



SYNERGY

Official Newsletter of the Governance Commission

Vol. 2 No.11

November 2015



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Electoral Dispute Resolution: Implications for Smooth Democratic Transition

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The Governance Commission on Thursday November 19, 2015 held a Policy Dialogue at the Bella Casa Hotel and Suites in Sinkor on the topic “**Electoral Dispute Resolution: Implications for a Smooth Democratic Transition – Issues for 2017**”. Presidential and national elections in Liberia have always been marred by allegations and counter allegations of fraud, vote-rigging, tampering with election ballots, and other election disputes. In view of these various disputes surrounding national elections in Liberia, the Governance Commission felt the need to organize this Policy Dialogue, the first in a series of five, to bring stakeholders together to begin discussions around election disputes resolution in preparation for 2017. Observers believe that the multiplicity of political parties (more than 20 already registered in Liberia) could increase election disputes and undermine Liberia’s fragile peace.



L-R Cllr. Jallah, Hon. John Gray (NPP), Gull (ANC)

Representatives of Political Parties, the Supreme Court Bench, and National Elections Commission (NEC) graced the Dialogue and fully participated in the discussions. It is no secret that the 2017 Presidential and Representative Elections will not only be a crucial test for Liberia’s fragile democracy but also historical in that it could witness the victory of an elected president from a different political party succeeding the incumbent for the first time in more than at least seventy years. It will also witness the first presidential election in which the incumbent does not participate as a candidate. It is the first, since the 1986 Constitution came into effect, wherein the Liberian Senate will not participate in the elections.

These Policy Dialogues are expected to greatly inform the Commission’s 2015 Annual Governance Assessment Report titled “Liberia’s Electoral system” in anticipation of a smooth democratic transition in 2017. The GC’s Annual Governance Assessment Report will examine the constitutional and statutory rules, operational procedures and practices governing the elections process, consider resources provided to actors, determine how best these actors have served their people, and take measures necessary to strengthen the electoral process as a whole.



Partial view of participants

The Policy Dialogue had two Key Speakers – former Senator Cllr. Fredrick Cherue and Cllr Tiawon Gongloe, a long time Human rights advocate. Cllr. Cherue spoke on the topic “**Prohibition in Electoral dispute resolutions**”. He observed that by referring to prohibition, the GC is seeking discussions on the impact of writs of prohibition in election matters in Liberia to which he will address from the year 2005 to present. Cherue explained that:

“Prohibition is a writ which seeks to restrain encroachment, excesses, and usurpation both in judicial and administrative matters. It is to prevent a great outrage of all principles of law/legal procedures and practices, where wrong, damage and injustices are likely to flow”.

A key question lingers in the minds of many. If prohibition is to stop why prohibition in electoral matters when you have an election commission? At every stage of the election, there are rules, policies and procedures that guide the process. However, the breach of any of these procedures will invite an inquiry, whether administrative or judicial. According to Cherue, in certain cases it is the judicial inquiry that is invited and when that is done prohibition comes into play. According to Cllr Cherue, because elections are exercises wherein a group of people seek to elect their leaders for public offices, aggrieved contestants or the people themselves sometimes seek the intervention of the court to legally address contending issue relating to the actions, behavior and conduct of those who conduct these elections. *“These are reasons why in most of our election cases writ of prohibition had been*

used by the Supreme Court, either to stop the process from going on – and that goes to the election commission, or to stop the candidate declared or returned as winner from taking seat until the dispute or complaint is investigated and the results are given”.

Another key question from the Dialogue is ‘Has prohibition produced the desired results; is it necessary in our electoral process? Cherue noted that this is the task assigned to all of us as we discuss the cases in which writ of prohibition was issued. Cllr Cherue noted the complexities discussing issues surrounding the Supreme Court and the issue of writ of prohibition, and their implications under our electoral process come 2017. But what if an aggrieved feels dissatisfied with the judgment of the Supreme Court, what’s next? Cllr. Cherue explains:



Cllr. Fredrick Cherue

*“Can we say that in some cases the Supreme Court was not right? No one in this room can say so because the law provides that the legislature shall make laws the executive shall enforce the law but the only institution that is clothed with the authority to determine what the law is the Supreme Court. That’s what makes it difficult. **It is the final arbiter of all issues** – whether they are administrative, judicial, or customary. **In most cases the Supreme Court had issued writ of prohibition and when the layman reads the law he wonders why the prohibition was issued.**”*

Making reference to the law, Cllr Cherue pointed out that “in order to justify the issuance of the writ of prohibition, the court, officers or other persons against whom it is erected have no jurisdiction to exercise judicial or passe- judicial powers; that the exercise of such power by such group, officer or other persons is unauthorized by law; and that the act could result into injury for which there is no accurate remedy.”

For the Supreme Court to issue a writ of prohibition, if the case is before a magistrate or the Election Commission, it must determine three things: a) that that forum is duly authorized by law to what it’s doing, or b) it is exceeding its authority or c) that it has the authority but is proceeding by a wrong rule. The Election law authorizes NEC to investigate all electoral cases that comes before it. It is the soul judge of cases that come before it. Many have wondered that if NEC is the soul judge in election related cases, why then is there the need for the Supreme Court to issue writ of be prohibition? **Cllr. Cherue however countered that:**

“The Supreme Court is the highest court of appeal with the final decision on unresolved disputes, and redress for aggrieved plaintiffs. This Court serves as the remedy at the end of the process. Though other actions can be appropriate, it will go to prohibition if irreparable damage or harm may be done, if prohibition is not issued”.

Referencing the Election’s law, Cherue noted that in “prohibition will not be used against an administrative agency when it is proceeding within the law creating it, when it is acting within its authority, adding that “in some of the cases prohibition had been issued because the Supreme Court at that time thought perhaps if it is not issued no other remedies were available, adequate or the irreparable damage would be done if that conduct or action is not stopped before the process ends.” According to Cherue, the Supreme Court has reiterated that it has held in many cases that the writ of prohibition is not the cure for all judicial misfortunes or ills, and that it cannot be used in place of an appeal. For the writ of prohibition has clearly defined role - to stop judicial or quasi- judicial act from proceeding when and where it has no jurisdiction, or if it has jurisdiction it can still be stopped when it proceeds by wrong rule.

Also speaking at the Dialogue was human rights and political activist **Cllr. Tiawon Gongloe**. He spoke on the topic “**Election Dispute Resolution: National Elections Commission and the Supreme Court**”. He recalled his involvement in several cases of election disputes in Liberia wherein he represented the National Elections Commission, making particular reference to a case involving opposition Liberty Party. He agreed that some of said cases did involve prohibition. He recalled the Liberty party filing **petition for declarative judgment** to the Civil law Court that was then upheld but the case later ended up in the Supreme Court. NEC won the case.

Cllr. Gongloe noted that election cases are difficult to win, and claimed that NEC, during his contract duration, was able to win all of its election cases – not necessarily because it had brilliant lawyers but because it is difficult to actually prove that the NEC was wrong. Gongloe observed that “the National Election processes are clear but most often people are emotional when they go through the process to the extent that they try to force the law to fit their emotions. Very often they don’t succeed”.



Cllr. Tiawon Gongloe

On the issue of dispute resolution mechanism with emphasis on what the Supreme Court and the Elections Commission can do to resolve election disputes-taking into consideration our historical contexts, Cllr Gongloe said Liberia is still trying to build a free, democratic society as promised the world and as reflected in our Declaration of Independence and enshrined in our Constitution. He explained that from 1847 to 1869 Liberia had a virtual one party state (with the Republican Party leading) despite our promise of practicing

democratic principles. In 1869 the True Whig Party won its first presidential bid, with Edward James Roye (a former Chief Justice and businessman) becoming the **first non-Republican party partisan** to ascend to the Liberian presidency twenty two years after Independence.

According to Cllr. Gongloe, President Roye was later undemocratically removed from office a year into his administration by a group of Senators and Representatives of the legislature that met somewhere in Cape Montserrado, issued a manifesto deposing the President, and had an Interim Government established called the (3 Man) Special Executive Committee (composed of Reginald A. Sherman, Charles B. Dumber, and Amos Herron). This transfer of authority had no Constitutional backing to support the leadership change. Gongloe further explained that in removing the President illegally, the Vice President (James Smith) fled Monrovia for Buchanan, Grand Bassa County. Some Legislators also went into hiding in fear of losing their lives. Upon his return to Monrovia later, Vice President Smith was sworn into office as President in keeping with the Constitution.

The next undemocratic Government without Constitutional backing was the 1980 military coup/government headed by Samuel K. Doe which opened a flood gate for political wrangling, intolerance, unconstitutional governments (1985–2003), some of which came into being through other democratic or legal arrangements. The heavily contested 2005, 2011, and recent senatorial elections indicate a society that has political evolved probably as a result of the already mentioned experiences. Despite these experiences, election disputes have remained the one constant variable – losers not easily ready to accept defeat but rather relying of election malpractices as a way out of fulfilling election promises to partisans.

Observers believe that the increase in political parties in Liberia serves as a major contributing factor to anticipated increase in 2017 election disputes. This observation is based on the increase of electoral disputes as the number of registered political parties increase overtime in Liberia. This trend of thought has now increased the debate/discussions around the need to make plans for a more peaceful election process come 2017.



Cllr. Ruth Jappah Samukai

'Moderating the discussions was GC's Commissioner Ruth Jappah Samukai. She noted that NEC has the constitutional responsibility to resolve electoral disputes, declare elections results and certificate winners. She stimulated the discussions with the following questions:

"How well has NEC functioned, especially against performance in 2014 election? What are the challenges that still need to be addressed?"

According to the Commissioner, the Supreme Court has appellate jurisdiction in the resolution of elections disputes, and the Constitution provides such responsibilities to the Supreme Court to **ensure prompt resolution** of elections disputes but the Court has its own internal process of dispute resolution which needs to be examined. The Constitution needs to determine the role of the justice in Chambers and that of the full bench. Commissioner Jappah Samukai noted that the Constitution and elections law specify the process and timetable for dispute resolution, but wondered how the Court functions in electoral disputes? Are there parts of the dispute resolution process that needs to be fixed?

Commissioner Jappah Samukai said as election year 2017 draws closer, the GC is beginning a national conversation on elections dispute resolution mechanism and this round of conversation, first in a series of dialogues, will focus on the two bodies that are highly involved with elections disputes: National Elections Commission (NEC) and the Supreme Court of Liberia.



GC's Vice Chair. Elizabeth Sele-Mulbah

GC's Vice Chair Elizabeth Sele Mulbah earlier welcomed everyone to the dialogue, noting "as Liberia progresses on an irreversible path in consolidating democracy in its post conflict era, your presence and active participation on the issue of electoral dispute will go a long way in paving the way for further progress in advancing our democracy.

Recommendations

The Dialogue came up with the following recommendations:

1. NEC (with inputs from political parties) should improve the political process to minimize disputes in the election process.
2. NEC serves as judge and jury creating distrust and mistrust of its decision on election dispute. We want Election law amended for the creation of an appellate board/board of appeal, separate from the NEC.
3. Create a special court to handle election disputes.
4. Supreme Court should schedule hearings of election dispute more adequately, effectively and swiftly to assure of an open and fair judicial process.
5. Judicial process should assure of a logical conclusion to all election disputes/complaints.

6. Constitution is amended to address issue of Supreme Court's use writ of Prohibition.
7. Election Laws be revisited to assure that NEC is not judge and jury especially in complaints against the Commission.
8. Election Magistrates, district officers and others be trained to understand issues that constitute election malpractices, or have the propensity to result to disputes; be legal minded, and people of integrity.
9. That election disputes/complaints be forwarded to NEC/Supreme Court through Political parties, and not by aggrieved candidate(s);
10. The role of civil society in the electoral is clearly defined to realize maximum voter involvement/impact in elections.
11. Holistically review the laws governing political parties and election and come up with dramatic changes necessary to positively impact future elections.
12. Merge or amalgamate parties thereby reducing the number of candidates and costs of elections.