor desk on

women and children matters in the office of the President, to enhance and positively address women and children's issues, which will ensure that the nomenclature of Feminist in Chief as assigned to his Excellency is “Beyond Rhetoric” consistent with the theme of the LNBA's 2023 Assembly.

WHEREAS, Cllr. Lamii Kpargoi speaking on behalf of the Carter Center reported that his organization is working with the Liberia Naational Police, Liberia Immigration Service and the Liberia Drug Enforcement Agency to foster transparency and accountability in their ranks to ensure the respect for Human Rights. He indicated that the Carter Center is presently partnering with the LNBA to provide pro bono legal services to needed Liberians. He indicated that lawyers under the guidance of the National Bar have traveled to Lofa, Nimba and Bong counties to provide free legal services to prolonged pre-trial detainees.

WHEREAS, Her Honor Chief Justice Sie-A-Nyene G. Youh, in her special remarks defined rhetoric as a language designed to have persuasive or impressive effect on its audience but often regarded as lacking in sincerity or meaningful content.

WHEREAS, Chief Justice Youh cautioned lawyers to move beyond the art of grandstanding, stating that an astute statesperson's words must be matched with substantive actions.

WHEREAS, Chief Justice Youh stressed that it is an undeniable fact that the election calendars are the most tumultuous and tedious times in the history of the Supreme Court. She submitted that the Supreme Court docket during the election period is overwhelming; however, she assured the audience assuring that the high court is well fortified, and judicially poised to hear and dispose of all and any disputed regardless of their magnitude of underlying currents.

WHEREAS, the Supreme Court Chief Judge cautioned that the Bench will only be moved by strong and convincing evidence and not political ideologies, crowds or the recently created political slang of strong holds. She indicated that the Court will continuously uphold this principle of law in deciding elections cases and will confirm or reject election results based upon evidence and nothing more, all of which is in consonance with the fundamental principle of law on equality before the law. In conclusion, she stated that the ignorance of the law as a plea will not constitute an excuse.

WHEREAS, Her Excellency Christine N. Umutoni, United Nations Resident Coordinator in Liberia in her Keynote address to the Assembly stated that the work of the LNBA is critical for national development and extended gratitude to the Bar for being inclusive in providing free legal aid to vulnerable individuals through its legal aid clinics.

WHEREAS, Ambassador Umutoni

CONT'D ON PAGE 18

RESOLUTION OF THE LIBERIAN NATIONAL BAR ASSOCIATION

reiterated that the Bar Association is a major stakeholder in the electoral process and must play a critical role in setting the agenda for political discourse and proactively pointing the way out to any challenging situation that may arise. She implored that lawyers and the courts must take the lead in ensuring the votes of Liberians are respected and protected.

WHEREAS, she further intimated the upcoming elections can either greatly advance or set back the country's long term democratic advancement, specifically stating that the ensuing elections is a defining moment and a test for Liberia's democracy, as they represent the will of the people. She noted that to achieve this, elections must be transparent, inclusive and accountable, and there must exist equitable opportunities to compete. Ambassador Umutoni highlighted that political participation is a legal right, which includes the right to nominate and elect representatives, to hold public office in accordance with the principle of equal opportunities, to participate in private and public meetings, and the right to form and join political parties.

WHEREAS, the keynote speaker admonished political parties to keep the principles and commitments they make to prevent electoral violence, impunity and injustices. She opined that the world is watching Liberia's elections closely and the Bar Association is a major player in ensuring that Liberia gives a good report of itself.

WHEREAS, a Continuing Legal Education (CLE) was presented under three (3) topics.

The first topic on Electoral Dispute Resolution of the Elections Commission; was presented by Counsellor Arthur T. Johnson and Atty. Alvin Teae Jallah and was moderated by Counsellor Norris Tweh.

The second topic on Trends and Outlook of the Honorable Supreme Court of Liberia in the Adjudication of Election Matters was presented by Counselor Benedict Sannoh and moderated by Counselor Neto Z. Lighe and statutorily prescribed steps and procedures likely to assure successful outcomes in electoral processes.

WHEREAS, similarly, electoral and cases have often been dismissed in our jurisdiction on account of what electoral tribunals and ultimately the Supreme Court have ascribed to a party's litigant's (lawyer's) neglect and failure to comply with prescribed steps and procedures set out in applicable electoral laws.

WHEREAS, Justice J'aneh highlighted the difficulty with the Court is that where its orders are not strictly obeyed especially in major electoral cases, the Court has often shy away in the face of daunting evidence.

WHEREAS, the President adjourned the first day's session at 5:15pm.

WHEREAS, Day Two of the Assembly began with a parade from the Kailondo Gas Station to the Ellen Johnson Sirleaf Ministerial Complex and,

WHEREAS, the business session was held wherein the President of the Liberian National

Bar Association, Cllr. Sylvester D. Rennie delivered his report on the status of the Bar, wherein he outlined the various activities of the Bar for the period under review.

WHEREAS, the third topic on constitutional and statutory steps preparation to the conduct of elections was presented by Former Justice Kabineh M. J'aneh and moderated by Counselor Angelique Weeks.

WHEREAS, the presentation on the electoral dispute of the elections commission, the focus on the review of the Legal Framework for hearing of electoral disputes, review of the National Election Commission's internal procedure on hearings, understanding the different level of jurisdiction and a review of the appeal process.

WHEREAS, Article 83 ©, 1986 Liberian Constitution provides that the National Elections Commission has 15 days from the date of Elections to declare/announce the results. However, a participating candidate and/or political party may challenge within seven days of the announcement, and that the Commission must hear electoral complaints within a period of thirty (30) days. Filing an appeal from the Board of Commissioners to the Supreme Court should take seven days while the Honorable Supreme court has seven days to decide on the matter.

WHEREAS, Chapter Five (5) of the elections law provides that the following persons may file a complaint: a registered voter, a candidate, or a political party on behalf of a candidate (with authorization from the candidate to file), coalition or alliance.

WHEREAS, the venue of filing an election complaint and process leading to the lodging of complaint is done in the country at the Elections Magistrate's Office where the allegation occurred or at the elections Headquarters in Sinkor. A complaint addressed to the Chairperson will be reviewed to determine whether it will be heard in the country concerned or by a hearing officer at NEC's headquarters.

WHEREAS, said complaint must be in writing, accompanied by all documentary evidence, giving notice of the particular violations being alleged. Defendant may file an answer. If no answer is filed, defendant shall be deemed to admit only those averments relating to the identity of the parties and spread on the record/minutes.

WHEREAS, the characteristics and nature of the hearing at the National Elections Commission is of a hybrid proceeding which includes the application of the Civil Procedure Law and Criminal Procedure Law.

WHEREAS, the Civil Procedure Law is used to guide the hearing. The administrative hearing applies the rules of civil procedure for the determination of the case, while the Criminal Procedure denotes the allegations of Election Fraud, Forgery, Misrepresentation, Malfeasance, Bribery, Undue Influence, Destruction, Removal or Mutilation of Ballot papers or boxes border on criminality and to prove that, the burden of standard of proof is beyond reasonable doubt.

WHEREAS, lawyers were cautioned by the presenter to take into consideration the fragile nature of election related cases so as to approach the process with outmost care in representing the interest of their clients. Legal practitioners

should be resilient, studious, and exhibit a high degree of professionalism in their legal advocacy of election cases before the appropriate legal forum.

WHEREAS, responding to questions posed by several lawyers wherein the presenters several responded that the National Elections Commission ten(10) day rule does not apply, and that an answer can be filed at any on or before the next hearing.

WHEREAS, in an inter-party dispute, the appealing party will superintend the fees only, while in an election dispute, only a candidate or a party can file. In the case of a candidate, the party filing must obtain consent of the candidate.

WHEREAS, the topic on Trends and Outlook of the Honorable Supreme Court of Liberia in the adjudication of election matters was presented by Counsellor Benedict F. Sannoh and moderated by Counsellor Neto Lighe.

WHEREAS, the presenter focused on the trend of the Opinions consistent with respecting and protecting the Will of the people as expressed by the votes in the elections conducted in consonance with the Constitution.

WHEREAS, protecting fundamental Rights articulated in the Constitution especially on due process of law entails presumption in favor of validity, wherein the Court has adopted as a cardinal principle in its disposition of election disputes, the presumption in favor of the validity of the election process and results.

WHEREAS, with respect to the critical focus on evidence, the presenter asserts that the Court has consistently demonstrated reluctance to set aside election results in totality because of allegations of fraud, irregularities and violations of the election laws.

WHEREAS, the topic on constitutional and statutory steps preparation to the conduct of elections was presented by Former Justice Kabineh M. J'aneh and moderated by Counselor Angelique Weeks.

WHEREAS, LNBA President Rennie recalled the passing to eternal glory of four(4) lawyers during the period under review and the appointment of three members of the Bar As Relieving Judges and Circuit Court Judge.

And WHEREAS, the LNBA President informed participants that the Annual Assemblies have now been reduced to one(1) Assembly based on a resolution of the National Convention; and that seven standing committees were established for the purpose of enhancing the work of the Bar; key achievements include but are not limited to: 157 cases handled by the Legal Aid Clinics, and the disbursement of 25% of remittance to the Local Bars.

NOW THEREFORE, the Liberian National Bar Association, sitting at its 2023 Annual Assembly after deliberation on the matters under consideration, hereby resolves as follows:

1. That the LNBA calls on the Government of Liberia and all its functionaries to ensure the security of all persons and political parties participating in the ensuing elections and calls on the National Elections Commission to particularly ensure the integrity of the election as the bedrock of our democracy.

2. That the LNBA collaborates with the National Elections Commission to build the

CONT'D ON PAGE 19

LNBA & NEC COLLABORATE**CONT'D FROM BACK PAGE**

Under the MoU which is for a period of one year, the Bar shall organize engagement meetings with relevant international partners to seek their support and collaboration to address issues around electoral violence as well as organize meetings with CSOs, religious leaders, joint security about the potential risks associated with early warning signs of conflict. The LNBA shall provide training support to Civil Society Organizations (CSOs), security sector, media organizations etc., on the effective, efficient and timely disposition of electoral complaints and also enhance the knowledge of LNBA members on the differences between court room litigation and electoral dispute resolution i.e. Litigation versus Administrative Hearings. The LNBA has agreed wholly to formulate long term capacity development and training plan for its members and the NEC with support to come from the UNDP and partners.

In a release issued on Tuesday July 25, 2023, the LNBA says, to implement the short-term interventions under the MoU, the UNDP Electoral Support Programme with support from the Swedish, Irish and the European Union (EU), is to provide One Hundred Fifty Thousand United States Dollars (150,000.00 USD). The short-term activities will be implemented within six months.

The LNBA says under the MoU, NEC in collaboration with the Bar, will organize stakeholder conferences to do stock-taking amongst the LNBA, NEC and the Supreme Court and Peace Building Office on all critical electoral interventions. NEC will recruit Hearing Officers and clerks and prepare them for training and set up a case management system for optimum efficiency. NEC shall provide strategic information and education plan on Electoral Dispute Resolution targeting political parties and other stakeholders to be rolled out for the smooth conduct of the electoral activities. Under the MoU, NEC and the LNBA shall hold experience sharing sessions on ethical aspects of the EDR to withstand political pressure on the NEC senior leadership.

The NEC will from time to time consult with the LNBA and raise any concerns regarding presentations made by any assigned lawyers on any related electoral matter. Two parties under the MoU have agreed that any lawyer performing legal services shall do so in keeping with the highest professional standard.

In a related development, the Leadership of the LNBA has commended the Chairperson of the NEC, Madam Davidetta Browne-Lansanah and the Board of Commissioners, the UNDP Electoral Support Program, the Swedish and Irish Governments and the EU for their support to actualize a mechanism that will enhance Liberia's democratic credential.

**LNBA Boss, Cllr. Sylvester D. Rennie**

The Bar says to satisfy one of the principles of any vibrant rule of law system; it would encourage all eligible voters to freely participate in the October 2023 elections to decide their leaders, a right consistent with law.

Liberia's 2023 Elections:**CONT'D FROM PAGE 16**

candidates to mobilize their supporters and challenge the election result. The news of budgetary constraints few months before elections is a source of violence.

Whether the elections will be a success void of violence is to some extent determined by the efforts taken to prevent election violence—first and foremost by the

government of Liberia, and leading candidates, but also by election observers, the National Elections Commission, police, international diplomats, civil society, and the Liberian people.

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5. <https://independentprobe.com/2023/03/12/breaking-news-u-s-sends-200-election-monitors-to-liberia/>

RESOLUTION OF THE LIBERIAN NATIONAL BAR ASSOCIATION**CONT'D FROM PAGE 18**

capacity of Magistrates, Hearing Officers, and the National Elections Commission in its entirety in support of the conduct of free and fair elections.

3. That the LNBA provides volunteer lawyers to assist the NEC in the management and resolution of elections disputes.

4. That the LNBA encourages the Government to conduct a national referendum to amend Article 83©) of the Liberian Constitution with the view of removing quasi-judicial authority of the NEC relative to adjudication of cases to correct the potential conflict of interest involving NEC presiding over complaints against its conducts and handling of elections.

5 That the LNBA bestows its highest honors on Ambassador Michael A. McCarthy for his

work in promoting adherence to the rule of law in Liberia during his tour of duty as Ambassador of the United States of America accredited to Liberia.

6. That the Secretariat of the LNBA be mandated to compile a comprehensive list of law firms that are yet to make good their payment of Project Fees mandated by the 2016 Convention and to compel compliance with the 2016 Convention Resolution.

7. That this Assembly approves the holding of a Rule of Law Champions Awards Night to be conducted by the LNBA.

8. That the LNBA supports the rebranding efforts being undertaken by the Chief Justice of the Honorable Supreme Court to dignify the legal profession and promote adherence to the rule of law.

9. That the LNBA encourages all Liberian lawyers to keep their membership with the African Bar Association (AfBA) active and to endeavor to attend the activities including the conference in Johannesburg, South Africa from 6-10 August, 2023.

10. That the LNBA engages the Legislature

to consider holding a referendum in the near future as regards the quasi-judicial authorities of the NEC.

11. That this Assembly mandates the Welfare Committee to draft a policy to address the Bar's response to issues affecting members.

12. That the Ministry of Justice takes seize of all activities before, during and after the electioneering process, to ensure that security is maintained.

DONE THIS 1st DAY OF APRIL A.D. 2023 AT THE ELLEN JOHNSON SIRLEAF MINISTERIAL COMPLEX, OLDEST CONGO TOWN, MONTSERRADO COUNTY, REPUBLIC OF LIBERIA ,BY THE RESOLUTION COMMITTEE OF THE LNBA.

1. Cllr. Bobby F. W. Livingstone
Chairman
2. Cllr. Stanley S. Kparkillen
3. Cllr. T. Emmanuel Tomah
4. Cllr. Ade Wede Kekuleh
5. Atty. Bowoulo Taylor Kelly
6. Atty. Ernest J. Dunbar
7. Law Student Saye Gbanlekpeh



SECOND EDITION

RULE OF LAW

2023 EDITION Newsletter

VOL.1 #2

A Publication of the Liberian National Bar Association

PRICE \$5.00USD

**END VIOLENCE
AGAINST WOMEN
IN ELECTIONS
NOW!**

LNBA & NEC COLLABORATE TO CONDUCT PEACEFUL, CREDIBLE AND TRANSPARENT ELECTIONS



LNBA Boss, Cllr. Sylvester D. Rennie



NEC Boss, Davidetta Browne-Lansanah

The Liberian National Bar Association (LNBA), is gratified by the strategic collaboration between it and the National Elections Commission for the peaceful conduct of the 2023 October General and Presidential Elections. The Bar avers that the July 11, 2023 Memorandum of Understanding signed between the LNBA and NEC has set the basis for the LNBA strategic support to the NEC to ensure that credible and transparent elections are conducted with the mass participation of Liberians consistent with Law.

Under the MoU, the LNBA will provide legal support to the NEC by sensitizing the public through the holding of public conversation on elections Laws and rulings of both the NEC and the Supreme Court on

past election cases as well as advocating for the adherence of the rule of Law by all actors during the electoral process.

Under the arrangement, the LNBA shall provide support to enhance the legal capacity of NEC to be effective in the adjudication of electoral disputes and increase public knowledge on electoral dispute resolution mechanisms; especially working with all stakeholders. The LNBA shall sensitize the public on the calendar of events covering the entire process. The Bar will provide training support to electoral staff to include elections magistrates, hearing officers, political parties' representatives, independent candidates, media organizations and others on the disposition of all electoral disputes.