

THE NATIONAL ELECTIONS COMMISSION AND THE CITIZENSHIP ISSUE: RISKING THE FUTURE OF LIBERIA

By

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I. THE PRELUDE

Several years following the 1985 Presidential and General Elections I had the occasion to meet with Ambassador Emmett Harmon who served as Chairman of the Special Elections Commission, the body that conducted the 1985 elections. Although the meeting, which occurred at the Liberian Consulate in New York, was an unscheduled one, it was one I had longed for. Why, I asked him, did he and his Commission turn the Liberian peoples' dreams and aspirations for a truly democratically elected government upside down and flat on its face, and deprive our nation and its people of the hope for a glorified stable future? I felt the urge to ask the question, perhaps the same as any other Liberians, but more so not only because I had worked for several years with the Morgan Grimes and Harmon Law Firm, of which Ambassador Harmon was a senior partner, but also because I was one of the lawyers who had put his life on the line. I enjoyed working with the firm; it allowed for honesty and competence amongst its lawyers, even in the midst of disagreements as to the firm's own approach to the resolution of legal issues. When I left the firm, I had already risen to the rank of Managing Director.

But there was a second reason why I felt a special sense of disappointment with the course being pursued by the Special Elections Commission and, in the light of that disappointment, the urge to have Ambassador Harmon give an account of his deeds as Chairman of the Special Elections Commission. I was one of the lawyers who, like a few other lawyers, had put his life on the line in the hope of seeing a democratic process emerge in Liberia after such a long period of national failings at democratic attempts. I wondered how the Ambassador could find peace in and with himself after presiding over the theft of the Liberian people elections and consequently taking the country and its people down the path of utter disaster. "Counsellor Banks", the Ambassador said in response to my query, "I had no choice. It has always remained a trouble spot for me, but it was either allowing Mr. Doe to become President of Liberia, however he turned out to be, or plunging the nation into an immediate blood bath and the loss of a great many lives." It seemed plausible that such could have been the fate of the Liberian people and nation, but that, I thought, was for history to judge. My reply to him therefore was that even with the scenario he had outlined, the Special Elections Commission still acted wrongly, that the ramifications of its action for the Liberian nation and people would be far greater and more disastrous than he could have ever imagined, and that the Liberian nation and people would feel the effects far beyond his own lifetime, perhaps even for decades. Twenty years after the fateful decision of the Special Elections Commission, in what was nothing short of a complete disservice to the Liberian nation and people, we, the people of Liberia, are still trying to deal with the effects.

II. THE FAILINGS OF THE NATIONAL ELECTIONS COMMISSION

We have come full circle in twenty years. Today, we have the Francis Johnson-Morris National Elections Commission (NEC). It isn't a Commission set up by an

elected government; contrarily, it is a Commission set up by the most corrupt government in the history of Liberia, a government comprising some of the most brutal people in the history of our nation, a government characterized by a level of incompetence unknown in our nation's history. It is a Commission the appointment of whose members, with minor exceptions, generated great disappointment. Today, almost twenty years to the date of the announcement of the results of the 1985 elections, we seem to be witnessing in the Francis Johnson Morris National Elections Commission the return all over of the Emmett Harmon Special Elections Commission. On August 13, 2005 the NEC, in response to two of the challenges filed before it against certain presidential and vice-presidential candidates on the grounds that they had taken up citizenship of foreign countries and therefore barred from contesting the Liberian presidency, issued out an opinion that may go down in Liberian history as monumental, comparable perhaps only to the announcement made by the Emmett Harmon Special Elections Commission in 1985. On that fateful October day, Liberians shed tears of blood for their country, their hopes dashed aside, and only a bleak future to look forward to. On that day, we saw the Emmett Harmon Special Elections Commission abandon all respect for the rule of law, the same as it had in the days preceding the announcement. I remember how ballot boxes were removed from their stations of storage under the cover of darkness; how ballots were destroyed; how ballot boxes were stuffed with fake ballots; how pooling personnel were sidelined and a 50 member body, comprising primarily Mr. Doe's friends, relatives, officials and compatriots, was appointed to count the ballots; and how political parties representatives were denied the right to ensure adequate counting of even those ballots that were not destroyed. Today, we are watching unfold a course by the Francis Johnson-Morris National Elections Commission that is increasingly disregarding the law and turning the rule of law flat on its face. The speculation that its decisions are being dictated from without is not important to this discourse, the same as the excuses by the Harmon Special Elections Commission for the violation of every rule of law principle was not relevant to its abridgment of the law. What is relevant is that the consequences of the decisions of the Francis Johnson-Morris National Elections Commission could be as far reaching as those made by the Emmett Harmon Special Elections Commission, and that the Liberian nation and its people could suffer serious ramifications for many years (or even decades) to come, perhaps even beyond the life of Francis Johnson-Morris and the members of her Commission.

Whether or not the members of the NEC can appreciate the magnitude of the role they are called upon to play in determining the future of Liberia, and I seriously doubt from their actions to date that there is such appreciation, the truth is that the seven members of the National Elections Commission hold the key to the success or failure of Liberia's quest for democracy. They have in their hands the power to determine whether we have peace--- sustainable peace --- or whether we see our people return to war. They can never afford to bend the rules, ignore the law, or taint the electoral process. We must speak out every time we see this happen, even if this makes our foreign friends (and those not our friends) uncomfortable. This is why, in the first instance, the nation needed its most honest, sober, committed, and professionally qualified sons and daughters for those positions. Those positions should never be filled merely by people who are looking for jobs, or who are the friends of government officials, or who can pay their way into being selected and have no conscience to live with when the dust have fallen on us. I can say without hesitation, and am prepared to accept the consequences, that as with most other appointments where he had the power of choice, the Chairman of the National Transitional Government of Liberia did the Liberian nation and its people

a great disservice.

Notwithstanding, I had hoped, without much enthusiasm, that the National Elections Commission of this transitional period would for once, unlike the Emmett Harmon Special Elections Commission, demonstrate the foresight to properly deal with the issues presented in accordance with the law. I had hoped that for once the NEC would disappoint me in my assessment of it and would display the level of competence expected of an institution of that nature. Although I never believed that the NEC, in whose hands the Chairman of the National Transitional Government of Liberia (NTGL) had placed the future of Liberia and its people, possessed the competence (except perhaps as to a few of its members) to properly perform the functions associated with the conduct of free and fair elections, I prayed that it would not take action that would place the future of Liberia and its people at risk. The Doe and Taylor eras had done enough to deprive Liberians of their honor, pride, dignity and self-respect, and the Bryant Transitional Government had equally compounded our self-inflicted disgrace by bringing even greater shame to our nation and people and to cause the international community to look upon us as undeserving its respect. Our people, I thought, needed a new start, in which the virtues of respect for the rule of law, could be seen and practiced by our National Elections Commission. We must not allow ourselves to be fooled into believing that such is practiced because of the number of candidates the Commission has allowed to contest various elective public positions. It isn't the number of candidates that is important. What is important is whether the NEC respects the rule of law. We had seen such disregard for the rule of law in the past that another mistake could be disastrous for Liberia, place Liberians again in a state of uncertainty, and dampen the small glimmer of hope they were only just beginning to develop again. Now, more than ever, I am of the belief, and that belief is strengthened by every action taken by the NEC, that that body, either because of its incompetence or other factors, which we must still seek to understand, is placing the future of our country and our people at great risk. Like the Harmon Special Elections Commission, the NEC is under the illusion (or is it a deliberate course) that our future and the future of our country can be made more secured if it chose not to follow the law.

Take a brief look at a few of its actions. Firstly, in what seemed a remarkable lack of appreciation for the rule of law, the NEC commenced its work on the faulty premise that it had powers that the Comprehensive Peace Agreement (CPA) had not reserved to it but rather to the international community to ensure that conduct exhibited by past elections commissions are not repeated and that the ensuing elections are free, fair, transparent, consistent with the laws of Liberia, and meet international standards. And, as to those powers that were reserved to it by the Liberian Constitution, as for example ensuring that the fundraising and other financial reporting provisions in the Constitution and the Elections Law were scrupulously adhered to by political parties and candidates, or investigating the sources of funds being exhibited by political parties and candidates, it showed remarkable acceptance of violation of the law by certain parties. To date, except for the publication a few days ago (two years late) of financial the requirements, the NEC has asked no questions and made no enquiries as to how some political parties, virtually penniless prior to the interim period, accumulated the wealth that they are currently displaying.

Secondly, on February 7, 2005, the NEC placed over 300,000 Liberians outside the country on notice that it was taking the bold step of disenfranchising them of the

right to participate in determining who the next leaders of their country should be. It didn't matter that the right to vote was a fundamental one guaranteed Liberians by the Liberian Constitution; it didn't matter that most of the affected Liberians were out of the country not of their own volition but because of the security condition that threatened their lives and very existence; and it didn't matter that the Liberian Constitution never envisioned that Liberians would be deprived of that right merely because they escaped a war in which death seemed so eminent, or that they would be discriminated against for having the foresight to escape the wrath of death that was consuming the nation and its people. The only apparent offense which formed the basis for the withdrawal of the critical constitutional right to vote --- the benefit of Liberian citizenship --- was that they had chosen to accept the safe sanctuary of refugee camps in foreign lands or the security of foreign nations sympathetic enough to offer them a second chance at life or an escape route from the impending fate of death that had befallen hundreds of thousands of their brothers and sisters. By its edict, it seemed, the NEC preferred that Liberians who had escaped the death trap of the war should have remained in Liberia and await their turn to be massacred by one or the other of the warring parties whose child soldiers had been turned into human killing machines for that purpose, or that in the alternative, they should have stayed to face the inevitable plight of starvation, disease, sickness, and consequently death. How can the NEC justify denying these Liberians of the right to vote while at the same time allowing those who seek political offices to be exempt from the constitutional residence requirement? I do not believe that the ten-year residency requirement was fair, reasonable or equitable, and I have been opposed to it from its very inception. However, if seemed reasonable to dispense with that provision (and I reserve comments on the manner in which the provision was amended), then why was it also not reasonable to dispense with other provisions, which, under the interpretation that the NEC accorded to those provisions, deprived Liberians of the one opportunity, presented to decide on the leadership of their country?

Further, the NEC, in what I believe has now become its characteristic exhibition of a lack of foresight, determined that notwithstanding the clear wording of the CPA, the National Transitional Legislative Assembly (NTLA) had the authority to amend the Liberian Constitution simply by the passage of an Act. It therefore submitted to the NTLA a draft legislation for passage into law. It is difficult to understand by any parity of reasoning that the NTLA has the authority to amend the Liberian Constitution. The CPA reserved no such power to the NTLA and none is vested in it under the Constitution, which the CPA clearly recognized as still being in effect. I do not question the laudable goals sought to be achieved. But no goals, however noble, can justify a resort to disregard or disrespect for the rule of law. If we give the impression that it is permissible to violate the law and show a disregard for the rule of law simply because the goal we seek is noble, we could be setting the stage to perpetuate the disaster that has befallen our country. Yet, the NEC chose to pursue that course either because it lacked the foresight to design an alternative course or because it believed that the expediency of the moment superseded the need for respect for the rule of law. I strongly believe that it was this kind of conduct that generated the first draft of the EGAP, which similarly sought to have the Liberian Constitution amended by either an Executive Order of the Chairman or the NTGL or by Act of the NTLA.

And more recently the Commission, in yet another display of its disregard for the law and a show of gross negligence in the performance of its duties, has created the real possibility that for the first time in our nation's history, Liberia could

have a president and/or vice president who, because of his citizenship of another country, holds allegiance not to Liberia but to a foreign sovereign power, and that a substantial number of the Liberian legislators could be similarly placed. The issue presented for the NEC's determination went beyond a mere violation of Liberian law, as important as that element may be. It involved national security and sovereignty: The control of the nation by persons who may not be Liberians and who owe no allegiance to Liberia. The Commission reached its conclusion by asserting that a person raising the issue of the Liberian citizenship of a candidate seeking elective public office, where the law requires that such person be a Liberian citizen or a naturalized Liberian citizen, has the burden of proving that candidate is not a Liberian citizen. The decision by the NEC turns the law on its head since, under the NEC reasoning a person seeking elective public office does not have the burden of proving to the Commission that he is a Liberian citizen even though the law requires that the candidate be a Liberian citizen or a natural born Liberian citizen. Even more disturbing is the fact that the NEC seems to believe that the duty imposed on it by law to ensure that candidates seeking elective public offices are Liberian citizens should be shifted from it to the objectors who must now prove that the candidates are not citizens of Liberia. That decision could have profound consequences for the future of Liberia and its people.

A point of clarity is important at this juncture. It doesn't matter to me who the candidates are and I refuse to dwell on personalities even though some of them may be the focus of the current ongoing controversy over the citizenship issue. Instead, I prefer to deal with the broader issue that as a consequence of the NEC's decision many persons seeking various political elective offices (presidential, vice-presidential and legislative) and who are not citizens of Liberia could be elected to such offices, not only in violation of the laws of Liberia, but also in having our constitutional branches of government controlled by persons who are not citizens of Liberia, who owe allegiance to another sovereign power, and who therefore could put our nation and people to risk. Accordingly, my approach is to treat the issue within a constitutional, rule of law and national security context rather than a personality controversy. Thus, in any situation where I make mention of a candidate it is only to put the issue in its proper context.

III. THE NEC AND THE CITIZENSHIP CONTROVERSY

Several weeks ago, the Liberian Observer Online carried an article in which Dr. Walter Gwenigale, a contestant for the Standard Bearer's position of the Liberian Unification Party (LUP), challenged the right of Dr. Shelton Beedoe to contest the same position. The article stated that Dr. Gwenigale had written a letter to the Chairman of LUP challenging the election of Dr. Beedoe as LUP's Standard Bearer to contest the Liberian presidency because, according to Dr. Gwenigale's, Dr. Beedoe was a citizen of Liberia and the United States. Dr. Gwenigale's reasoned that Liberian law does not allow dual citizenship and that therefore Dr. Beedoe was barred from holding a position in the party from which he could seek the presidency of the Republic.

At around the same time, the Observer Online also published an interview that it stated it had had with another presidential aspirant, George Manneh Weah. According to the Observer, it posed the following question: "Amb. Weah, a lot of your critics, rivals and enemies have made a big deal about the citizenship issue. Some say that because you are a naturalized citizen in France and maybe in Italy, you

should not be in this race. Is that a fair assessment and is there any truth that you hold a European citizenship?" Candidate Weah is said to have responded as follows: "... You know, I will be honest with you because I have an honest life and don't want to cheat anybody. In the past when I played in Paris, of course I played under dual nationality status. So before I came into politics because of the love of my people and when I was petitioned to run I knew there would be rules and I would have to abide by the rules of the elections commission so I renounced my French citizenship and I have all the documents to prove it...." The issue took on prominence when the Coalition of Political Parties Youths (CPPY) filed a complaint against presidential aspirants George Manneh Weah and Marcus Dahn, accusing the former of holding French citizenship and the latter of holding United States citizenship. CPPY asserted that in taking up the citizenship of foreign nations, the two presidential aspirants had lost their Liberian citizenship, and as such, they should be barred from contesting the presidency of Liberia.

In yet another development surrounding the citizenship issue, The Analyst reported that two other Liberian groups, The Progressive Action for Change and Brains of Liberia, had filed challenges with the NEC against presidential aspirants Ellen Johnson-Sirleaf, Togba Nah Tipoteh, Alhaji G. V. Komah, Nathaniel Barnes, Charles W. Brumskine, H. Varney G. Sherman, John Morlu, Robert Korto, Winston Tubman, Roland Massaquoi, and Sekou Konneh. Although the basis for the challenges varied, the primary allegation, the Analyst noted, related to the question of Liberian citizenship. Like the Coalition of Political Parties Youths, these groups also asked the NEC to bar the named individuals from contesting the presidency.

How the issue is resolved is critical to Liberia's future. It spans not only presidential candidates, but also legislative candidates, many of whom allegedly hold citizenship of other countries. It was important therefore that the NEC dealt with the issue in a manner that preserved and protected the oneness of the Liberian nation, ensuring not only that the candidates meet the citizenship requirements of the law, but also that non-Liberians who owe no allegiance to Liberia not become executive and legislative leaders of Liberia. It isn't a question of whether we like the law or believe that it should be changed; it is a question of whether we follow the law as mandated and preserve the rule of law.

This was the expectation held by many Liberians when the NEC availed itself of the opportunity to speak to the issue in the case involving presidential aspirants George Manneh Weah and Marcus Dahn. In its decision, the NEC declared: "It is the ruling of the NEC that the evidence by the complainants is not sufficient to prove the dual nationality of Ambassador Weah and Dr. Marcus Dahn to render them ineligible to contest in the 2005 elections as presidential candidates." The NEC explained that on receiving the complaints and "considering the enormous constitutional gravity of the allegations made by the complainants", it had its senior legal counsel communicate with the United States and French Embassies "to confirm the citizenship or non-citizenship of Dr. Dahn and Ambassador Weah of the US and France respectively". The NEC decision noted further that the United States Embassy had failed to respond to the query but that the French Consular Attaché in Liberia promptly responded, informing the Commission that the French Consulate did not have a listing of all French nationals and stating that "the French Judiciary authorities are the only competent authorities vested with the power to clarify any doubt over the French citizenship of any individual." The Commission added that notwithstanding, the French Consulate General in Abidjan and in Monrovia had indicated that the Consulate had "a list of individuals who chose to register as

French citizens residing in Liberia or Cote d'Ivoire." It quoted the French Consulate response as stating that it "does not have and never had any French citizen by the name of George Weah registered as a French citizen residing in Liberia. Furthermore, the Office of the Consular Attaché in Monrovia never handled or even saw a French passport under the name of George Weah, since it opened in December 2003. However, the Office of the Consular Attaché came across documents belonging to Mr. George Weah on two occasions, both of them pertaining to a visa request in order to enable Mr. Weah to travel to France. The first time, in May 2005, a visa was requested by the Ministry of Foreign Affairs on a Liberian diplomatic passport; the second in July 2005 on an ordinary Liberian passport."

The NEC noted that in respect to candidate George Manneh Weah, who did not appear in person at the hearing, his counsel "denied the allegation and contended that at no time did Mr. weah take on French citizenship and renounce his Liberian citizenship." The Commission stated that candidate Weah's counsel presented the following documents in support of the denial: "A Liberian diplomatic passport bearing number D/0002014-00 issued on July 13, 2000; another Liberian Diplomatic passport bearing number D/004193-04 issued on December 7, 2004; . . . a birth certificate issued by the Ministry of Health and Social welfare on march 23, 2005 as well as a copy of the list of players of the National Football team of Liberia by the Confederation of African football and FIFA dated January 20, 2002 and June 18, 2002 respectively."

As to the complainants, the Commission noted that they had presented no evidence with respect to candidate Marcus Dahn and that with respect to candidate George Weah, they had only made reference only to the interview carried in the Daily Observer newspaper. The complainants contended that we Mr Weah had not rebutted the statements attributed to him, the same constituted an admission by Mr. Weah. This response was not satisfying to the Commission and, hence, on August 5, 2005 it requested the complainants to produce the tape so that could be assured, under the best evidence rule, that the voice on the tape was that of candidate Weah and that he had admitted to being a French citizen. It noted that the complainants had failed to meet this request, and therefore had not met the test of the preponderance of the evidence to substantiate their claim as to Mr. Weah's French citizenship. The Commission also dismissed as hearsay the FIFA Magazine Article of 1996 which stated that Mr. Weah had "dual Liberian and French citizenship". The Commission therefore concluded that the complainants had not provided sufficient evidence against candidates Dahn and Weah to prove their dual nationality as would render them ineligible to contest the 2005 elections as presidential candidates.

Perhaps even more disappointing is the fact that the Commission chose not to hear or pass upon challenges made against other presidential candidates prior to pronouncing them eligible to contest the presidential elections. Did the Commission not consider that it was only appropriate and fair that as it did with the complainants against Dahn and Weah, it should also have dealt with the complaints against the other candidates prior to declaring them eligible to contest the presidential elections? How could the NEC declare any candidate eligible to run for an office when the law requires that the person's eligibility depended on his citizenship of Liberia and a challenge had been posed to that person's assertion of Liberian citizenship? How, after such blunder, does the Commission propose to subsequently inform any of the candidates it had declared eligible that it had now determined that they, or any of them, were after all not eligible to contest the presidency? One can only imagine the chaos that such a declaration could bring to

Liberia, only because, perhaps as expected, the Commission chose once again to exhibit its incompetence. What about the other candidates who are seeking presidential and legislative offices? What if no challenges are posed? Does the NEC, on that basis alone, declare that the candidates are eligible to contest the presidency and legislative positions? What were the views of the so-called "senior legal counsel"? And what of the Elections Advisor(s) seconded to the Commission by the international community or the United Nations? Is this how they verify citizenship in their respective home countries or deal with the issue when a challenge is raised? If this is how they would advise the conduct of elections in their respective countries, then I can only pray that the Lord will have mercy on those countries, the same as I am praying that the Lord will have mercy on Liberia. Or is it that our foreign friends believe that we are undeserving of the same democratic and rule of law standard practiced in their own homes?

Notwithstanding my disappointment with the NEC, it is important to note, to the credit of two of the lawyers on the Commission, that Commission's decisions was not unanimous. Of its seven members, four signed the opinion, one abstained, and two, for whatever reason(s), did not append their signatures to the document. I assume that the two members who did not append their signatures to the document disagreed with the decision. If that is the case, I am disappointed that they did see fit to write dissenting opinions so that the Liberian people and the world could have a glimpse of how they felt about the issue and the proceedings as conducted by the Commission. It is noteworthy nevertheless that out of the three lawyers on the seven members Commission, two (a majority of the lawyers) disagreed with the decision. It is most unfortunate that the non-lawyers on the Commission did not see fit to listen to the majority of the lawyers as to the legal implications of the decision. It is also unfortunate that the majority of the lawyers on the Commission did not voice a public concern at clearing candidates to contest elective public offices without first determining whether they qualify as citizens of Liberia as required by the Liberian Constitution and the Aliens and Nationality Law.

Now that the preliminaries have been dealt with and the premise laid, I propose to examine the role, duties and responsibilities assigned to the Commission in regard to the citizenship issue and to undertake a diagnostic study of the proceedings as conducted by the Commission. This may give clarity as to where I believe the Commission has gone seriously wrong. A good place to start is with the Liberian Constitution. We know that the Comprehensive Peace Agreement of August 18, 2003 suspended certain provisions of the Constitution. We know that the CPA also declared that those provisions of the Constitution not suspended remain in full force and effect. And we know further that the CPA did not suspend the provisions of the constitution relating to Liberian citizenship and the eligibility criteria for contesting elective public offices, whether for the presidency, vice presidency, senator, representative, or chief. One common theme runs throughout the requirements: The aspirants must be Liberian citizens. However, the standard is set much higher for persons seeking the presidency and vice presidency: They must be natural born Liberian citizens. (Lib. Const., Art. 52).

The first question for query is who then is a Liberian citizen? The Constitution states the following, at Article 27: (a) All persons who, on the coming into force of this Constitution were lawfully citizens of Liberia shall continue to be Liberian citizens; and (b) only persons who are Negroes or of Negro descent shall qualify by birth or by naturalization to be citizens of Liberia. That organic

document recognizes that persons born of Liberian parents, although outside Liberia, are also Liberian citizens; but it states that upon attaining their majority such persons must relinquish any other citizenship acquired by them by virtue of they having been born outside Liberia or unto parents, one of who was a foreign national. Equally important is the document's declaration that no Liberian will be denied the right to change his or her Liberia citizenship or nationality. (Lib. Const., Art. 28). And it vests in the Liberian Legislature the power to prescribe additional qualification criteria for and the procedures by which naturalization may be obtained as well as the broader power to establish laws for citizenship, naturalization and residence. (Lib. Const., Arts. 27(c) and 34)

Pursuant to the powers granted under the previous Liberian Constitution the Legislature in 1973 passed the Aliens and Nationality Law (ANL). The 1986 Liberian Constitution, at Article 95, proclaimed the said law as being fully in force. The Aliens and Nationality Law outlines the criteria for acquiring Liberian citizenship, and the manner in which that citizenship can be lost. It states that Liberian citizenship is acquired through birth or by naturalization. (ANL, secs. 20.1 and 21.1). Under the said law, no person claiming Liberian citizenship can hold dual nationality, except for the following: (a) where a Liberian woman, by virtue of her marriage to a foreign national, and without and affirmative action on her part, automatically becomes a citizen of her husband's country; (b) where by virtue of birth to parents, one of whom is a foreign national, a Liberian acquires the citizenship of the parent's country; and (c) where a Liberian acquires the citizenship of another country by virtue of having been born in that foreign country unto one or more Liberian parents. However, in both of the latter instances, the Liberian citizen must, at the age of maturity swear allegiance to Liberia and renounce his or her foreign citizenship; otherwise he or she loses his or her Liberian citizenship. (ANL, sec. 20.1).

The current debates center around persons who were born of Liberian parentage, or, being of Negro descent, acquired Liberian citizenship by virtue of having been born in Liberia. The allegation is that although some of the aspirants for elective public offices were born Liberian citizens by birth and therefore were natural born Liberians, they had subsequently determined to, and did acquire, the citizenship of foreign nations; that by virtue of their affirmative action, they had lost their Liberian citizenship; and that as a result of that lost of Liberian citizenship they were not eligible to seek any elective public office where the law states that only citizens of Liberia are eligible to contest such office. Some of the complainants have even stated that certain of the aspirants had acquired dual citizenship of Liberia and the foreign nation and that this formed the basis for their exclusion to contest the ensuing elections.

It is worthy to reemphasize that Liberia does not recognize dual nationality, except in the instances mentioned above. The current issues do not involved any of the exceptions noted above. Rather, the issue involve allegations of affirmative action taken by certain of the political aspirants in acquiring the citizenship of other nations. Our Alien and nationality is clear on the issue. It states, at chapter 22, that a Liberian loses his citizenship automatically and without and proceedings being instituted for that purpose if he or she does any one of the following acts: (a) obtains the naturalization of another state upon his own application, upon the application of an authorized agent, or through the naturalization of a parent having legal custody of the person then twenty-one years of age unless the person enters Liberia and establishes it as his/her permanent

residence prior to his/her twenty-third birthday; (b) taking an oath or making an affirmative or other declaration of allegiance to a foreign state or a political subdivision thereof; (c) entering or serving in the armed forces of a foreign state of one's free choice without the specific authorization of the President of Liberia; (d) voting in a political election in a foreign state or voting in an election to determine the sovereignty of a foreign state; and (e) making a formal renunciation of Liberian nationality before a diplomatic or consular officer of Liberia in a foreign state in such form as may be prescribed by the Minister of Foreign Affairs of Liberia.

Knowing what we do know of Liberians, it is safe to say that many no longer possess Liberian citizenship as a result of one of the above acts, especially in respect of those who have naturalized in a foreign country and those who have served in or are continuing to service in the armed forces of foreign states without the specific permission of the President of Liberia. Even those who have voted in foreign elections have automatically lost their Liberian citizenship. As painful as that may be, it is the law of Liberia. What then were the duties and responsibilities of the NEC in respect of the aspirants for elective public offices? The fact that a person has a birth certificate showing that he was born in Liberia and/or unto Liberian parents some 35 or 40 or even 50 years ago, showing that at the time of birth the person was a Liberian citizen, does not necessarily thereby make him a citizen of Liberia in the present. If he took up the citizenship of another country at any point after his birth, he automatically lost his Liberian citizenship, but he would still be entitled to a birth certificate. No judicial proceedings were necessary to cause the loss of his citizenship; that loss was caused by the affirmative act of naturalization with a foreign state. Yet, such person would still be entitled to a birth certificate, if he made the request for one. That certificate would show that he was born in Liberia unto Liberian parents. The truth of the matter, however, is that such person would no longer be a Liberian citizen. Indeed, even assuming that he subsequently relinquished his foreign citizenship or nationality and again took up Liberian citizenship he could no longer be deemed a natural born Liberian. His new status would be a naturalized Liberian.

Nor is the possession or production of a Liberian diplomatic or official passport, dated long after the years an individual is alleged to have acquired the citizenship of another state, conclusive as to the person's Liberian citizenship. We know that many foreign nationals possess Liberian diplomatic passports, sold to them by some government officials or others, or given to them by virtue of serving as Liberia's Honorary Consuls, for whatever reasons. Even the holding of an ordinary Liberian passport does not establish Liberian citizenship for purposes of holding the nation's highest executive office. Moreover, the failure by a foreign embassy to respond to a citizenship query wrongly posed to it by the NEC, the wrong party to pose such query, does not provide justification for the NEC's assumption that the aspirant is a Liberian citizen.

The Commission owes the Liberia nation and people the duty to ensure that those persons seeking elective public offices meet the requirements of the law, principally that they are citizens of Liberia. It had the mandatory responsibility and owed the Liberian people and nation the mandatory duty to investigate each candidate, without awaiting a challenge from any person, to ensure that all of the political aspirants are citizens of Liberia. As a first step, and particularly given the given the importance of the office of the presidency of the nation and of

Senators and Representatives, the NEC should have had each aspirant swear to a declaration, under penalty or perjury and disqualification, in which he/she answers certain key questions, including the following: (a) Are you a citizen of Liberia? (b) By what method did you become a citizen of Liberia, birth or naturalization? (If naturalized, please attach instruments of naturalization). (c) Did you at any time relinquish your Liberian citizenship or have you ever taken up the citizenship or nationality of another country since becoming a Liberian citizen, by birth or naturalization? If yes, when? (d) How long were you a citizen of that foreign state? (e) If you acquired the citizenship of a foreign state, did you relinquish that citizenship and again become a Liberian citizen? When? (f) Have you ever held dual citizenship of Liberia and a foreign state? Under what circumstances did you acquire or hold such dual citizenship? Have you relinquished the citizenship of that foreign state? (g) Have you served in foreign armed forces or voted in any election for political office in a foreign state? Have you ever contested an election in a foreign state or held office in a foreign state growing out of an election? These would have provided the basis for the NEC initial investigation of the aspirants to ascertain whether there were citizens of Liberia, especially as the Aliens and Nationality Law makes it clear that dual nationality is not recognized in the Liberian jurisdiction, except in the special circumstances stated before. It did not require any great brains to know that these preliminary steps were necessary and went to the core of establishing that the aspirants are Liberian citizens. Yet, no where in its opinion does the NEC state what documents it required of the aspirants, which documents it received from them, and what in the documents indicated that at present the aspirants were citizens of Liberia, that they have never renounced their Liberian citizenship for that of another nation, or that having renounced their Liberian citizenship, they had undertaken the naturalization process prescribed by law to regain their Liberian citizenship. To the contrary, the Commission's opinion leaves one with the impression that the only documents it possessed relative to aspirant Weah were those presented by his lawyers for the first time during the proceedings. No mention was made of any documents presented by aspirant Dahn. And nothing was said of any documents required by the Commission and presented by the said aspirants or any other aspirants contesting elective public offices. One must therefore wonder how the Commission determined in the first instance or otherwise became convinced that the aspirants for elective public offices were Liberian citizens, or that being Liberian citizens they had met the further requirement of natural born citizens, as warranted the aspirants being cleared to contest the elections.

Moreover, no reference was made in the opinion to the Ministry of Justice which, under the Aliens and Nationality Law, has the authority, with certain prescribed intervention of Liberian courts of competent jurisdiction, to administer the said law with regards to Liberian citizenship. Nowhere does the opinion state the procedures the candidates were required to pursue and what those procedures had revealed of the candidates; no where does the Commission show how the duty imposed on it by law to certify that a person is a citizen of Liberia shifted from it to the objectors to prove that a contestant for elective public office is not a citizen of Liberia; and no where in the opinion does the Commission state that it enquired of the candidates whether there were citizens of Liberia or if they had ever taken up citizenship of a foreign country, or if they had, what was the current status of that citizenship.

The NEC is not clothed with the right or the authority, whether under the Constitution or the Elections Law, to make any assumption as to the Liberian

citizenship of any of the political aspirants without the adequate evidence presented by such aspirants and certification by the appropriate government agency as to that citizenship. Nor should the Commission have relied on the complainants to produce evidence to the contrary in the absence of it having failed to fulfill its role as required of it by law to ensure that each aspirant for elective public office is a citizen of Liberia.

The object of the constitutional and statutory requirements regarding Liberian citizenship relative to aspirants seeking elective public offices is to ensure that no foreign persons contest Liberian elections and that no foreign person ends up holding elective public offices, as would bring into question issues of allegiance, sovereignty, security, and the like, which could put the Liberian people and the Liberian nation state at serious risk. The duty therefore was on the NEC in the first instance, and the burden similarly was on the political aspirants in the first instance to show citizenship, not the objectors to show the non-citizenship of the aspirants. Constitution clearly states that no Liberian should be prevented from renouncing his Liberian citizenship and taking up the citizenship of another country.

In part 2, I shall examine further how the Commission should have carried out that duty and the responsibility imposed.