

## CONSTITUTION REVIEW COMMITTEE

### Factsheet on the 1986 Constitution of Liberia

#### History

- The current Constitution of Liberia took effect from **6 January 1986**.
- The drafting of the Constitution was done by a National Constitutional Commission of 25 members, including 24 men and 1 woman. It was ratified by a Constitutional Advisory Assembly with 59 members, of whom 3 were women.

#### Overview of the Constitution

- The 1986 Constitution has 97 Articles or substantive provisions arranged in 13 chapters.
- According to the brief Preamble, the Constitution is established by the People of the Republic of Liberia following the suspension of the previous constitution of 1847 in order to establish how Liberia will be governed.
- In terms of its structure, the Constitution starts with the establishment of the state and describes its citizens and their rights and duties. This is followed by provisions that establish the 3 main arms of government and their main powers, functions and responsibilities. Thereafter follow provisions that deal with fundamental processes such as elections and responses to emergency situations. After this are provisions that establish independent commissions and set the principles for how officials must conduct themselves. Then follow provisions on how to amend the Constitution. Finally, are the provisions dealing with the transition or change to the 1986 Constitution.

#### Chapter 1 – Structure of the State

There are 3 key principles in this chapter:

- All power comes from the people. The government rules on behalf of the people who are the source of its powers. The government also accounts to the people through democratic elections.
- The Constitution is the supreme law. This legal supremacy of the Constitution is guaranteed by the Supreme Court.
- Liberia is organised as a unitary republic; only administrative functions can be decentralised to counties. There is separation of power to three arms or branches of government. Each branch is separate from the others and has exclusive power according to its role. Together, the branches check and balance each other and they also coordinate their roles.

#### Chapter 2 – General Principles of National Policy

This part has 7 articles. It offers essential guidelines on how the state is administered and the key goals to be achieved. The guidelines are directed at state officials in the Legislature and the Executive, who are the ones responsible for making and implementing official policies. These policies in turn are meant to direct official actions and the laws enacted by the Legislature.

The main provisions require the state to aim to achieve –

- National integration and unification, with all citizens participating in government (Art. 5)
- Preservation of Liberian culture even as the state develops (Art. 5)
- Elimination of tribalism, abuse of power and corrupt practices (Art. 5)
- Mass education and elimination of illiteracy (Art. 6)

- v) Management of the economy and natural resources to improve the peoples’ welfare (Art. 7)
- vi) Opportunities for employment and safe working conditions (Art. 8)
- vii) Cooperation with other states and regional organisations (Art. 9)
- viii) Publication and dissemination of the Constitution with its principles and provisions taught in educational institutions throughout Liberia (Art. 10)

As general guidelines, they do not require any specific measure except the guideline dealing with the teaching of the Constitution. These provisions do not specify time periods to achieve the goals. They also do not include monitoring and enforcement mechanisms.

### Chapter 3 – Fundamental rights

There are some 16 articles in total which guarantee some 21 distinct rights.

The rights guaranteed are usually known as **Civil and Political Rights**. These are the rights that are guaranteed to the individual in accordance with the United Nations International Covenant on Civil and Political Rights, which is 1 of the 7 basic UN human rights legal conventions.

The rights guaranteed in this chapter are legally enforceable by the courts (Art. 26). Some of the rights can be generally limited by law. Others require in addition that limitations are backed by a court order, e.g. the right to privacy.

According to some provisions, rights are enjoyed by “persons” including “every person lawfully within the Republic,” e.g. the right to freedom of movement and residence. Other provisions only guarantee a right to a “citizen” who is the one able to enforce that particular right. The most detailed provisions regarding rights deal with the issue of fair trial in criminal justice proceedings in Art. 21.

Some of the rights guaranteed in the Constitution include: right to equality before the law; freedoms of movement, speech, assembly and association; right to privacy; right to equal opportunity to work and equal pay for equal work; right to property and the right to life.

#### Comparison with other Constitutions

<b>Liberia (1986 Constitution)</b>	<b>South Africa (1996 Constitution)</b>	<b>Kenya (2010 Constitution)</b>	<b>Ghana (1992 Constitution)</b>
<ul style="list-style-type: none"> <li>• Civil rights</li> <li>• Political rights</li> <li>• Property rights</li> <li>• Right to sue the government</li> </ul>	<ul style="list-style-type: none"> <li>• Civil rights</li> <li>• Political rights</li> <li>• Economic rights</li> <li>• Social rights</li> <li>• Cultural rights</li> <li>• Language rights</li> <li>• Minority rights</li> <li>• Child rights</li> </ul>	<ul style="list-style-type: none"> <li>• Civil rights</li> <li>• Political rights</li> <li>• Economic rights</li> <li>• Social rights</li> <li>• Cultural rights</li> <li>• Minority rights</li> <li>• Child rights</li> <li>• Women’s rights</li> <li>• Land rights</li> <li>• Marginalised community rights</li> </ul>	<ul style="list-style-type: none"> <li>• Civil rights</li> <li>• Political rights</li> <li>• Economic rights</li> <li>• Social rights</li> <li>• Cultural rights</li> <li>• Right to education</li> <li>• Women’s rights</li> <li>• Child rights</li> <li>• Disabled people’s rights</li> </ul>

## Chapter 4 - Citizenship

This is a very brief chapter with two key provisions. It says who is a Liberian citizen and how citizenship of Liberia is acquired or lost.

Liberian citizenship is an entitlement to a person who already was a Liberian citizen on 6 January 1986 at the time the Constitution took effect and to any person born to a Liberian citizen (father or mother). Citizenship may also be acquired by non-citizens who apply successfully for citizenship (naturalisation) as per the law on immigration.

According to the Constitution, Liberian citizenship cannot be acquired by birth or by naturalisation by a person who is not of Negro descent.

Citizenship may be lost in two cases: Firstly, by a Liberian citizen who changes citizenship or who does not renounce citizenship in another country. Secondly, by application of legislation.

The Constitution does not expressly prohibit the denial or withdrawal of citizenship to citizens by birth. It also does not permit dual citizenship.

## Chapter 5 – The Legislature

This important chapter provides for the establishment of the Legislature, which is one of the three arms of the state. It sets out what the Legislature is, its composition, its powers and functions, and finally, how these powers and functions are to be exercised and performed.

Liberia's Legislature is one organ made up of two chambers or Houses, which are the Senate and the House of Representatives (Art. 29). Some provisions of the Constitution apply to the Legislature as a whole, e.g. to ensure a population census every 10 years and to conduct business in the English language. Others apply solely to either of the two Houses. Most decisions can be made when a simple majority in each House is present to make the quorum.

### Who can be elected to the Legislature?

There are four requirements to be met if one wants to be elected to the Legislature: (a) citizenship, (b) domicile or residence in the place from where one is elected at least one year prior to the time of the election, (c) be a taxpayer, and (d) meet minimum age qualifications = 30 years or more for the Senate and 25 years or more for the House of Representatives (Art. 30).

### When and where does the Legislature work?

The Legislature assembles once a year beginning from the second (2<sup>nd</sup>) working Monday in January. The Constitution does not expressly say how long the session should last, though it permits its extension beyond the date when it should end. Both the Senate and the House of Representatives must always sit in the same city.

### What are the powers of the Legislature?

To start with, the Constitution says that the legislative power of the Republic shall be vested in the Legislature (Art. 29). The Legislature is the exclusive body that can make the laws in Liberia.

While it has a general law making power, the Constitution has also prescribed some areas where the Legislature should make laws, e.g. to make laws for citizenship, elections, criminal offences and pension schemes for government workers.

In addition to the law making power, the other powers of the legislature fall into five categories:

- (i) Powers dealing with the administrative structure of the country: The Legislature can create new counties and alter the existing ones.
- (ii) Powers dealing with the security of the country: The Legislature declares war and authorises peace. Through its control of finances it raises the armed forces and makes rules for their governance, and generally provides for the security of the country.
- (iii) Powers dealing with the financing of the state: The Legislature authorises taxation, oversees government expenditure, allocates state finances, authorises government to borrow and guarantees it loans and even regulates the currency of Liberia.
- (iv) Powers dealing with the administration of justice: The Legislature sets up all the courts below the Supreme Court and defines their powers and jurisdiction.
- (v) Powers dealing with international relations: The Legislature has to approve treaties between Liberia and other countries and may regulate international trade with Liberia.

### How does the Legislature make laws?

Before a law is made, it starts as a *bill* (a proposal for a law) or resolution in either the Senate or the House of Representatives. Any member can propose a bill. Citizens may also petition the Legislature for a bill to be enacted. A bill has to be debated and passed in accordance with the rules of procedure adopted in each House.

Both Houses must pass a bill. It is then sent to the President for approval. If the approval is given, the bill becomes a law that can be enforced. If the approval is not given, the President must return the bill to the House from where it originated, noting the objections. This non-approval is called a veto. It can apply to the entire proposal or only to parts of it. The Legislature may then change the bill to respond to the objections before returning it to the President for approval. It may also decide to overrule the president's veto which it can do by a vote of two-thirds majority of the members in each House. This majority vote ensures the bill becomes a law overruling the objection of the president. In some cases, a bill can also become a law if the president after receiving it for approval takes no action on it within 20 days.

### The House of Representatives

- Is composed of members elected for a term of six (6) years
- Its members represent the legislative constituencies within the counties and are eligible for re-election
- Has the sole power to prepare a bill to impeach the president, vice-president, chief justice or judges of the Supreme Court and other state officials
- Elects and removes its presiding officer, called a Speaker, who also presides over joint sessions of the two Houses
- Its members are protected from criminal trials instigated only on account of their official work
- Has to approve for the Senate to adjourn for more than five days at a time

### The Senate

- Is composed of members, called Senators, elected for a term of nine (9) years
- Senators represent counties and each county elects two senators with one vote each. Senators can be re-elected
- Has the sole power of trial and conviction of state officials when a bill of impeachment has been prepared
- Does not elect its main presiding officer, called the President of the Senate, as this post is held by the Vice-President of the Republic
- Elects its second presiding officer, called the *President Pro Tempore*.

- Gives consent to presidential appointments to certain positions (Art. 54).

## Chapter 6 – The Executive

In 15 articles, this chapter establishes the office of the president and the vice president, defines their role in the state and provides for the exercise of executive power.

Executive power is vested in the President, who is the head of state, head of government and head of the armed forces. The President is elected by universal vote for a term of six (6) years subject to a constitutional term limit of two terms. When in office, the President enjoys immunity from arrest and prosecution, as well as from civil proceedings.

The Vice-President assists the President and is elected on the same political ticket at the same time and for a similar term as the President. But they cannot both come from the same County. The Vice President is also the President of the Senate.

### Qualifications for President and Vice-President

- Must be a natural born Liberian citizen
- Not less than 35 years of age
- Owner of free real property valued not less than \$25,000
- Resident in Liberia ten (10) years prior to the time of election

### Specific powers of the President

The President has specific powers that cannot be delegated to any other person including the Vice-President. These powers are to:

- Appoint state officials - cabinet ministers, deputy ministers, ambassadors, the Chief Justice and judges of the Supreme Court, superintendents and other county officials, military officers above rank of lieutenant, marshals, deputy marshals, sheriffs, Notaries Public and Justices of the Peace
- Remove or sack state officials, other than those where the Constitution requires impeachment proceedings
- Remove elected Paramount, Clan and Town Chiefs where there is proved misconduct
- Conduct foreign affairs on behalf of Liberia and to conclude treaties with concurrence of the House of Representatives
- Report to the Legislature on the state of the Republic
- Pardon court fines and sentences except impeachment convictions and sign warrants to carry out capital sentences
- Proclaim and declare a State of Emergency
- Approve or veto the bills passed by the Legislature

### Removal or Impeachment

The Constitution permits impeachment of the President and Vice-President on grounds of treason, bribery, felonies, gross misconduct and violation of the Constitution (Art. 62).

## Chapter 7 – The Judiciary

This chapter mainly deals with the Supreme Court. Judicial power is vested in the Supreme Court and other subordinate courts which shall apply statutory and customary laws.

### Role of Supreme Court

The Supreme Court has the final say over the interpretation of the Constitution. It is also the final court of appeal in all other cases. Its judgements cannot be appealed to or reviewed by any other branch of Government.

It decides on constitutional issues either as a final appeal or as original cases. The Legislature cannot make any law to interfere with the powers of the Supreme Court.

### Supreme Court Justices

The Supreme Court has five judges – the Chief Justice and four (4) Associate Justices. They enjoy immunity in the course of their work.

Liberian citizens of good moral character and who have practised for at least 5 years may be appointed to these positions by the President, with Senate approval. The judges may be removed only upon impeachment by the Senate.

Justices may remain in office until they reach the retirement age of 70 years.

## Chapter 8 –Political Parties and Elections

This chapter has 3 key stipulations aimed at protecting a democratic system: (i) it declares as unconstitutional any attempt at establishment of a one-party state, (ii) it permits competitive political parties, and (iii) it enables Liberians to participate in competitive elections.

### Political Parties

The Constitution has general and in some cases detailed regulations for political parties.

- Liberians may freely form or join a political party, which is an association with membership of not less than 500 qualified voters in each of at least six (6) counties whose activities include canvassing for votes (Art. 78)
- A political party must be registered by the Elections Commission after meeting the requirements (Art. 79)
- The name, objective, emblem or motto of a political party should not have a religious or divisive ethnic association (Art. 79)
- Political parties should hold elections for their officials at least once in every six (6) years (Art. 79)
- Political parties that aim to undermine democracy or promote violence are not permitted (Art. 80)
- Political parties can obtain funds from citizens but not trade unions, businesses and corporations (Art 82)
- Political parties may not hold funds or assets outside Liberia; parties or independent candidates may only receive foreign funds if these are remitted by Liberia citizens from abroad (Art 82).
- Elections Commission has the power to examine and order independent audits of political party finances.
- The law may restrict certain categories of Liberians joining political parties

### Elections

The Elections Commission is the body that organises elections and referenda. Liberians vote by secret ballot if they are registered voters after reaching the age of 18 years. The Legislature has the duty to provide by law for electoral offences and penalties and other regulations for elections.

### Public elections

Voting for the President, Vice-President, members of the Senate and members of the House of Representatives shall be conducted on the second Tuesday in October of each election year. Elections must be held at least once every six years.

Public officers must win an absolute majority of the votes cast. If no candidate wins this majority, a run-off vote must be held on the second Tuesday following, in which only the two candidates who received the greatest number of votes in the first round compete.

Political parties and independent candidates must submit detailed statements of assets and liabilities to the Elections Commission within a specified timeframe.

**Fixed timeframe**

The Constitution fixes the elections date. It also sets firm and tight timelines for the electoral process. This includes the time frame for declaring returns after an election (within 15 days), for filing a complaint with the Elections Commission after announcement of results (within 7 days), for investigating and disposing of the complaint (within 30 days).

An appeal against the decision of the Elections Commission may be made to the Supreme Court within 7 days. If an appeal is filed, the Elections Commission must submit records to the Supreme Court within 7 days. The Supreme Court must hear and determine the complaint within 7 days. If an election is to be repeated, the new election must take place within 60 days of the decision of the Supreme Court.

**Chapter 9 – Emergency Powers**

The President may in consultation with leaders of the Legislature, declare a State of Emergency. The Constitution requires the Legislature to approve the continuation of a State of Emergency.

**Legislative approval**

Within 7 days of making a declaration, the President must convey the justification to the Legislature. The Legislature then has a period of 72 hours to decide if to uphold, modify or revoke the declaration. A two-thirds majority vote of the membership of each House is needed to uphold or modify the declaration. The declaration is automatically revoked if the two-third majority is not obtained.

The Constitution does not say for how long a State of Emergency may remain in operation. It also does not provide for periodic review by the Legislature during the continuation of a State of Emergency.

**The reasons**

The Constitution permits a declaration of a State of Emergency only where there is a threat or outbreak of war or where civil unrest is a real danger to the security or well-being of the state.

The Constitution is silent on situations other than war and civil unrest, which may seriously endanger the state or some of its parts, such as natural disasters, environmental calamities or disease outbreaks.

**Measures allowed and prohibited during a State of Emergency**

ALLOWED	PROHIBITED
The President can: <ul style="list-style-type: none"> <li>• Order the armed forces into a state of combat</li> <li>• Suspend rights and freedoms guaranteed in the Constitution</li> <li>• Exercise any other emergency powers necessary and appropriate to deal with the</li> </ul>	The President cannot: <ul style="list-style-type: none"> <li>• Suspend or abrogate the Constitution</li> <li>• Dissolve the Legislature</li> <li>• Suspend or dismiss the Judiciary</li> <li>• Amend the Constitution</li> <li>• Suspend <i>habeas corpus</i></li> </ul>

emergency

### Chapter 10 – Autonomous Public Commission

The Constitution directly establishes three (3) independent commissions, namely –

- A. Civil Service Commission
- B. Elections Commission
- C. General Auditing Commission

The Constitution does not specify the powers, functions, composition or terms of the Commission, which therefore require the Legislature to enact enabling laws.

### Commissions in other Constitutions

LIBERIA	SOUTH AFRICA	KENYA
<ol style="list-style-type: none"> <li>1. Civil Service Commission</li> <li>2. Elections Commission</li> <li>3. General Auditing Commission</li> </ol>	<ol style="list-style-type: none"> <li>1. Public Service Commission</li> <li>2. Electoral Commission</li> <li>3. The Auditor-General</li> <li>4. The Public Protector</li> <li>5. Human Rights Commission</li> <li>6. Commission for the Promotion and Protection of the Rights of the Cultural, Religious and Linguistic Communities</li> <li>7. Commission for Gender Equality</li> <li>8. Judicial Service Commission</li> </ol>	<ol style="list-style-type: none"> <li>1. Public Service Commission</li> <li>2. Independent Electoral and Boundaries Commission</li> <li>3. National Human Rights and Equality Commission</li> <li>4. Judicial Service Commission</li> <li>5. Parliamentary Service Commission</li> <li>6. National Land Commission</li> <li>7. Commission on Revenue Allocation</li> <li>8. Salaries and Remuneration Commission</li> <li>9. National Police Service Commission</li> <li>10. Teachers Service Commission</li> </ol>

### Chapter 11 – Miscellaneous

This Chapter has 1 article which deals with the conduct of public officials (Art 90).

A person elected or appointed to public office should avoid any activity that is against public policy or that raises a conflict of interest. Secondly, a public official shall not demand or receive bribes or personal benefits for doing their work.

The Legislature shall prescribe a Code of Conduct for public officials setting out offences and penalties for violations.

### Chapter 12 – Amendments

The Constitution of Liberia may be amended. The two ways to amend the Constitution are by Legislative initiative and by Popular initiative.

The Legislature initiates constitutional amendment by a two-thirds majority vote of the membership of both Houses.



The popular initiative requires a petition signed by at least 10,000 citizens to be submitted to the Legislature. The petition will only succeed when it receives two-thirds majority support of both Houses and is also ratified by two-thirds of the registered voters at a referendum which must be held not sooner than one year after the action of the Legislature.

Proposed constitutional amendments must be adequately publicised. If several amendments are put to the same referendum, then they must be presented in a way that allows the people to vote for or against them separately.

All the provisions of the Constitution of Liberia can be amended. The only condition is that an amendment to the President's two-term limit does not become effective during an incumbent's term. This provision itself is not protected against amendment.

### **Chapter 13 - Transitional Provisions**

This is the last chapter. Its provisions deal with the continuation from a previous constitution order to the new succeeding one.

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