ADVISORY OPINION

I. Introduction

Global political and health authorities are battling to contain and prevent the spread of the Corona Virus Disease (COVID-19) pandemic which has severely devastated the entire planet leading to loss of lives and other consequences. African States are grappling with this global scourge with World Health Organization (WHO) predicting that Africa's experience with the disease would be catastrophic considering limited resources and poor health infrastructure to fight the disease.

Liberia's weak health system was exposed in 2014 during the Ebola Virus Disease (EVD). Since then there has been little improvement in the Liberia health sector. Owing to this situation, there has been some step by the Government of Liberia with the support of the international community to develop measures that will minimize or stop the spread of the deadly Corona Virus (COVID-19).

In the wake of the pandemic, Liberians of all work of life are expected to provide Full Cooperation. Solidarity and Collaboration are key to tackle the virus as well as mitigating the effects. This will require difficult measures that will be designed to halt the spread. While this situation will require some restrictions on the rights of citizens; respect
fundamental rights, including economic and social and cultural rights and civil-political rights will be crucial to the success of the public health response.

II. **Questions raised by the opinion**

Hence, this brings to two major questions which this opinion wishes to address: first, whether the Independent National Commission on Human Rights (INCHR) has a statutory mandate to advise the Government of Liberia on matters concerning human rights, and as well to ensure that Government’s activities are consistent with human rights standards and whether the situation of the Corona Virus Disease which threatens right to life and many other rights warrant an opinion? And second, whether there is a legal obligation on the right to health as derives from both domestic as well as international human rights laws to which Liberia as a State Party must act?

III. **Statutory Mandate of the INCHR**

The Independent National Commission on Human Rights (INCHR) Act of 2005 provides that, ‘the Commission shall have general competence to protect and promote human rights in the Republic of Liberia according to the provision of the Act, the Constitution of Liberia, and other relevant laws of Liberia.’\(^1\) This broad mandate gives the Commission authority to oversee all matters that anchor on human rights throughout the Republic of Liberia. Art. 4 (3) empowers the

\(^1\) INCHR Act of 2005 Art. 3(1)
Commission ‘to submit to the Government, Senate and any other competent body, on an advisory basis, either at the request of the authorities concerned or on its own motion, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights.’

The above stated provisions constitute the legal basis for the Commission’s decision to respond to the health emergency through an Advisory Opinion to guide the Government of Liberia in its response to the COVID-19. INCHR encourages the Government of Liberia to strengthen its efforts in the fight against the virus; and however reminds the Government of its human rights obligations under international and regional human rights treaties as well as an obligation within the Constitutional, legislative and policy frameworks on the protection, promotion, and fulfillment of human rights at all times. Hence, the two questions as to the INCHR obligation has been answered in the affirmative. Regarding the second question, the answer is also in affirmative, because the COVID-19 pandemic threatens economic and social cultural rights and civil and political rights. The proceeding sections lay out the applicable human rights standards regarding the fight against the deadly scourge of CONVID-19.

IV. Liberia’s legal obligation derives from human treaties

2 Ibid, Art. 4(3)
There is a legal basis for state obligation under international human rights law. Specifically, the International Covenant on Economic and Social and Cultural Rights (ICESCR) established a body that monitors compliance of high contracting party, to the provisions of the Covenant. The Committee receives reports and based on these report engage State Party in a ‘constructive dialogue.’ Thereafter the Committee in its Concluding Observation highlights concerns and makes recommendations that assist a State Party to improve on its human rights practice consistent with norms in the Covenant. Liberia ratified the ICESCR in September 2004. The Committee in a General Comment 14 provides the specific obligation of State Parties regarding The Right to the Highest Attainable Standard of Health (Art. 12):

a. Obligation to protect include, inter alia, the duties of States to adopt legislation or to take other measures ensuring equal access to health care and health-related services provided by third parties; to ensure that privatization of the health sector does not constitute a threat to the availability, accessibility, adaptability and quality of health facilities, goods and services; to control the marketing of medical equipment and medicines by third parties; and to ensure that medical practitioners and other health professionals meet appropriate standards of education, skill and ethical codes of conduct…³

b. The obligation to fulfill requires States parties, inter alia, to give sufficient recognition to the right to health in the national political

³CESCR General Comment No. 14: The Right to the Highest Attainable, para 35
and legal systems, preferably by way of legislative implementation, and to adopt a national health policy with a detailed plan for realizing the right to health…”

c. The obligation to fulfill (facilitate) requires States inter alia to take positive measures that enable and assist individuals and communities to enjoy the right to health. States parties are also obliged to fulfil (provide) a specific right contained in the Covenant when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal. The obligation to fulfil (promote) the right to health requires States to undertake actions that create, maintain and restore the health of the population.”

V. **Human Rights Standards.**

a. **Emergency measures**

The Government of Liberia has taken and will take difficult decisions to respond to COVID-19 spread in Liberia. A Domestic legal framework provides for the limitation of rights in case of a health emergency. Section 14.2 of the Public Health Law provides that ‘[w]henever any part of the Republic appears to be threatened by ,any formidable epidemic, endemic or communicable disease, the Minister shall declare such part an infected area and shall make rules with regard to any of the following matters: a) For the speedy interment of the dead; b) For house to house visitation; c) For the provision of medical aid and accommodation, for the promotion of cleansing, ventilation, disinfection and disinfestation,

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4 Ibid. para 36
5 Ibid. para 37
and for guarding against the spread of disease; d) For preventing any person from leaving and reinected area without undergoing all or any of the following: medical examination, disinfection, disinfestation, inoculation, vaccination or re-vaccination, immunization or passing a specific period in an observation ramp or station…’\(^6\)

Essentially, the intervention of the Minister of Health can be triggered when the incident should: (a) immediately threaten life, health, property or the environment or (b) have already caused a loss of life, health detriments, property and damage or environmental damage or (c) have a high probability of escalating to cause immediate danger to life, health, property and the environment.’\(^7\)

International human rights law also allows for emergency measures in response to significant threats. However such measure should be proportionate to the objective such emergency seek to achieve. Measures should be applied in a non-discriminatory way. Article 4 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) set out conditions under which rights can be restricted. The objective of Article 4 is to protect the rights of individuals rather than to permit the imposition of limitation by States. Such restrictions must be in line with the law, including international human rights standards, compatible with the nature of the rights protected by the Covenant, in

\(^6\) Public Health Law of Liberia, Ch. 14 (a-q)
\(^7\) Ibid. also see proposed revised National Public Health Law 2019.
the interest of legitimate aims pursued, and strictly necessary for the promotion of the general welfare in a democratic society. ⁸

Human rights standards also provide that the least restrictive alternative must be adopted where several types of limitations are available. Even where such limitations on grounds of protecting public health are permitted, they should be of limited duration and subject to review.

Most often, States under public emergency find subterfuge to stifle other rights having no bearing on the emergency. Emergency powers must be used for legitimate public health goals, not used as a basis to quash dissent or silence the work of human rights defenders or journalists. Even during an emergency, some rights are non-derogable: for example the principle of non-refoulement, prohibition of collective expulsion, the prohibition of torture and ill-treatment, the use of arbitrary detention and others. ⁹

To meet the requirement of article 4 of the ICCPR, the Government is required to proclaim the existence of the emergency. This requirement is necessary for the maintenance of the principles of legality and the rule of law at the time when they are most needed. Moreover, it is aimed at transparency, preventing arbitrary derogations, and reducing the incidence of de facto emergencies. If the consequences of the public health emergency could entail derogation from any provision of the

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⁸ Ibid at 3, para. 28
⁹ ICCPR General comment 29, para.11
ICCPR then in making the proclamation, the Government must act within the framework of the appropriate Constitutional framework.\textsuperscript{10}

The Government should also endeavor to reach out to all societies including people who are marginalized and face difficulties accessing public information and services for a variety of reasons. Vulnerable persons including persons with disabilities need to have access to public information and response to the COVID-19. As a communication strategy, public information should be user friendly and if possible in languages well understood by targeted groups.

\textbf{b. Access to health}

Article 11 (b) of the Constitution of Liberia provides, that ‘[a]ll persons, irrespective of ethnic background, race, sex, creed, place of origin or political opinion, are entitled to the fundamental rights and freedoms of the individual, subject to such qualifications as provided for in this Constitution. Section 14.2 of the proposed Public Health Law of 2019 prohibits discrimination. It provides that ‘[n]o citizen of the Republic of Liberia shall, on the grounds of age, current health status, disability, ethnicity, medical history, nationality, race, religious beliefs, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving government funds.’\textsuperscript{11}

Besides, the National Health and Social Welfare Policy and Plan 2011-2021 provides that access to quality health and social welfare services is

\textsuperscript{10} LIB CONST. Arts. 85-88
\textsuperscript{11} The proposed Public Health Law is supported by para 3.2.2 of the National Health Policy and Welfare Plan.
a human right and is a precondition of individual and societal development.\textsuperscript{12}

Under international human rights law, Article 12 of the ICESCR recognizes the right to health facilities, goods and services. The Committee of the ESCR has held that ‘any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health.’\textsuperscript{13} The Committee has opined also that in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programs.\textsuperscript{14}

c. Housing

During the health emergency, it is expected that people will be required to stay at home and practice social distancing. This decision will be extremely difficult for most people. The Government has to take concrete measures to accommodate those who will fall in this category, especially those who live in congested communities and households.

\textsuperscript{13} Ibid at 7, para, 16
\textsuperscript{14} Ibid.
Access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water is crucial to fight the pandemic. Provision of emergency housing facilities including using vacant abandoned public housing will serve some useful purposes in the short term and for long term recovery plan.

Possibly, the Government should broadly place a moratorium on payment of rent-deferral for those who will lose income as a result of these measures. Reasonably, the Government must ensure that it applies less restrictive measures that will reduce all excruciating conditions while at the same time ensuring that the COVID-19 is effectively contained or stop from spreading.

d. Persons with disabilities

Persons with disabilities (PwDs) suffer disproportionately during emergency period. In public health emergencies like the COVID-19 several measures such as social distancing and isolation remain a burden with PwDs considering that they rely on others for support. The National Health Policy and Welfare Plan2011-2021 provides that, ‘[a]ll people in Liberia shall have access to effective health and social welfare services irrespective of socioeconomic status, origin, ethnicity, gender, age and geographic location without discrimination.’

Concrete steps are needed to accommodate PwDs during these crucial times. An institutional and administrative mechanism must be strengthened. The National Commission on Disabilities (NCD) was

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15The National Health Policy and Welfare Plan of Liberia (2011-2021), para. 3.2.2
established in 2011 to address PwDs issue. The NCD should be involved in all of the strategic planning on the COVID-19 response. Moreover, there is a need to customize awareness and preparedness messages and materials for specific groups of people, and put them in alternative and accessible formats.

e. Gender

The equal enjoyment of human rights by women and girls must be protected during a state of emergency (art. 4). States parties which take measures derogating from their obligations under the Covenant in time of public emergency, as provided in article 4, should provide information to the Committee with respect to the impact on the situation of women of such measures and should demonstrate that they are non-discriminatory. 16

The COVID-19 pandemic has severe consequences for women’s health, with spikes in domestic violence and maternal mortality predicted as women lose access to vital health services and social support. 17 There is a global call for the full maintenance of sexual and reproductive health services during the COVID-19 outbreak, which should include antenatal and postnatal care, access to modern contraception and emergency contraception, and safe abortion and post-abortion care "to the full extent of the law" in all areas where services are likely to be impacted. 18

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16ICCPR General Comment No. 28. para. 7
17Ibid.
18Ibid.
The government must give priority to the testing of pregnant women with COVID-19 testing symptoms, isolation of pregnancy wards from confirmed COVID-19 cases and elevation of care for pregnant women with respiratory illness, and extra care for women in delivery, in case of breathing complication arise. In the situation whereby Government institute stay-home order, women are more likely to shoulder higher proportions of the domestic burden during a lockdown. Another area of concern for women is the fact that women constitute significant number in the health sector in Liberia- nurses, mid-wife and traditional birth attendants. In many cases, their safety is being compromised through contact with high-risk environments and a lack of personal protective equipment (PPE). These health related work equipment and materials should be served and made available.

While priority must be given to the surge in the number of confirmed cases of COVID-19 in Liberia, sexual and reproductive health services should be seen as a life-saving priority and integral to the response, including access to contraception, maternal and newborn care; treatment of STIs; safe abortion care; and effective referral pathways. Awareness about available services for women in this regard is critical because drawing from the experience of the Ebola Virus Diseases pandemic in 2014 women stayed away from medical facilities due to quarantine restrictions or misconceptions about virus transmission, and were forced instead into riskier home births.

19Water, sanitation and hygiene, Liberia has abundant water resources, but close to 90% of its population has limited access to safe drinking water, 2019, https://www.unicef.org/liberia/water-sanitation-and-hygiene (accessed 5 April 2020)
f. Water and sanitation

Today, a global pandemic brings into focus how important water is to our lives and public health and reveals how much more needs to be done to fully guarantee water and sanitation is available to everyone, both as a human right and as a critical way to protect our community from diseases. Access to clean water and adequate hand-washing facilities is not yet a reality. Along with placing travel restrictions and encouraging social distancing, healthcare officials have stated over and over again that washing your hands is the most important step to manage the spread of the virus. The COVID-19 virus demonstrates why water and sanitation must be available, accessible and affordable to all to keep our communities safe, healthy and thriving.

Sanitation is very poor, with the vast majority of people in rural areas lacking decent toilets and latrines, and having to defecate in the open instead. About 42 percent of Liberia population practices open defecation according to the Joint Monitoring Programme 2017 (JMP 2017).20 All in all, less than 10 percent of Liberians have access to safely managed drinking water and sanitation services, according to the JMP 2017.21 The recent Ebola outbreak has also highlighted the risks associated with inadequate access to water, sanitation, and hygiene (WASH) to prevent or stop the spread of diseases.22

Article 12 of the International Covenant on Economic and Social Rights provides that human right to water ‘entitles everyone to sufficient, safe,
acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.’

**g. Privacy**

The right to privacy is recognized by the Constitution. Article 16 provides ‘[t]hat no person shall be subjected to interference with his privacy of person, family, home or correspondence except by order of a court of competent jurisdiction. While the right guaranteed by the provision of the Constitution provided exception only by order of a court, other legislations such as the National Public Health Law provides a broad exemption for public health emergency.

In international human rights law, Article 17 of the ICCPR provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family or correspondence as well as against unlawful attacks on his honor and reputation. The Human Rights Committee has stated that State Parties are required guaranteed against all such interferences and attacks whether they emanate from State authorities or natural or legal persons. Even with regards to interferences that conform to the Covenant, relevant legislation must specify in detail

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23 UNCESCR General Comment No. 15 (2002)
the precise circumstances in which such interferences may be permitted.\textsuperscript{24}

Privacy, therefore, is susceptible to restrictions based on the pursuit of certain legitimate objectives. These objectives should be justified by the fact that they are (i) for a legitimate aim, (ii) necessary and (iii) proportional.

While surveillance is necessary for tracking suspected victims of the COVID-19, the Government should cautiously tread on a balancing act. The purpose of surveillance, tracing and general interference with the right to privacy must serve a lawful purpose.

\textbf{h. People in detention and institutions}

People held in detention are most often at risk of infection in the case of a serious outbreak. Social distancing and isolation appear to be a challenging problem for inmates and Correction Officers. The application of all standards for the treatment of prisoners should be observed. For the example, the UN Standard Minimum Rules for the Treatment of Prisoners calls for the examination of every person as soon as possible before and after admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions.\textsuperscript{25}

\textsuperscript{24} HRC General Comment 16 (1988)

\textsuperscript{25} UN Standard Minimum Rules for the Treatment of Prisoners, Rule 24.
The applicable law Criminal Procedure Law regarding those held in pretrial detention should be considered by both the courts and prosecution. For example, the release of accused persons for misdemeanor offenses should be seeing as a method of decongesting prisons to avoid any possible outbreak of COVID-19 in prison and detention facilities. Non-custodial measures, alternatives to detention should be explored and enforced.

In tandem with these measures, the Government through the Ministry of Justice should design programs that will create awareness on the impact and response to the COVID-19 to those in detention. Moreover, special care should be paid to women in prison facilities without discrimination. The provision of sanitary pads, toiletries and others should be considered as specific and immediate needs for women in prison. Prison institutions should continue routine medical checks for all inmates and specifically women in distress. Inmates should be allowed under necessary supervision to communicate with their family and friends at regular intervals, by correspondence and other means practicable.

i. Social and Economic Impact

Away from a clinical setting, the social and economic impact of the pandemic has profoundly impacted every fabric. The situation is more acute in Liberia were unemployment has soared more than 60%. Still recovering from the impact of the Ebola Virus Disease, the advent of the COVID-19 has exacerbated the right to a decent livelihood. With the

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current measures of isolation and possible lock-down, Liberians and residents will find life more difficult and very unbearable.

The Government should initiate immediate economic relief. For example, the Government should initiate leave with pay and well facilitate the reasonable reduction of prices of basic commodities such as food, gas/fuel, transportation, electricity, water, etc. The Government should commission a special task force that will ensure compliance with Government mandate regarding the prices of basic goods.

j. Stigmatization

Section 7.6 of the Public Health Law of Liberia provides that ’[n]o one shall practice or introduce, or support in any form or manner discrimination, stigmatization or segregation against persons affected or previously affected by notifiable diseases (whether communicable or non-communicable) and conditions with less epidemic potential such as leprosy, lymphoedema, hydrocele, ulcers, etc.). This prohibition shall extend to and include discrimination, stigmatization or segregation against family members of persons affected or previously affected by notifiable diseases.’ In this regard, the Government should increase awareness and develop specific massages geared towards the elimination of stigmatization of victims of COVID-19.

VI. Conclusion

COVID-19 provides a daunting challenge for all Liberians. The Government of Liberia should ensure that all Liberians are saved and
protected from COVID-19. However, providing safety and secured healthy environment for all Liberians requires serious measures. These measures should be proportionate and evaluated against the risk. The Government is also required to pursue less intrusive means when possible to ensure the protection of public health.

VII. Recommendations

The Independent National Commission on Human Rights (INCHR) recommends the followings:

a. The Government should proclaim the existence of state emergency (public health emergency) to uphold the principle of legality and rule of law. The declaration will ensure transparency and prevent arbitrary derogation and incidence of *de facto* emergencies. This will allow INCHR and other human rights groups to monitor and ensure that the enforcement is strictly in line with public health;

b. That health facilities are made accessible to all Liberians and residents without discrimination. The government should initiate a low-cost targeted program for poor and disadvantaged persons to access medical facilities;

c. The Government in collaboration with international partners develops communication/awareness strategies to inform the population about COVID-19 and its response; as much as possible the communication strategy should include languages/messages that are easily understood by Liberians and residents. This means
also that persons with disabilities, including those with earing and listening impairment, are considered in this messaging.

d. The government approach should be gender-sensitive, especially women. Priority for testing pregnant women with COVID-19 symptoms, isolation of pregnancy wards from COVID-19 and extra care for women in delivery should be considered. The protection of Sexual Reproductive Health Rights of women is critical during this time of the pandemic. Access to safe delivery, use of contraception, treatment of STIs should be made available at all times. Hence, the Government should ensure that there is enough information for women to access hospital maternity facilities without fear and the misconception about the spread of the COVID-19.

e. Adequate safe water reduces the risk of diseases. With global health authorities’ recommendations about hand-washing, the Government should ensure adequate supplies of safe water. In this regard, the Government should suspend the payment of or reduce bills for water supply and ensure that communities have water at all times for hand-washing, consumption, cooking and domestic hygienic use.

f. The government should consider as a priority the issue of those held in prison facilities. The decongestion of prisons will help mitigate the spread since detention facilities are not feasible for distancing and isolation. The applicable criminal procedure law
regarding bail and alternative non-custodial measures should be encouraged and enforced.

g. The Economic and social impact of the COVID-19 is colossal. Measures such as stay-home and social distancing have a serious economic impact, especially for vulnerable people. The Government's recent pay-leave for non-essential staff is a welcome development. However, the sky-rocket of prices of basic commodities in the face of these measures is unbearable. The government should discuss means to reduce the prices of basic commodities such as rice, transportation, etc.

h. Those who are affected and survivor of COVID-19 stand the risk of stigmatization and discrimination. The government must design appropriate strategies with civil society to address stigmatization by applying the relevant laws. Awareness and education of the virus are critical to the reduction of stigmatization and discrimination.

i. The Independent National Human Rights Commission (INCHR) consistent with its mandate, avails itself to the Government in whatever feasible way to help in awareness-raising and technical support that will guide the Government in the application of human rights-based approach in the planning and programming of the fight against COVID-19 at this crucial period, so that no one is left behind.
Rev. Bartholomew B. Colley (Atty.)
Acting Chairperson, INCHR-Liberia